Health & Human Services Access Subcommittee

Wednesday, March 23, 2011
1:00 – 4:00 PM
12 HOB

Dean Cannon
Speaker

Gayle Harrell
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health & Human Services Access Subcommittee

Start Date and Time: Wednesday, March 23, 2011 01:00 pm

End Date and Time: Wednesday, March 23, 2011 04:00 pm

Location: 12 HOB
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 959 Administrative Monitoring of Mental Health and Substance Abuse Service Providers by Young
HB 145 Sexual Exploitation by Fresen
HB 909 Emergency Medical Services by Perry
HB 4151 Standards for Compressed Air by Porter
HB 1241 Independent Living by Glorioso
CS/HB 479 Medical Malpractice by Civil Justice Subcommittee, Horner
HB 935 Health Care Price Transparency by Corcoran
HB 49 Massage Therapy by Fresen
HB 1117 Interstate Health Insurance Policies by Wood
HB 1171 Long-Term Care Ombudsman Program by Harrison
HB 1271 Dentistry by Campbell

Consideration of the following proposed committee bill(s):

PCB HSAS 11-01 -- Repeals Obsolete Language relating to Vulnerable Children and Adults

Presentation by Department of Children & Families on findings and actions taken related to recent child deaths

NOTICE FINALIZED on 03/21/2011 16:22 by Villar.Melissa

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 959 Administrative Monitoring of Mental Health and Substance Abuse Service Providers
SPONSOR(S): Young and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Batchelor	Schoolfield
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill amends s. 402.7306, F.S., which relates to administrative monitoring of service providers and adds mental health and substance abuse providers under s. 394.674, F.S., to the list of providers affected by this section. In addition, the Behavioral Health Managing Entities under contract to the Department of Children and Families and their contracted monitoring agents are added to the list of agencies affected by this section.

The bill limits agencies who perform licensure, and programmatic monitoring to once every three years if the provider of child welfare, mental health or substance abuse services is accredited by the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation. This requirement already exists for administrative monitoring.

The bill also limits discretionary monitoring of providers by removing current authority to monitor for suspected problems and leaving authority to monitor for complaints. Existing law allows the agencies to continue to monitor facilities to ensure service delivery and compliance with federal and state rules and regulations if this does not overlap with accreditation standards.

Finally, the bill adds mental health and substance abuse service providers to the list of providers authorized to use an internet data warehouse for archiving administrative and fiscal records. An agency that conducts administrative monitoring of these service providers is required to use this data warehouse for document requests.

The bill provides an effective date upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Contract Monitoring

State agency procurement contracts typically include oversight mechanisms for contract management and program monitoring. Contract monitors ensure that contractually required services are delivered in accordance with the terms of the contract, approve corrective action plans for non-compliant providers, and withhold payment when services are not delivered or do not meet quality standards.

In November 2008, Children's Home Society of Florida (CHS) surveyed 162 contract programs, in an effort to "assess the quantity of external contract monitoring of CHS programs and identify any potential areas of duplication across monitoring by state and designated lead agencies.[1]"

According to the responses, between October 1, 2007 and September 30, 2008, 104 programs were monitored 154 times by state agencies, and 1,369 documents were requested in advance of site monitoring visits. Of the document requests, 488 (36 percent) were requested by other state agencies or other departments within a state agency during the past year. According to the survey, examples of duplicative document requests include:

- Finance and Accounting Procedures;
- Human Resources Policies and Procedures;
- List of Board of Directors and Board Meeting Minutes;
- Financial Audit and Management Letter;
- IRS forms;
- By-laws; and
- Articles of Incorporation.

During site visits, reviewers evaluated the same policies and procedures reviewed by other state agencies and professional program staff spent an average of 60 hours on each site visit.

House Bill 5305 (2010)

In 2010 the Legislature passed House Bill 5305[2] establishing s. 402.7306, F.S. to limit administrative monitoring to once every three years, if the contracted provider of child welfare services is accredited by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), the Commission on Accreditation of Rehabilitation Facilities (CARF), or the Council on Accreditation (COA).

HB 5305 also authorized private-sector development and implementation of an Internet-based secure and consolidated data warehouse for maintaining corporate, fiscal and administrative records related to child welfare provider contracts, and required state agencies that contract with child welfare providers to access records from this database.

Coordination of Contracted Services

The 2010 Legislature also passed Senate bill 2386[3] creating s. 287.0575, F.S., requiring the coordination of contracted services related to providers under contract with the Department of Children and Families (DCF), Agency for Persons with Disabilities (APD) , Department of Health (DOH), the Department of Elder Affairs (DOEA), and the Department of Veterans Affairs (DVA).

---

[1] CHS, *Case Study-Contract Monitoring Survey* (December 3, 2008).
[2] Chapter 2010-158 Laws of Florida.
[3] Chapter 2010-151 Laws of Florida

This section of law provides that contract service providers must provide contract managers with comprehensive lists of their health and human services contracts if they have more than one contract with more than one agency, establish a single lead administrative coordinator for each contract service provider among agencies having multiple contracts, and requires that each agency contracting for health and human services annually evaluate the performance of the designated lead coordinator. [4]

Behavioral Health Managing Entities

Behavioral Health Managing Entities are established in s 394.9082, F.S., to provide more efficient oversight and coordination of mental health and substance abuse service programs under DCF. The managing entity is under contract with DCF to manage the day-to-day operational delivery of behavioral health services through an organized system of care.[5] The goal is to effectively coordinate, integrate and manage the delivery of behavioral health services.[6]

Current Licensure Authority

Mental health providers are licensed by the Agency for Health Care Administration (AHCA) under the authority of chapter 394 Part IV, F.S. Substance Abuse providers are licensed by DCF under the authority of s. 397.401, F.S. In addition, s. 394.741, F.S. provides that accreditation must be accepted as a substitute for facility onsite licensure review and administrative and programmatic requirements for mental health and substance abuse treatment services.[7]

Child welfare providers are licensed as child placing agencies and residential child caring agencies by the Department of Children and Family Services under the authority of s.409.175, F.S.

Effect of Proposed Changes

The bill amends s. 402.7306, F.S., which relates to administrative monitoring of service providers and adds mental health and substance abuse providers under s. 394.674, F.S., to the list of providers affected by this section. In addition, the Behavioral Health Managing Entities under contract to the Department of children and Families and their contracted monitoring agents are added to the list of agencies affected by this section.

The bill limits agencies to perform licensure, and programmatic monitoring once every three years if the provider of child welfare, mental health or substance abuse services is accredited by the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities ,or the Council on Accreditation. This requirement already exists for administrative monitoring.

The bill also limits discretionary monitoring of providers by removing current authority to monitor for suspected problems and leaving authority to monitor for complaints. Existing law allows the agencies to continue to monitor facilities to ensure service delivery and compliance with federal and state rules and regulations if this does not overlap with accreditation standards.

Finally, the bill adds mental health and substance abuse service providers to the list of providers authorized to use an internet data warehouse for archiving administrative and fiscal records. An agency that conducts administrative monitoring of these service providers is required to use this data warehouse for document requests.

---

[4] s. 287.0575, F.S.
[5] s. 394.9082(2)(d), F.S.
[6] s. 394.9082(5), F.S.
[7] s. 394.741, F.S.,

B. SECTION DIRECTORY:

Section 1: Amends s. 402.7306, F.S., relating to administrative monitoring.

Section 2: Provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

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:

   The 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- The bill could be clearer by limiting the use of "accreditation" in lieu of monitoring to those contracted services being purchased which have been covered by the accreditation. As written, it is

possible that a provider could be accredited for a service not included within the contracted services, but still fall within the monitoring limitations of this bill.

- The bill may conflict with routine fire safety inspections conducted in child welfare agencies which are required in s. 409.175(6)(f), F.S.,
- The bill cross references s. 394.674, F.S., which refers to the eligibility requirements for individuals receiving DCF funded services. A more accurate cross reference would be to contractual requirements (s. 394.74, F.S.) rather than individual/client requirements.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to administrative monitoring of mental health and substance abuse service providers; amending s. 402.7306, F.S.; including mental health and substance abuse providers for purposes of administrative monitoring; requiring the Department of Children and Family Services, the Department of Health, the Agency for Persons with Disabilities, the Agency for Health Care Administration, community-based care lead agencies, and the Department of Children and Family Services' managing entities and their contracted monitoring agents to adopt policies for the administrative monitoring of child welfare, mental health, and substance abuse service providers; limiting frequency of administrative, licensure, and programmatic monitoring of mental health and substance abuse service providers under certain conditions; providing an effective date.

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

Section 1. Section 402.7306, Florida Statutes, is amended to read:

402.7306 Administrative monitoring <u>of</u> ~~for~~ child welfare providers <u>and mental health and substance abuse service providers who provide services under s. 394.674</u>.—The Department of Children and Family Services, the Department of Health, the Agency for Persons with Disabilities, the Agency for Health Care Administration, ~~and~~ community-based care lead agencies<u>, and the Department of Children and Family Services' managing entities,</u>

as defined in s. 394.9082, and their contracted monitoring agents shall identify and implement changes that improve the efficiency of administrative monitoring of child welfare, mental health, and substance abuse services. To assist with that goal, each such agency shall adopt the following policies:

(1) Limit administrative, licensure, and programmatic monitoring to once every 3 years if the child welfare, mental health, or substance abuse service provider is accredited by the Joint Commission ~~on Accreditation of Healthcare Organizations~~, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation of Children and Family Services. If the accrediting body does not require documentation that the state agency requires, that documentation shall be requested by the state agency and may be posted by the service provider on the data warehouse for the agency's review. Notwithstanding the survey or inspection of an accrediting organization specified in this subsection, an agency specified in and subject to this section may continue to monitor the service provider as necessary with respect to:

(a) Ensuring that services for which the agency is paying are being provided.

(b) Investigating complaints ~~or suspected problems~~ and monitoring the service provider's compliance with any resulting negotiated terms and conditions, including provisions relating to consent decrees that are unique to a specific service and are not statements of general applicability.

(c) Ensuring compliance with federal and state laws, federal regulations, or state rules if such monitoring does not

duplicate the accrediting organization's review pursuant to accreditation standards.

Medicaid certification and precertification reviews are exempt from this subsection to ensure Medicaid compliance.

(2) Allow private sector development and implementation of an Internet-based, secure, and consolidated data warehouse and archive for maintaining corporate, fiscal, and administrative records of child welfare, mental health, or substance abuse service providers. A service provider shall ensure that the data is up to date and accessible to the applicable agency under this section and the appropriate agency subcontractor. A service provider shall submit any revised, updated information to the data warehouse within 10 business days after receiving the request. An agency that conducts administrative monitoring of child welfare, mental health, or substance abuse service providers under this section must use the data warehouse for document requests. If the information provided to the agency by the service provider's data warehouse is not current or is unavailable from the data warehouse and archive, the agency may contact the service provider directly. A service provider that fails to comply with an agency's requested documents may be subject to a site visit to ensure compliance. Access to the data warehouse must be provided without charge to an applicable agency under this section. At a minimum, the records must include the service provider's:

(a) Articles of incorporation.

(b) Bylaws.

(c) Governing board and committee minutes.

(d) Financial audits.

(e) Expenditure reports.

(f) Compliance audits.

(g) Organizational charts.

(h) Governing board membership information.

(i) Human resource policies and procedures.

(j) Staff credentials.

(k) Monitoring procedures, including tools and schedules.

(l) Procurement and contracting policies and procedures.

(m) Monitoring reports.

Section 2. This act shall take effect upon becoming a law.

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(s) Young offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 402.7306, Florida Statutes, is amended to read:

402.7306 Administrative monitoring of ~~for~~ child welfare providers, and administrative, licensure, and programmatic monitoring of mental health and substance abuse service providers. For the purpose of this section mental health and substance abuse service providers are those providers who provide services to the state's priority population defined under s. 394.674 F.S. The Department of Children and Family Services, the Department of Health, the Agency for Persons with Disabilities, the Agency for Health Care Administration, ~~and~~ community-based care lead agencies, managing entities as defined in s. 394.9082, and agencies contracted monitoring agents shall

identify and implement changes that improve the efficiency of administrative monitoring of child welfare services, and the administrative, licensure, and programmatic monitoring of mental health and substance abuse services. To assist with that goal, each such agency shall adopt the following policies:

(1) Limit administrative monitoring to once every 3 years if the child welfare provider is accredited by the Joint Commission ~~on Accreditation of Healthcare Organizations~~, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation of Children and Family Services. If the accrediting body does not require documentation that the state agency requires, that documentation shall be requested by the state agency and may be posted by the service provider on the data warehouse for the agency's review. Notwithstanding the survey or inspection of an accrediting organization specified in this subsection, an agency specified in and subject to this section may continue to monitor the service provider as necessary with respect to:

(a) Ensuring that services for which the agency is paying are being provided.

(b) Investigating complaints or suspected problems and monitoring the service provider's compliance with any resulting negotiated terms and conditions, including provisions relating to consent decrees that are unique to a specific service and are not statements of general applicability.

(c) Ensuring compliance with federal and state laws, federal regulations, or state rules if such monitoring does not

duplicate the accrediting organization's review pursuant to accreditation standards.

Medicaid certification and precertification reviews are exempt from this subsection to ensure Medicaid compliance.

(2) Limit administrative, licensure, and programmatic monitoring to once every 3 years if the mental health and substance abuse service provider is accredited by the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation of Children and Family Services. If the services being monitored are not the services for which the provider is accredited, the limitations of this subsection do not apply. If the accrediting body does not require documentation that the state agency requires, that documentation shall be requested by the state agency and may be posted by the service provider on the data warehouse for the agency's review. Notwithstanding the survey or inspection of an accrediting organization specified in this subsection, an agency specified in and subject to this section may continue to monitor the service provider as necessary with respect to:

(a) Ensuring that services for which the agency is paying are being provided.

(b) Investigating complaints, identified problems that would affect the safety or viability of the service provider, and monitoring the service provider's compliance with any resulting negotiated terms and conditions, including provisions

relating to consent decrees that are unique to a specific service and are not statements of general applicability.

(c) Ensuring compliance with federal and state laws, federal regulations, or state rules if such monitoring does not duplicate the accrediting organization's review pursuant to accreditation standards.

Medicaid certification and precertification reviews are exempt from this subsection to ensure Medicaid compliance.

(3) Allow private sector development and implementation of an Internet-based, secure, and consolidated data warehouse and archive for maintaining corporate, fiscal, and administrative records of child welfare providers, mental health or substance abuse service providers. A service provider shall ensure that the data is up to date and accessible to the applicable agency under this section and the appropriate agency subcontractor. A service provider shall submit any revised, updated information to the data warehouse within 10 business days after receiving the request. An agency that conducts administrative monitoring of child welfare, mental health, or substance abuse service providers under this section must use the data warehouse for document requests. If the information provided to the agency by the service provider's data warehouse is not current or is unavailable from the data warehouse and archive, the agency may contact the service provider directly. A service provider that fails to comply with an agency's requested documents may be subject to a site visit to ensure compliance. Access to the data

warehouse must be provided without charge to an applicable agency under this section. At a minimum, the records must include the service provider's:

(a) Articles of incorporation.

(b) Bylaws.

(c) Governing board and committee minutes.

(d) Financial audits.

(e) Expenditure reports.

(f) Compliance audits.

(g) Organizational charts.

(h) Governing board membership information.

(i) Human resource policies and procedures.

(j) Staff credentials.

(k) Monitoring procedures, including tools and schedules.

(l) Procurement and contracting policies and procedures.

(m) Monitoring reports.

Section 2. This act shall take effect upon becoming a law.

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

Remove the entire title and insert:

An act relating to administrative, licensure and programmatic monitoring of mental health and substance abuse service providers; amending s. 402.7306, F.S.; including mental health and substance abuse providers for

purposes of administrative, licensure and programmatic monitoring; requiring the Department of Children and Family Services, the Department of Health, the Agency for Persons with Disabilities, the Agency for Health Care Administration, community-based care lead agencies, managing entities, and agencies contracted monitoring agents to adopt policies for the monitoring of mental health, and substance abuse service providers; limiting frequency of administrative, licensure, and programmatic monitoring of mental health and substance abuse service providers under certain conditions; requiring use of data warehouse for document requests for administrative monitoring; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 145 Sexual Exploitation
SPONSOR(S): Fresen
TIED BILLS: **IDEN./SIM. BILLS:** SB 718

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Batchelor	Schoolfield
2) Civil Justice Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 145 creates the Florida Safe Harbor Act and makes several amendments to protect and provide shelter for sexually exploited children. Specifically, the bill makes the following changes:

- The bill makes several amendments to definitions relating to sexual exploitation;
- Requires delivery of children alleged to be dependent and sexually exploited to short-term safe houses, if one is available;
- Provides rebuttable presumptions of law that placement in safe houses is necessary for sexually exploited children;
- Provides Legislative intent that services for sexually exploited children be provided in a secure residential setting, provided that the expenditure of such funds is calculated by the Department of Children and Family Services (DCF) to be a potential cost savings and more cost-effective than those otherwise provided;
- Directs DCF to contract for the operation of short-term safe houses and 1 statewide long term safe house;
- Revises prostitution laws so that certain acts related to prostitution are unlawful only if committed by any person 16 years of age or older;
- Amends civil penalty for specified violations of prostitution from $500 to $5,000 and applies it to violators who solicit, induce, entice or procure another to commit prostitution, lewdness, or assignation. It also revises the civil penalty so that it also applies to violators, 16 or older in age, who use or threaten to use a deadly weapon during specified offenses related to prostitution in s. 796.07(3), F.S. Directs that $4500 of the civil penalty be paid to DCF to fund safe houses and short-term safe houses;

The bill has an indeterminate fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Sexual Exploitation

Current law references sexual exploitation in the definition of "sexual abuse of a child."[1] Sexual exploitation of a child includes allowing, encouraging, or forcing a child to either solicit for or engage in prostitution; or engage in a sexual performance, as defined by Chapter 827, F.S.[2] Prostitution is the giving or receiving of the body for sexual activity for hire, excluding sexual activity assignation.[3] It is unlawful to offer to commit, to commit, or to engage in prostitution, lewdness, or assignation.[4] The prohibition against these acts exists without respect to the age of the person offering, committing, or engaging in prostitution.

A first offense for prostitution is a 2nd degree misdemeanor, a second offense is a 1st degree misdemeanor, and a third or subsequent offense is a third degree felony.[5] In addition to the criminal penalties, a civil penalty of $500 can be assessed against individuals that solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.[6]

Any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking, a second degree felony.[7] However, a person commits a first degree felony if the offense of sex trafficking is committed against a person who is under the age of 14 or if such offense results in death.[8]

Sex-Trafficking and Prostitution of Children

It is estimated that about 293,000 American youth are currently at risk of becoming victims of commercial sexual exploitation. The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets who are highly susceptible to become victims of prostitution. These children generally come from homes where they have been abused, or from families that have abandoned them, and often become involved in prostitution as a way to support themselves financially or to get the things they want or need.[9]

Other young people are recruited into prostitution through forced abduction, pressure from adults, or through deceptive agreements between parents and traffickers. [10] In a study conducted at the University of New Hampshire in 2009, researchers found that among a sampling of law enforcement agencies for information concerning youth involved in prostitution, of the estimated 1,450 arrests /detentions for crimes

---

[1] s. 39.01(67), F.S.
[2] s. 39.01(67)(g), F.S.
[3] s. 796.07(1)(a), F.S.
[4] s. 796.07(e), F.S.,
[5] s. 796.07(4), F.S.,
[6] s. 769.07(6), F.S.
[7] s. 796.045, F.S.
[8] *Id.*
[9] Id.; Richard J. Estes and Neil Alan Weiner, Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico, University of Pennsylvania (2001), available at www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf. (last visited 3/19/11)
[10] Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff); Francis T. Miko & Grace Park, Trafficking in Women and Children: The U.S. and International Response, p. 7. (Updated July 10, 2003), at http://www.usembassy.it/pdf/other/RL30545.pdf. (last visited 3/19/11).

related to juvenile prostitution in the U.S. in 2005, 95% involved third party exploiters, 31% were for what they labeled solo types of prostitution cases, and 12% involved sexual exploitation.[11]

Third party or pimp-controlled commercial sexual exploitation of children is linked to escort and massage services, private dancing, drinking and photographic clubs, major sporting and recreational events, major cultural events, conventions, and tourist destinations. About one-fifth of these children become involved in nationally organized crime networks and is trafficked nationally. They are transported around the United States by a variety of means – cars, buses, vans, trucks or planes, and are often provided counterfeit identification to use in the event of arrest.[12] The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.[13]

Services Currently Available for Shelter

If a child in the Department of Children and Family Services' (DCF) care is missing, the case worker fills out a Missing Child Report, which details the child's disappearance, including involvement in prostitution.[14]

DCF acknowledges that minimal and inappropriate shelters exist for victims of sexual exploitation since victims in runaway shelters or group homes can continue to be psychologically manipulated and return to the control of the trafficker. Foster homes, group homes, and shelters are not ideal for several reasons including the fact that these residences are not equipped to deal with sexual exploitation trauma and also that the trafficker/pimp could easily find the child and threaten to harm the foster family or residents unless contact with the child is permitted.[15]

DCF may also use the State Inpatient Psychiatric Placement (SIPP), which provides secure housing and services. The program includes lengthy assessment that must be performed prior to placement.[16] Unfortunately, exploited children tend to leave before services and placement is finalized.[17]

Services are available through the Children In Need of Services (CINS) program to provide short-term shelter, counseling, services, and case management in one of the 28 youth shelters statewide that are operated by the Department of Juvenile Justice (DJJ).[18] These shelters are primarily voluntary and a court may order the child to stay in shelter for a period no longer than 120 days.[19] Even under this longer stay option, only 10 are available statewide.[20] But since most sexually exploited children are adjudicated dependent, they would not be eligible for CINS service.[21]

If a judge finds that a child is either in contempt of the court or in need of an extremely safe treatment environment, the judge may place the child in a locked setting for up to 120 days.[22] Reductions in funding have resulted in fewer than 10 children served per year under this type of physically secure placement.[23] There is simply not enough availability to consider this placement as a viable option for exploited children.

---

[11] Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff); Kimberly J. Mitchell, David Finkelhor and Janis Wolak, *Conceptualizing Juvenile Prostituion as Child Maltreatment: Findings from the National Juvenile Prostitution Study, p.22-26, University of New Hampshire Sage Publications*

[12] Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff);Richard J. Estes and Neil Alan Weiner, Commercial Sexual Exploitation of Children in the U.S, Canada and Mexico, pp. 7-8. University of Pennsylvania (2001), available at www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf.

[13] *Id*

[14] Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff).

[15] *Id*

[16] s. 39.407, F.S.

[17] Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff).

[18] *Id*

[19] s. 984.226, F.S.

[20] Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff).

[21] *Id*

[22] s. 984.226, F.S.

[23] Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff).

Effect of Proposed Changes

The bill creates the Florida Safe Harbor Act in s.39.001(4),F.S., to provide special care and services to all sexually exploited children in the dependency process. One of the policy changes the bill makes is creating a rebuttable presumption that children have been sexually exploited when committing acts such as prostitution. Under this change, if a law enforcement officer encounters a child for an act of prostitution, the officer must presume the child has been sexually exploited and must transfer the child to a short-term safe house, if one is available.

Definitions
Specifically, the bill amends the following definitions in s. 39.01, F.S:

- abuse" is amended so that it includes sexual abuse.
- "child who is found to be dependent" is amended so it includes children that have been sexually exploited and have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care. The effect of this change will place sexually exploited children within dependency actions.
- "sexual abuse of a child" is amended so that sexual exploitation includes the act of a child offering to engage in or engaging in prostitution or sexual acts. The definition is also amended to include participation in sex trafficking as an act of sexual exploitation of a child. The effect of these changes to the definition of "sexual exploitation of a child" will create additional grounds for sexual exploitation so that an individual is also held responsible for the voluntary act of the child offering to engage in or engaging in prostitution.

Transfer to a Short-term Safe House
The bill amends s. 39.401, F.S., by requiring law enforcement officers to deliver a sexually exploited child to a short-term safe house if one is available. The effect of this change will require a law enforcement officer to deliver a youth who is being sexually exploited to a safe house, regardless of whether the child is a repeat offender or voluntarily engaging in prostitution.

Shelter Placement
The bill amends s. 39.402, F.S., by creating a rebuttable presumption on placement of a sexually exploited child in a short-term safe house. The bill requires DCF, at the hearing to continue shelter care, to establish probable cause that the child has been sexually exploited, and that placement in a short-term safe house is most appropriate. The bill also adds sexual exploitation to the list of conditions which show reasonable effort by DCF to prevent or eliminate the need for removal. The effect of these changes will get a sexually exploited child into shelter and treatment for prostitution rather than processed through the criminal justice system.

Disposition Hearings
The bill also amends s. 39.521, F.S., to add sexual exploitation as one of the reasons a child cannot safely remain at home in findings by the court during a disposition hearing., Additionally, the bill requires the court to commit a victim of sexual exploitation to a safe house when the child has been adjudicated dependent. The effect of these changes will provide cause for the court in a dependency action to remove a child from the home who has been sexually exploited to place the child in a safe house and therefore removal is warranted.

Safe-Harbor Placement
The bill creates s. 39.524, F.S., relating to safe-harbor placement. The section requires any child 6 years of age or older who has been found to be a victim of sexual exploitation to be assessed for placement in a safe house, and if placement is warranted, it shall be granted, if available. It also requires all safe houses that receive children to report to DCF its success in achieving permanency for those children. It also requires DCF to report to the Legislature on the placement of children in safe homes during the year and include a detailed account of expenditures incurred.

Safe Harbors for Sexually Exploited Children
The bill also creates s. 409.1678, F.S., relating to safe harbor for children who are victims of sexual exploitation. The section requires DCF to enter into an interagency agreement with the Department of Juvenile Justice to identify agency responsibilities for referrals, placement, service, coordination, terms and conditions, and performance outcomes. It also creates definitions for:

- "child advocate" for sexually exploited children to ensure short-term safe houses are employed by individuals trained to best assist the child.
- "safe house" as a living environment that has set aside gender-specific, separate and distinct living quarters for sexually exploited children who have been adjudicated dependent or delinquent and need to reside in a secure facility with 24-hour-awake staff. The safe house is required to be licensed by DCF as a child-caring agency under s. 409.175, F.S.
- "secure" means that a child is supervised 24 hours a day by staff who are awake while on duty.
- "sexually exploited child" to mean a dependent child who has suffered sexual abuse, as defined in 39.01(67)(g).

Short-term Safe Houses
Also in s. 409.1678, F.S., the bill directs each of the 15 DCF child service districts to address the needs of sexually exploited children and to the extent funds are available ensure that preventative services, including a short-term safe house is available to children in the district. The bill directs DCF or a lead agency to contract with an appropriate not-for-profit agency with experience working with sexually exploited children to operate the short-term safe house.

Long-term Safe House
The bill also requires DCF to contract with an appropriate not-for-profit agency to operate at least one statewide long term safe house to provide safe and secure long-term housing and specialized services for sexually exploited children throughout the state. The bill provides DCF with rule-making authority to implement the provisions of 409.1678, F.S.

Subject to Availability of Funds
The bill provides that section 9 of the bill which includes short term and long-term safe house operations are subject to available appropriations contained in the General Appropriations Act.

Prohibitions of Prostitution
The bill amends s. 796.07, F.S., by adding additional prohibitions of prostitution. Specifically, the bill makes it unlawful to use a deadly weapon during the commission of offenses relating to prostitution. The bill also makes certain acts related to prostitution unlawful only if committed by any person 16 years of age or older. The effect of this change could result in individuals under the age of 16 not being held criminally responsible for acts of prostitution that are voluntary.

Additionally the bill amends the civil penalty that may be assessed against violators of specified provisions related to prostitution. Currently, a civil penalty of $500 must be assessed against a person who violates s. 796.07(2)(f), by soliciting, inducing, enticing, or procuring another to commit prostitution, lewdness, or assignation. The bill will amend the section by increasing the civil penalty to $5,000 and directing that $4,500 of the penalty be paid to DCF to fund safe houses and short-term safe houses and the remaining $500 shall be paid to the circuit court administrator. Additionally, the bill amends current law by restricting that the penalty may only be assessed against violators who solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation. It also restricts the civil penalty to violators, that are 16 or older, who use or threaten to use a deadly weapon during specified offenses related to prostitution in s. 796.07(3), F.S. The effect of these changes creates a proposed funding source for the safe houses for sexually exploited children.

Eligibility for Award
The bill amends s. 960.065, F.S., to allow victims of sexual exploitation to be eligible for compensation (awards) per Chapter 960, Victims Assistance.

Release or delivery from Custody
The bill amends s. 985.115, F.S., to include short term safe house as an option for the release of a child after they have been taken into custody.

Juvenile Delinquency
The bills amends s. 985.145, F.S. and s. 985.15, F.S., by prohibiting juvenile probation officers and the state attorney from filing a petition for delinquency for an act related to prostitution unless the child has been previously adjudicated delinquent.

B. SECTION DIRECTORY:

Section 1: Provides a name for the act.

Section 2: Amends s. 39.001, F.S., relating to purposes and intent; personnel standards and screening.

Section 3: Amends s. 39.01, F.S., relating to definitions.

Section 4: Amends s. 39.401, F.S., relating to taking a child alleged to be dependent into custody; law enforcement officers and authorized agents of the department.

Section 5:.Amends s. 39.402, F.S., relating to placement in a shelter.

Section 6: Amends s. 39.521, F.S., relating to disposition hearings; powers of disposition.

Section 7: Creates s. 39.524, F.S., relating to safe-harbor placement.

Section 8: Amends s. 322.28, F.S., relating to period of suspension or revocation.

Section 9: Creates s. 409.1678, F.S., relating to safe harbor for children who are victims of sexual exploitation.

Section 10: Amends s. 796.07, F.S., relating to prohibiting prostitution, etc.; evidence; penalties; definitions.

Section 11: Amends s. 960.065, F.S., relating eligibility for awards.

Section 12: Amends s. 985.115, F.S., relating to release or delivery from custody.

Section 13: Amends s. 985.145, F.S., relating to responsibilities of intake screenings and assessments.

Section 14: Amends s. 985.15, F.S., relating to filing decisions.

Section 15: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   A new revenue source is created in this bill which is from a civil penalty of $4,500 related to prostitution. The revenues stream for this bill is generated from violations related to prostitution. The amount of revenue generated is contingent on the number of violations and the amount of civil penalty fines that are collected.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The proposed legislation states that costs for safe houses are contingent on available appropriations in the General Appropriations Act. DCF reports that other similar residential facilities under the department's purview cost $350 per child per day. [24]

The State Courts System cannot determine the fiscal impact on from a potential increase in judicial workload due to lack of data. [25]

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 creates rule-making authority for DCF relating to the safe harbor of sexually exploited children.

C. DRAFTING ISSUES OR OTHER COMMENTS:

[24] Staff Analysis, HB 145 (2011); Department of Children and Family Services. (on file with committee staff).
[25] Office of the State Courts Administrator 2011 Judicial Impact Statement (2/2/2011). (on file with committee staff).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to sexual exploitation; providing a short title; amending s. 39.001, F.S.; providing legislative intent and goals; conforming cross-references; amending s. 39.01, F.S.; revising the definitions of the terms "abuse," "child who is found to be dependent," and "sexual abuse of a child"; amending s. 39.401, F.S.; requiring delivery of children alleged to be dependent and sexually exploited to short-term safe houses; amending s. 39.402, F.S.; providing for a presumption that placement of a child alleged to have been sexually exploited in a short-term safe house is necessary; providing requirements for findings in a shelter hearing relating to placement of an allegedly sexually exploited child in a short-term safe house; amending s. 39.521, F.S.; providing for a presumption that placement of a child alleged to have been sexually exploited in a safe house is necessary; creating s. 39.524, F.S.; requiring assessment of certain children for placement in a safe house; providing for use of such assessments; providing requirements for safe houses receiving such children; requiring an annual report concerning safe-house placements; amending s. 322.28, F.S.; conforming a cross-reference; creating s. 409.1678, F.S.; providing legislative intent relating to safe houses; providing definitions; requiring districts of the Department of Children and Family Services to address child welfare service needs of sexually exploited children as a component of their master plans; providing for

operation of safe houses; providing duties, responsibilities, and requirements for safe houses and their operators; providing for training for law enforcement officials who are likely to encounter sexually exploited children; amending s. 796.07, F.S.; revising prohibitions on prostitution and related acts; providing a civil penalty for use or threatened use of a deadly weapon during the commission of specified offenses; providing for an increased civil penalty and disposition of proceeds; conforming a cross-reference; amending s. 960.065, F.S.; allowing victim compensation for sexually exploited children; amending s. 985.115, F.S.; conforming a provision to changes made by the act; amending ss. 985.145 and 985.15, F.S.; providing a presumption against filing a delinquency petition for certain prostitution-related offenses in certain circumstances; providing an effective date.

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

Section 1. <u>This act may be cited as the "Florida Safe Harbor Act."</u>

Section 2. Subsections (4) through (12) of section 39.001, Florida Statutes, are renumbered as subsections (5) through (13), respectively, paragraph (c) of present subsection (7) and paragraph (b) of present subsection (9) are amended, and a new subsection (4) is added to that section, to read:

39.001 Purposes and intent; personnel standards and

screening.—

(4) SEXUAL EXPLOITATION SERVICES.—

(a) The Legislature recognizes that child sexual exploitation is a serious problem nationwide and in this state. The children at greatest risk of being sexually exploited are runaways and throwaways. Many of these children have a history of abuse and neglect. The vulnerability of these children starts with isolation from family and friends. Traffickers maintain control of child victims through psychological manipulation, force, drug addiction, or the exploitation of economic, physical, or emotional vulnerability. Children exploited through the sex trade often find it difficult to trust adults because of their abusive experiences. These children make up a population that is difficult to serve and even more difficult to rehabilitate. Although minors are by law unable to consent to sexual activity, they are most often treated as perpetrators of crime rather than victims. Moreover, the historical treatment of such children as delinquents has too often resulted in the failure to successfully prosecute the trafficker, who is the true wrongdoer and threat to society.

(b) The Legislature establishes the following goals for the state related to the status and treatment of sexually exploited children in the dependency process:

1. To ensure the safety of children.

2. To provide for the treatment of such children as dependent children rather than as delinquents.

3. To sever the bond between exploited children and traffickers and to reunite these children with their families or provide them with appropriate guardians.

4. To enable such children to be willing and reliable witnesses in the prosecution of traffickers.

(c) The Legislature finds that sexually exploited children need special care and services in the dependency process, including counseling, health care, substance abuse treatment, educational opportunities, and a safe environment secure from traffickers.

(d) The Legislature further finds that sexually exploited children need the special care and services described in paragraph (c) independent of their citizenship, residency, alien, or immigrant status. It is the intent of the Legislature that this state provide such care and services to all sexually exploited children in this state who are not otherwise receiving comparable services, such as those under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

(8) ~~(7)~~ OFFICE OF ADOPTION AND CHILD PROTECTION.—

(c) The office is authorized and directed to:

1. Oversee the preparation and implementation of the state plan established under subsection (9) ~~(8)~~ and revise and update the state plan as necessary.

2. Provide for or make available continuing professional education and training in the prevention of child abuse and neglect.

3. Work to secure funding in the form of appropriations, gifts, and grants from the state, the Federal Government, and

other public and private sources in order to ensure that sufficient funds are available for the promotion of adoption, support of adoptive families, and child abuse prevention efforts.

4. Make recommendations pertaining to agreements or contracts for the establishment and development of:

a. Programs and services for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect.

b. Training programs for the prevention of child abuse and neglect.

c. Multidisciplinary and discipline-specific training programs for professionals with responsibilities affecting children, young adults, and families.

d. Efforts to promote adoption.

e. Postadoptive services to support adoptive families.

5. Monitor, evaluate, and review the development and quality of local and statewide services and programs for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect and shall publish and distribute an annual report of its findings on or before January 1 of each year to the Governor, the Speaker of the House of Representatives, the President of the Senate, the head of each state agency affected by the report, and the appropriate substantive committees of the Legislature. The report shall include:

a. A summary of the activities of the office.

b. A summary of the adoption data collected and reported

to the federal Adoption and Foster Care Analysis and Reporting System (AFCARS) and the federal Administration for Children and Families.

c. A summary of the child abuse prevention data collected and reported to the National Child Abuse and Neglect Data System (NCANDS) and the federal Administration for Children and Families.

d. A summary detailing the timeliness of the adoption process for children adopted from within the child welfare system.

e. Recommendations, by state agency, for the further development and improvement of services and programs for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect.

f. Budget requests, adoption promotion and support needs, and child abuse prevention program needs by state agency.

6. Work with the direct-support organization established under s. 39.0011 to receive financial assistance.

(10) ~~(9)~~ FUNDING AND SUBSEQUENT PLANS.—

(b) The office and the other agencies and organizations listed in paragraph (9) ~~(8)~~(a) shall readdress the state plan and make necessary revisions every 5 years, at a minimum. Such revisions shall be submitted to the Speaker of the House of Representatives and the President of the Senate no later than June 30 of each year divisible by 5. At least biennially, the office shall review the state plan and make any necessary revisions based on changing needs and program evaluation results. An annual progress report shall be submitted to update

the state plan in the years between the 5-year intervals. In order to avoid duplication of effort, these required plans may be made a part of or merged with other plans required by either the state or Federal Government, so long as the portions of the other state or Federal Government plan that constitute the state plan for the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect are clearly identified as such and are provided to the Speaker of the House of Representatives and the President of the Senate as required above.

Section 3. Subsections (2) and (15) and paragraph (g) of subsection (67) of section 39.01, Florida Statutes, are amended to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(2) "Abuse" means any willful act or threatened act that results in any physical, mental, or sexual <u>abuse,</u> injury<u>,</u> or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

(15) "Child who is found to be dependent" means a child who, pursuant to this chapter, is found by the court:

(a) To have been abandoned, abused, or neglected by the child's parent or parents or legal custodians;

(b) To have been surrendered to the department, the former

Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;

(c) To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of this chapter, a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;

(d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;

(e) To have no parent or legal custodians capable of providing supervision and care; ~~or~~

(f) To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians; or

(g) To have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care.

(67) "Sexual abuse of a child" means one or more of the following acts:

(g) The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution; or allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; ~~or~~

2. Engage in a sexual performance, as defined by chapter 827; or

3. Participate in the trade of sex trafficking as provided in s. 796.035.

Section 4. Paragraph (b) of subsection (2) and paragraph (b) of subsection (3) of section 39.401, Florida Statutes, are amended to read:

39.401 Taking a child alleged to be dependent into custody; law enforcement officers and authorized agents of the department.—

(2) If the law enforcement officer takes the child into custody, that officer shall:

(b) Deliver the child to an authorized agent of the department, stating the facts by reason of which the child was taken into custody and sufficient information to establish probable cause that the child is abandoned, abused, or neglected, or otherwise dependent. In the case of a child for whom there is probable cause to believe he or she has been sexually exploited, the law enforcement officer shall deliver the child to the appropriate short-term safe house as provided for in s. 409.1678 if a short-term safe house is available.

For cases involving allegations of abandonment, abuse, or neglect, or other dependency cases, within 3 days after such release or within 3 days after delivering the child to an authorized agent of the department, the law enforcement officer who took the child into custody shall make a full written report to the department.

(3) If the child is taken into custody by, or is delivered to, an authorized agent of the department, the agent shall review the facts supporting the removal with an attorney representing the department. The purpose of the review is to determine whether there is probable cause for the filing of a shelter petition.

(b) If the facts are sufficient and the child has not been returned to the custody of the parent or legal custodian, the department shall file the petition and schedule a hearing, and the attorney representing the department shall request that a shelter hearing be held within 24 hours after the removal of the child. While awaiting the shelter hearing, the authorized agent of the department may place the child in licensed shelter care, or in a short-term safe house if the child is a sexually exploited child, or may release the child to a parent or legal custodian or responsible adult relative or the adoptive parent of the child's sibling who shall be given priority consideration over a licensed placement, or a responsible adult approved by the department if this is in the best interests of the child. Placement of a child which is not in a licensed shelter must be preceded by a criminal history records check as required under s. 39.0138. In addition, the department may authorize placement of a housekeeper/homemaker in the home of a child alleged to be dependent until the parent or legal custodian assumes care of the child.

Section 5. Subsection (2) and paragraphs (a), (d), and (h) of subsection (8) of section 39.402, Florida Statutes, are amended to read:

39.402 Placement in a shelter.—

(2) A child taken into custody may be placed or continued in a shelter only if one or more of the criteria in subsection (1) apply ~~applies~~ and the court has made a specific finding of fact regarding the necessity for removal of the child from the home and has made a determination that the provision of appropriate and available services will not eliminate the need for placement. In the case of a child who is alleged to have been sexually exploited, there is a rebuttable presumption that placement in a short-term safe house is necessary.

(8)(a) A child may not be held in a shelter longer than 24 hours unless an order so directing is entered by the court after a shelter hearing. In the interval until the shelter hearing is held, the decision to place the child in a shelter or release the child from a shelter lies with the protective investigator. In the case of a child who is alleged to have been sexually exploited, there is a rebuttable presumption that placement in a short-term safe house is necessary.

(d) At the shelter hearing, in order to continue the child in shelter care:

1. The department must establish probable cause that reasonable grounds for removal exist and that the provision of appropriate and available services will not eliminate the need for placement;

2. The department must establish probable cause for the belief that the child has been sexually exploited and, therefore, that placement in a short-term safe house is the most appropriate environment for the child; or

3.~~2.~~ The court must determine that additional time is necessary, which may not exceed 72 hours, in which to obtain and review documents pertaining to the family in order to appropriately determine the risk to the child during which time the child shall remain in the department's custody, if so ordered by the court.

(h) The order for placement of a child in shelter care must identify the parties present at the hearing and must contain written findings:

1. That placement in shelter care is necessary based on the criteria in subsections (1) and (2).

2. That placement in shelter care is in the best interest of the child.

3. That continuation of the child in the home is contrary to the welfare of the child because the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of preventive services.

4. That based upon the allegations of the petition for placement in shelter care, there is probable cause to believe that the child is dependent or that the court needs additional time, which may not exceed 72 hours, in which to obtain and review documents pertaining to the family in order to appropriately determine the risk to the child.

5. That the department has made reasonable efforts to prevent or eliminate the need for removal of the child from the home. A finding of reasonable effort by the department to prevent or eliminate the need for removal may be made and the

department is deemed to have made reasonable efforts to prevent or eliminate the need for removal if:

a. The first contact of the department with the family occurs during an emergency;

b. The appraisal of the home situation by the department indicates that the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of preventive services;

c. The child cannot safely remain at home, either because there are no preventive services that can ensure the health and safety of the child or because, even with appropriate and available services being provided, the health and safety of the child cannot be ensured;

d. The child has been sexually exploited; or

e.~~d.~~ The parent or legal custodian is alleged to have committed any of the acts listed as grounds for expedited termination of parental rights in s. 39.806(1)(f)-(i).

6. That the court notified the parents, relatives that are providing out-of-home care for the child, or legal custodians of the time, date, and location of the next dependency hearing and of the importance of the active participation of the parents, relatives that are providing out-of-home care for the child, or legal custodians in all proceedings and hearings.

7. That the court notified the parents or legal custodians of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel, pursuant to the

procedures set forth in s. 39.013.

8. That the court notified relatives who are providing out-of-home care for a child as a result of the shelter petition being granted that they have the right to attend all subsequent hearings, to submit reports to the court, and to speak to the court regarding the child, if they so desire.

Section 6. Paragraph (f) of subsection (1) and paragraph (d) of subsection (3) of section 39.521, Florida Statutes, are amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(f) If the court places the child in an out-of-home placement, the disposition order must include a written determination that the child cannot safely remain at home with reunification or family preservation services and that removal of the child is necessary to protect the child. If the child is removed before the disposition hearing, the order must also include a written determination as to whether, after removal, the department made a reasonable effort to reunify the parent and child. Reasonable efforts to reunify are not required if the court finds that any of the acts listed in s. 39.806(1)(f)-(l)

have occurred. The department has the burden of demonstrating that it made reasonable efforts.

1. For the purposes of this paragraph, the term "reasonable effort" means the exercise of reasonable diligence and care by the department to provide the services ordered by the court or delineated in the case plan.

2. In support of its determination as to whether reasonable efforts have been made, the court shall:

a. Enter written findings as to whether prevention or reunification efforts were indicated.

b. If prevention or reunification efforts were indicated, include a brief written description of what appropriate and available prevention and reunification efforts were made.

c. Indicate in writing why further efforts could or could not have prevented or shortened the separation of the parent and child.

3. A court may find that the department made a reasonable effort to prevent or eliminate the need for removal if:

a. The first contact of the department with the family occurs during an emergency;

b. The appraisal by the department of the home situation indicates a substantial and immediate danger to the child's safety or physical, mental, or emotional health which cannot be mitigated by the provision of preventive services;

c. The child cannot safely remain at home, because there are no preventive services that can ensure the health and safety of the child or, even with appropriate and available services being provided, the health and safety of the child cannot be

ensured. There is a rebuttable presumption that any child who has been found to be a victim of sexual exploitation as defined in s. 39.01(67)(g) meets the terms of this sub-subparagraph; or

d. The parent is alleged to have committed any of the acts listed as grounds for expedited termination of parental rights under s. 39.806(1)(f)-(l).

4. A reasonable effort by the department for reunification has been made if the appraisal of the home situation by the department indicates that the severity of the conditions of dependency is such that reunification efforts are inappropriate. The department has the burden of demonstrating to the court that reunification efforts were inappropriate.

5. If the court finds that the prevention or reunification effort of the department would not have permitted the child to remain safely at home, the court may commit the child to the temporary legal custody of the department or take any other action authorized by this chapter.

(3) When any child is adjudicated by a court to be dependent, the court shall determine the appropriate placement for the child as follows:

(d) If the child cannot be safely placed in a nonlicensed placement, the court shall commit the child to the temporary legal custody of the department. Such commitment invests in the department all rights and responsibilities of a legal custodian. The department shall not return any child to the physical care and custody of the person from whom the child was removed, except for court-approved visitation periods, without the approval of the court. Any order for visitation or other contact

must conform to the provisions of s. 39.0139. There is a rebuttable presumption that any child who has been found to be a victim of sexual exploitation as defined in s. 39.01(67)(g) be committed to a safe house as provided for in s. 409.1678. The term of such commitment continues until terminated by the court or until the child reaches the age of 18. After the child is committed to the temporary legal custody of the department, all further proceedings under this section are governed by this chapter.

Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department shall set forth the powers of the custodian of the child and shall include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, no further judicial reviews are required, so long as permanency has been established for the child.

Section 7. Section 39.524, Florida Statutes, is created to read:

39.524 Safe-harbor placement.—

(1) Except as provided in s. 39.407, any dependent child 6 years of age or older who has been found to be a victim of sexual exploitation as defined in s. 39.01(67)(g) must be assessed for placement in a safe house as provided in s. 409.1678. The assessment shall be conducted by the department or its agent and shall incorporate and address current and historical information from any law enforcement reports; psychological testing or evaluation that has occurred; current and historical information from the guardian ad litem, if one has been assigned; current and historical information from any current therapist, teacher, or other professional who has knowledge of the child and has worked with the child; and any other information concerning the availability and suitability of safe-house placement. If such placement is determined to be appropriate as a result of this procedure, the child must be placed in a safe house, if one is available.

(2) The results of the assessment described in subsection (1) and the actions taken as a result of the assessment must be included in the next judicial review of the child. At each subsequent judicial review, the court must be advised in writing of the status of the child's placement, with special reference regarding the stability of the placement and the permanency planning for the child.

(3) Any safe house that receives children under this section shall establish special permanency teams dedicated to overcoming the special permanency challenges presented by this population of children. Each facility shall report to the

department its success in achieving permanency for children placed by the department in its care at intervals that allow the current information to be provided to the court at each judicial review for the child.

(4)(a)1. By December 1 of each year, the department shall report to the Legislature on the placement of children in safe houses during the year, including the criteria used to determine the placement of children, the number of children who were evaluated for placement, the number of children who were placed based upon the evaluation, and the number of children who were not placed.

2. The department shall maintain data specifying the number of children who were referred to a safe house for whom placement was unavailable and the counties in which such placement was unavailable. The department shall include this data in its report under this paragraph so that the Legislature may consider this information in developing the General Appropriations Act.

(b) As part of the report required in paragraph (a), the department shall also provide a detailed account of the expenditures incurred for "Special Categories: Grants and Aids-Safe Houses" for the fiscal year immediately preceding the date of the report. This section of the report must include whatever supporting data is necessary to demonstrate full compliance with s. 409.1678(3)(b). The document must present the information by district and must specify, at a minimum, the number of additional beds, the average rate per bed, the number of

additional persons served, and a description of the enhanced and expanded services provided.

Section 8. Subsection (7) of section 322.28, Florida Statutes, is amended to read:

322.28 Period of suspension or revocation.—

(7) Following a second or subsequent violation of s. 796.07(2)(e)~~(f)~~ which involves a motor vehicle and which results in any judicial disposition other than acquittal or dismissal, in addition to any other sentence imposed, the court shall revoke the person's driver's license or driving privilege, effective upon the date of the disposition, for a period of not less than 1 year. A person sentenced under this subsection may request a hearing under s. 322.271.

Section 9. Section 409.1678, Florida Statutes, is created to read:

409.1678 Safe harbor for children who are victims of sexual exploitation.—

(1) It is the intent of the Legislature to provide safe houses and short-term safe houses for sexually exploited children to give them a secure residential environment; to allow them to be reintegrated into society as stable and productive members; and, if appropriate, to enable them to testify as witnesses in criminal proceedings related to their exploitation. Such children require a full range of services in addition to security, including medical care, counseling, education, and mentoring. These services are to be provided in a secure residential setting by a not-for-profit corporation or a local government entity under a contract with the department or by a

lead agency as described in s. 409.1671, provided that the expenditure of funds for such services is calculated by the department to be a potential cost savings and more cost-effective than those otherwise provided by the government. These contracts should be designed to provide an identified number of children with access to a full array of services for a fixed price. Further, it is the intent of the Legislature that the department and the Department of Juvenile Justice establish an interagency agreement by December 1, 2011, that describes respective agency responsibilities for referral, placement, service provision, and service coordination for dependent and delinquent youth who are referred to these residential group care facilities. The agreement must require interagency collaboration in the development of terms, conditions, and performance outcomes for safe-house contracts serving children who have been adjudicated dependent or delinquent.

(2) As used in this section, the term:

(a) "Child advocate" means an employee of a short-term safe house who has been trained to work with and advocate for the needs of sexually exploited children. The advocate shall accompany the child to all court appearances, meetings with law enforcement, and the state attorney's office and shall serve as a liaison between the short-term safe house and the court.

(b) "Safe house" means a living environment that has set aside gender-specific, separate, and distinct living quarters for sexually exploited children who have been adjudicated dependent or delinquent and need to reside in a secure residential facility with staff members awake 24 hours a day. A

safe house shall be operated by a licensed family foster home or residential child-caring agency as defined in s. 409.175, including a runaway youth center as defined in s. 409.441. Each facility must be appropriately licensed in this state as a residential child-caring agency as defined in s. 409.175 and must be accredited by July 1, 2012. A safe house serving children who have been sexually exploited must have available staff or contract personnel with the clinical expertise, credentials, and training to provide services identified in paragraph (3)(e).

(c) "Secure" means that a child is supervised 24 hours a day by staff members who are awake while on duty.

(d) "Sexually exploited child" means a dependent child who has suffered sexual exploitation as defined in s. 39.01(67)(g) and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

(e) "Short-term safe house" means a shelter operated by a licensed residential child-caring agency as defined in s. 409.175, including a runaway youth center as defined in s. 409.441, that has set aside gender-specific, separate, and distinct living quarters for sexually exploited children. In addition to shelter, the house shall provide services and care to sexually exploited children, including food, clothing, medical care, counseling, and appropriate crisis intervention services at the time they are taken into custody by law enforcement or the department.

(3)(a) Notwithstanding any other provision of law, pursuant to regulations of the department, every district of the

department shall address the child welfare service needs of sexually exploited children as a component of the district's master plan and, to the extent that funds are available, ensure that preventive services, including a short-term safe house to serve sexually exploited children, are available to children residing in the district. The department or a lead agency that has been established in accordance with s. 409.1671 shall contract with an appropriate not-for-profit agency having experience working with sexually exploited children to operate such a short-term safe house. This section does not prohibit a district from using a homeless youth program or services for victims of human trafficking for such purposes so long as the staff members have received appropriate training approved by the department regarding sexually exploited children and the existing programs and facilities provide a safe, secure, and appropriate environment for sexually exploited children. Crisis intervention services, short-term safe-house care, and community programming may, where appropriate, be provided by the same not-for-profit agency. Districts may work cooperatively to provide such short-term safe-house services and programming, and access to such placement, services, and programming may be provided on a regional basis, provided that every district ensures, to the extent that funds are available, that such placement, services, and programs are readily accessible to sexually exploited children residing within the district.

(b) The capacity of the services and programs described in subsection (1) shall be based on the number of sexually exploited children in each district who are in need of such

services. A determination of such need shall be made annually in every district by the local administrator of the department and be included in the department's master plan. This determination shall be made in consultation with local law enforcement, runaway and homeless youth program providers, local probation departments, local community-based care and social services, local guardians ad litem, public defenders, state attorney's offices, and child advocates and services providers who work directly with sexually exploited youth.

(c) The department shall contract with an appropriate not-for-profit agency having experience working with sexually exploited children to operate at least one safe house in a geographically appropriate area of the state, which shall provide safe and secure long-term housing and specialized services for sexually exploited children throughout the state. The appropriateness of the geographic location shall be determined by the department, taking into account the areas of the state with high numbers of sexually exploited children and the need for sexually exploited children to find shelter and long-term placement in a secure and beneficial environment. The department shall determine the need for more than one safe house based on the numbers and geographical location of sexually exploited children within the state.

(d) The department shall contract with a not-for-profit corporation, a local government entity, or a lead agency that has been established in accordance with s. 409.1671 for the performance of short-term safe-house and safe-house services described in this section. A lead agency that is currently

providing the equivalent of a safe house may provide this service directly with the approval of the department. The department or a lead agency may contract for more than one short-term safe house in a district and more than one safe house in the state if that is determined to be the most effective way to achieve the goals of this section.

(e) The lead agency, the contracted not-for-profit corporation, or the local government entity is responsible for security, crisis intervention services, general counseling and victim-witness counseling, a comprehensive assessment, residential care, transportation, access to behavioral health services, recreational activities, food, clothing, supplies, infant care, and miscellaneous expenses associated with caring for these children; for necessary arrangement for or provision of educational services, including life skills services and planning services to successfully transition residents back to the community; and for ensuring necessary and appropriate health and dental care.

(f) The department may transfer all casework responsibilities for children served under this section to the entity that provides the safe-house service, including case management and development and implementation of a case plan in accordance with current standards for child protection services. When the department establishes a program under this section in a community that has a lead agency as described in s. 409.1671, the casework responsibilities must be transferred to the lead agency.

(g) This section does not prohibit any provider of these services from appropriately billing Medicaid for services rendered, from contracting with a local school district for educational services, or from obtaining federal or local funding for services provided, as long as two or more funding sources do not pay for the same specific service that has been provided to a child.

(h) The lead agency, not-for-profit corporation, or local government entity has the legal authority for children served in a safe-house program, as provided in chapter 39 or this chapter, as appropriate, to enroll the child in school, to sign for a driver's license for the child, to cosign loans and insurance for the child, to sign for medical treatment of the child, and to authorize other such activities.

(i) The department shall provide technical assistance as requested and contract management services.

(j) This section shall be implemented to the extent that appropriations contained in the General Appropriations Act are available for such purpose.

(k) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section conferring duties upon it.

(l) All of the services created under this section may, to the extent possible provided by law, be available to all sexually exploited children whether they are accessed voluntarily, as a condition of probation, through a diversion program, through a proceeding under chapter 39, or through a

referral from a local community-based care or social service agency.

(4) The local district administrator may, to the extent that funds are available, in conjunction with local law enforcement officials, contract with an appropriate not-for-profit agency having experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children. Districts may work cooperatively to provide such training, and such training may be provided on a regional basis. The department shall assist districts in obtaining any available funds for the purposes of conducting law enforcement training from the Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice.

Section 10. Present subsections (2) and (6) of section 796.07, Florida Statutes, are amended, present subsections (3) through (6) are renumbered as subsections (4) through (7), respectively, and a new subsection (3) is added to that section, to read:

796.07 Prohibiting prostitution and related acts~~, etc.; evidence; penalties; definitions~~.—

(2) It is unlawful to:

(a) ~~To~~ Own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution.

(b) ~~To~~ Offer, or to offer or agree to secure, another for

the purpose of prostitution or for any other lewd or indecent act.

(c) ~~To~~ Receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose.

(d) ~~To~~ Direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation.

~~(e) To offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation.~~

(e)~~(f) To~~ Solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.

(f) Use or threaten to use a deadly weapon during the commission of one of the offenses enumerated in subsection (3).

(g) Have committed one of the offenses enumerated in subsection (3) and be in violation of s. 796.08(4) or (5).

~~(g) To reside in, enter, or remain in, any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation.~~

~~(h) To aid, abet, or participate in any of the acts or things enumerated in this subsection.~~

~~(i) To purchase the services of any person engaged in prostitution.~~

(3) It is unlawful for any person 16 years of age or older

to:

(a) Purchase the services of any person engaged in prostitution.

(b) Offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation.

(c) Reside in, enter, or remain in any place, structure, or building, or enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation.

(d) Aid, abet, or participate in any of the acts or things enumerated in subsection (2) or this subsection.

(7) ~~(6)~~ A person who violates paragraph (2)(e) or paragraph (2)(f) shall be assessed a civil penalty of $5,000 ~~$500~~ if the violation results in any judicial disposition other than acquittal or dismissal. Of the proceeds from each penalty ~~penalties~~ assessed under this subsection, $500 shall be paid to the circuit court administrator for the sole purpose of paying the administrative costs of treatment-based drug court programs provided under s. 397.334 and $4,500 shall be paid to the Department of Children and Family Services for the sole purpose of funding safe houses and short-term safe houses as provided in s. 409.1678.

Section 11. Section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(1) Except as provided in subsection (2), the following persons shall be eligible for awards pursuant to this chapter:

(a) A victim.

(b) An intervenor.

(c) A surviving spouse, parent or guardian, sibling, or child of a deceased victim or intervenor.

(d) Any other person who is dependent for his or her principal support upon a deceased victim or intervenor.

(2) Any claim filed by or on behalf of a person who:

(a) Committed or aided in the commission of the crime upon which the claim for compensation was based;

(b) Was engaged in an unlawful activity at the time of the crime upon which the claim for compensation is based;

(c) Was in custody or confined, regardless of conviction, in a county or municipal detention facility, a state or federal correctional facility, or a juvenile detention or commitment facility at the time of the crime upon which the claim for compensation is based;

(d) Has been adjudicated as a habitual felony offender, habitual violent offender, or violent career criminal under s. 775.084; or

(e) Has been adjudicated guilty of a forcible felony offense as described in s. 776.08,

is ineligible ~~shall not be eligible~~ for an award.

(3) Any claim filed by or on behalf of a person who was in custody or confined, regardless of adjudication, in a county or municipal facility, a state or federal correctional facility, or a juvenile detention, commitment, or assessment facility at the time of the crime upon which the claim is based, who has been adjudicated as a habitual felony offender under s. 775.084, or who has been adjudicated guilty of a forcible felony offense as

described in s. 776.08, renders the person ineligible ~~shall not be eligible~~ for an award. Notwithstanding the foregoing, upon a finding by the Crime Victims' Services Office of the existence of mitigating or special circumstances that would render such a disqualification unjust, an award may be approved. A decision that mitigating or special circumstances do not exist in a case subject to this section does ~~shall~~ not constitute final agency action subject to review pursuant to ss. 120.569 and 120.57.

(4) Payment may not be made under this chapter if the person who committed the crime upon which the claim is based will receive any direct or indirect financial benefit from such payment, unless such benefit is minimal or inconsequential. Payment may not be denied based on the victim's familial relationship to the offender or based upon the sharing of a residence by the victim and offender, except to prevent unjust enrichment of the offender.

(5) A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation of a child as defined in s. 39.01(67)(g).

Section 12. Paragraph (b) of subsection (2) of section 985.115, Florida Statutes, is amended to read:

985.115 Release or delivery from custody.—

(2) Unless otherwise ordered by the court under s. 985.255 or s. 985.26, and unless there is a need to hold the child, a person taking a child into custody shall attempt to release the child as follows:

(b) Contingent upon specific appropriation, to a shelter

approved by the department or to an authorized agent or short-term safe house under s. 39.401(2)(b).

Section 13. Paragraph (i) of subsection (1) of section 985.145, Florida Statutes, is amended to read:

985.145 Responsibilities of juvenile probation officer during intake; screenings and assessments.—

(1) The juvenile probation officer shall serve as the primary case manager for the purpose of managing, coordinating, and monitoring the services provided to the child. Each program administrator within the Department of Children and Family Services shall cooperate with the primary case manager in carrying out the duties and responsibilities described in this section. In addition to duties specified in other sections and through departmental rules, the assigned juvenile probation officer shall be responsible for the following:

(i) Recommendation concerning a petition.—Upon determining that the report, affidavit, or complaint complies with the standards of a probable cause affidavit and that the interests of the child and the public will be best served, the juvenile probation officer may recommend that a delinquency petition not be filed. If such a recommendation is made, the juvenile probation officer shall advise in writing the person or agency making the report, affidavit, or complaint, the victim, if any, and the law enforcement agency having investigative jurisdiction over the offense of the recommendation; the reasons therefor; and that the person or agency may submit, within 10 days after the receipt of such notice, the report, affidavit, or complaint to the state attorney for special review. In the case of a

report, affidavit, or complaint alleging a violation of s. 796.07(3), there is a presumption that the juvenile probation officer recommend that a petition not be filed unless the child has previously been adjudicated delinquent. The state attorney, upon receiving a request for special review, shall consider the facts presented by the report, affidavit, or complaint, and by the juvenile probation officer who made the recommendation that no petition be filed, before making a final decision as to whether a petition or information should or should not be filed.

Section 14. Paragraph (c) of subsection (1) of section 985.15, Florida Statutes, is amended to read:

985.15 Filing decisions.—

(1) The state attorney may in all cases take action independent of the action or lack of action of the juvenile probation officer and shall determine the action that is in the best interest of the public and the child. If the child meets the criteria requiring prosecution as an adult under s. 985.556, the state attorney shall request the court to transfer and certify the child for prosecution as an adult or shall provide written reasons to the court for not making such a request. In all other cases, the state attorney may:

(c) File a petition for delinquency. In the case of a report, affidavit, or complaint alleging a violation of s. 796.07(3), there is a presumption that a petition not be filed unless the child has previously been adjudicated delinquent;

Section 15. This act shall take effect July 1, 2011.

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

Committee/Subcommittee hearing bill: Health & Human Services Access Subcommittee

Representative Fresen offered the following:

Amendment (with title amendment)

Remove lines 491-917 and insert:

placed in a safe house, if one is available. As used in this section, the term "available" means a placement that is located within the circuit or that is otherwise reasonably accessible.

(2) The results of the assessment described in subsection (1) and the actions taken as a result of the assessment must be included in the next judicial review of the child. At each subsequent judicial review, the court must be advised in writing of the status of the child's placement, with special reference regarding the stability of the placement and the permanency planning for the child.

(3) Any safe house that receives children under this section shall establish special permanency teams dedicated to overcoming the special permanency challenges presented by this

population of children. Each facility shall report to the department its success in achieving permanency for children placed by the department in its care at intervals that allow the current information to be provided to the court at each judicial review for the child.

(4)(a) By December 1 of each year, the department shall report to the Legislature on the placement of children in safe houses during the year, including the criteria used to determine the placement of children, the number of children who were evaluated for placement, the number of children who were placed based upon the evaluation, and the number of children who were not placed.

(b) The department shall maintain data specifying the number of children who were referred to a safe house for whom placement was unavailable and the counties in which such placement was unavailable. The department shall include this data in its report under this subsection so that the Legislature may consider this information in developing the General Appropriations Act.

Section 8. Section 409.1678, Florida Statutes, is created to read:

409.1678 Safe harbor for children who are victims of sexual exploitation.—

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

(a) "Child advocate" means an employee of a short-term safe house who has been trained to work with and advocate for the needs of sexually exploited children. The advocate shall accompany the child to all court appearances, meetings with law

enforcement, and the state attorney's office and shall serve as a liaison between the short-term safe house and the court.

(b) "Safe house" means a living environment that has set aside gender-specific, separate, and distinct living quarters for sexually exploited children who have been adjudicated dependent or delinquent and need to reside in a secure residential facility with staff members awake 24 hours a day. A safe house shall be operated by a licensed family foster home or residential child-caring agency as defined in s. 409.175, including a runaway youth center as defined in s. 409.441. Each facility must be appropriately licensed in this state as a residential child-caring agency as defined in s. 409.175 and must be accredited by July 1, 2012. A safe house serving children who have been sexually exploited must have available staff or contract personnel with the clinical expertise, credentials, and training to provide services identified in paragraph (2)(b).

(c) "Secure" means that a child is supervised 24 hours a day by staff members who are awake while on duty.

(d) "Sexually exploited child" means a dependent child who has suffered sexual exploitation as defined in s. 39.01(67)(g) and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

(e) "Short-term safe house" means a shelter operated by a licensed residential child-caring agency as defined in s. 409.175, including a runaway youth center as defined in s. 409.441, that has set aside gender-specific, separate, and distinct living quarters for sexually exploited children. In

addition to shelter, the house shall provide services and care to sexually exploited children, including food, clothing, medical care, counseling, and appropriate crisis intervention services at the time they are taken into custody by law enforcement or the department.

(2)(a) Notwithstanding any other provision of law, pursuant to regulations of the department, every circuit of the department shall address the child welfare service needs of sexually exploited children as a component of the circuit's master plan. This determination shall be made in consultation with local law enforcement, runaway and homeless youth program providers, local probation departments, local community-based care and social services, local guardians ad litem, public defenders, state attorney's offices, and child advocates and services providers who work directly with sexually exploited youth.

(b) The lead agency, not-for-profit agency, or local government entity providing safe-house services is responsible for security, crisis intervention services, general counseling and victim-witness counseling, a comprehensive assessment, residential care, transportation, access to behavioral health services, recreational activities, food, clothing, supplies, infant care, and miscellaneous expenses associated with caring for these children; for necessary arrangement for or provision of educational services, including life skills services and planning services to successfully transition residents back to the community; and for ensuring necessary and appropriate health and dental care.

(c) This section does not prohibit any provider of these services from appropriately billing Medicaid for services rendered, from contracting with a local school district for educational services, or from obtaining federal or local funding for services provided, as long as two or more funding sources do not pay for the same specific service that has been provided to a child.

(d) The lead agency, not-for-profit agency, or local government entity providing safe-house services has the legal authority for children served in a safe-house program, as provided in chapter 39 or this chapter, as appropriate, to enroll the child in school, to sign for a driver's license for the child, to cosign loans and insurance for the child, to sign for medical treatment of the child, and to authorize other such activities.

(e) All of the services created under this section may, to the extent possible provided by law, be available to all sexually exploited children whether they are accessed voluntarily, as a condition of probation, through a diversion program, through a proceeding under chapter 39, or through a referral from a local community-based care or social service agency.

(3) The local circuit administrator may, to the extent that funds are available, in conjunction with local law enforcement officials, contract with an appropriate not-for-profit agency having experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law

enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children. Circuits may work cooperatively to provide such training, and such training may be provided on a regional basis. The department shall assist circuits in obtaining any available funds for the purposes of conducting law enforcement training from the Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice.

Section 9. Subsection (6) of section 796.07, Florida Statutes, is amended to read:

796.07 Prohibiting prostitution and related acts~~, etc.; evidence; penalties; definitions~~.—

(6) A person who violates paragraph (2)(f) shall be assessed a civil penalty of $5,000 ~~$500~~ if the violation results in any judicial disposition other than acquittal or dismissal. Of the proceeds from each penalty ~~penalties~~ assessed under this subsection, $500 shall be paid to the circuit court administrator for the sole purpose of paying the administrative costs of treatment-based drug court programs provided under s. 397.334 and $4,500 shall be paid to the Department of Children and Family Services for the sole purpose of funding safe houses and short-term safe houses as provided in s. 409.1678.

Section 10. Section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(1) Except as provided in subsection (2), the following persons shall be eligible for awards pursuant to this chapter:

(a) A victim.

(b) An intervenor.

(c) A surviving spouse, parent or guardian, sibling, or child of a deceased victim or intervenor.

(d) Any other person who is dependent for his or her principal support upon a deceased victim or intervenor.

(2) Any claim filed by or on behalf of a person who:

(a) Committed or aided in the commission of the crime upon which the claim for compensation was based;

(b) Was engaged in an unlawful activity at the time of the crime upon which the claim for compensation is based;

(c) Was in custody or confined, regardless of conviction, in a county or municipal detention facility, a state or federal correctional facility, or a juvenile detention or commitment facility at the time of the crime upon which the claim for compensation is based;

(d) Has been adjudicated as a habitual felony offender, habitual violent offender, or violent career criminal under s. 775.084; or

(e) Has been adjudicated guilty of a forcible felony offense as described in s. 776.08,

is ineligible ~~shall not be eligible~~ for an award.

(3) Any claim filed by or on behalf of a person who was in custody or confined, regardless of adjudication, in a county or municipal facility, a state or federal correctional facility, or a juvenile detention, commitment, or assessment facility at the time of the crime upon which the claim is based, who has been adjudicated as a habitual felony offender under s. 775.084, or

who has been adjudicated guilty of a forcible felony offense as described in s. 776.08, renders the person ineligible ~~shall not be eligible~~ for an award. Notwithstanding the foregoing, upon a finding by the Crime Victims' Services Office of the existence of mitigating or special circumstances that would render such a disqualification unjust, an award may be approved. A decision that mitigating or special circumstances do not exist in a case subject to this section does ~~shall~~ not constitute final agency action subject to review pursuant to ss. 120.569 and 120.57.

(4) Payment may not be made under this chapter if the person who committed the crime upon which the claim is based will receive any direct or indirect financial benefit from such payment, unless such benefit is minimal or inconsequential. Payment may not be denied based on the victim's familial relationship to the offender or based upon the sharing of a residence by the victim and offender, except to prevent unjust enrichment of the offender.

(5) A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation of a child as defined in s. 39.01(67)(g).

Section 11. Paragraph (b) of subsection (2) of section 985.115, Florida Statutes, is amended to read:

985.115 Release or delivery from custody.—

(2) Unless otherwise ordered by the court under s. 985.255 or s. 985.26, and unless there is a need to hold the child, a person taking a child into custody shall attempt to release the child as follows:

(b) Contingent upon specific appropriation, to a shelter approved by the department or to an authorized agent or short-term safe house under s. 39.401(2)(b).

Section 12. Paragraph (i) of subsection (1) of section 985.145, Florida Statutes, is amended to read:

985.145 Responsibilities of juvenile probation officer during intake; screenings and assessments.—

(1) The juvenile probation officer shall serve as the primary case manager for the purpose of managing, coordinating, and monitoring the services provided to the child. Each program administrator within the Department of Children and Family Services shall cooperate with the primary case manager in carrying out the duties and responsibilities described in this section. In addition to duties specified in other sections and through departmental rules, the assigned juvenile probation officer shall be responsible for the following:

(i) Recommendation concerning a petition.—Upon determining that the report, affidavit, or complaint complies with the standards of a probable cause affidavit and that the interests of the child and the public will be best served, the juvenile probation officer may recommend that a delinquency petition not be filed. If such a recommendation is made, the juvenile probation officer shall advise in writing the person or agency making the report, affidavit, or complaint, the victim, if any, and the law enforcement agency having investigative jurisdiction over the offense of the recommendation; the reasons therefor; and that the person or agency may submit, within 10 days after the receipt of such notice, the report, affidavit, or complaint

to the state attorney for special review. In the case of a report, affidavit, or complaint alleging a violation of s. 796.07(2)(e), there is a presumption that the juvenile probation officer recommend that a petition not be filed unless the child has previously been adjudicated delinquent. The state attorney, upon receiving a request for special review, shall consider the facts presented by the report, affidavit, or complaint, and by the juvenile probation officer who made the recommendation that no petition be filed, before making a final decision as to whether a petition or information should or should not be filed.

Section 13. Paragraph (c) of subsection (1) of section 985.15, Florida Statutes, is amended to read:

985.15 Filing decisions.—

(1) The state attorney may in all cases take action independent of the action or lack of action of the juvenile probation officer and shall determine the action that is in the best interest of the public and the child. If the child meets the criteria requiring prosecution as an adult under s. 985.556, the state attorney shall request the court to transfer and certify the child for prosecution as an adult or shall provide written reasons to the court for not making such a request. In all other cases, the state attorney may:

(c) File a petition for delinquency. In the case of a report, affidavit, or complaint alleging a violation of s. 796.07(2)(e), there is a presumption that a petition not be filed unless the child has previously been adjudicated delinquent;

Section 14. This act shall take effect January 1, 2012.

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

Remove lines 22-38 and insert:

concerning safe-house placements; creating s. 409.1678, F.S.; providing definitions; requiring circuits of the Department of Children and Family Services to address child welfare service needs of sexually exploited children as a component of their master plans; providing duties, responsibilities, and requirements for safe houses and their operators; providing for training for law enforcement officials who are likely to encounter sexually exploited children; amending s. 796.07, F.S.; providing for an increased civil penalty and disposition of proceeds; amending s. 960.065, F.S.;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 909 Emergency Medical Services
SPONSOR(S): Perry and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1358

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Holt	Schoolfield
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

In 2009, the U.S. Department of Transportation released the new National Emergency Medical Services (EMS) Education Standards for emergency medical technicians (EMTs) and paramedics. The bill updates Florida's EMTs and paramedics training requirements to reflect the new 2009 national training standards.

The bill amends the definition of "basic life support" to update the definition to include the name of the new National EMS Education Standards, removes outdated competencies that are captured within the training course and makes conforming changes. The bill increases the timeframe that EMT or paramedic can take the state examination following successful completion of an approved training program from 1 to 2 years.

The bill removes the requirement that EMTs and paramedics complete the requirement for HIV/AIDS continuing education instruction. The bill amends the timeline that the state emergency medical services plan is updated from biennially to every five years.

The bill has no fiscal impact on the state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background
Emergency Medical Technicians and Paramedics

The Department of Health (DOH), Division of Emergency Operations regulates emergency medical technicians (EMTs) and paramedics. EMTs and paramedics are regulated pursuant to ch. 401, Part III, F.S. As of June 30, 2010, there were 35,828 active in-state licensed EMTs and 24,103 active in-state licensed paramedics in Florida.[1]

HIV and AIDS Training Requirements

In 2006, the Legislature revised the requirements for HIV/AIDS continuing education instruction in the general licensing provisions for health practitioners[2] regulated by s. 456.033, F.S.[3] The law removed the requirement that the HIV/AIDS continuing education course be completed at each biennial license renewal. Instead, licensees are required to submit confirmation that he or she has completed a course in HIV/AIDS instruction at the time of the first licensure renewal or recertification.[4]

Section 381.0034, F.S., requires the following practitioner groups to complete an HIV/AIDS educational course at the time of biennial licensure renewal or recertification:

- EMTs and paramedics;
- Midwives;
- Radiologic personnel and
- Laboratory personnel.

Failure to complete the HIV/AIDS continuing education requirement is grounds for disciplinary action.[5]

National EMS Education Standards

In 2009, the U.S. Department of Transportation released the new National Emergency Medical Services (EMS) Education Standards (Standards), which replaces the National Highway Traffic Safety Administration, National Standard Curricula (or Emergency Medical Technician-Basic Standard Curriculum) at all licensure levels.[6]

The Standards define the minimal entry-level educational competencies, clinical behaviors, and judgments that must be met by EMS personnel to meet national practice guidelines.[7] The Standards provide guidance to instructors, regulators, and publishers regarding the content to provide interim support as EMS instructors and programs across the nation transition from the National Standard Curricula to the National EMS Education Standards.

---

[1] Florida Department of Health, Division of Medical Quality Assurance, Annual Report: July 1, 2009-June 30, 2010, *available* at: http://www.doh.state.fl.us/mqa/reports.htm (last viewed March 20, 2011).
[2] Acupuncturist; physician; osteopathic physician; chiropractic physician; podiatric physician; certified optometrist; advanced registered nurse practitioner; registered nurse; clinical nurse specialist; pharmacist; dentist; nursing home administrator; occupational therapist; respiratory therapist; or nutritionist; or physical therapists.
[3] *See* 2006-251, L.O.F.
[4] s. 456.033, F.S.
[5] s. 381.0034(2), F.S.
[6] National Highway Traffic Safety Administration, Emergency Medical Services, Educational Standards and NSC: National Emergency Medical Services Education Standards, *available* at:http://www.ems.gov/education/nationalstandardandncs.html (last viewed March 20, 2011).
[7] *Id.*

The Standards assume there is a progression in practice from the entry-level Emergency Medical Responder level to the advanced Paramedic level.[8] That is, licensed personnel at each level are responsible for all knowledge, judgments, and behaviors at their level and at all levels preceding their level.[9] According to the Standards, there are four licensure levels of EMS personnel: Emergency Medical Responder; Emergency Medical Technician; Advanced Emergency Medical Technician; and Paramedic.[10] For example, a Paramedic is responsible for knowing and doing everything identified in that specific area, as well as knowing and doing all tasks in the three preceding levels. Essential components of the EMS National agenda included creating a single National EMS Accreditation Agency and a single National EMS Certification Agency to ensure consistency and quality of EMS personnel.[11]

Emergency Medical Services State Plan

Currently, the DOH is responsible, for the improvement and regulation of basic and advanced life support programs and is required to biennially develop and revise a comprehensive state plan for basic and advanced life support services.[12]

The Effects of the Bill

The bill removes the requirement that EMTs and paramedics complete the requirement for HIV/AIDS continuing education instruction. Universal precautions[13] are core concepts of the EMT and paramedic training and are practiced in the field daily, therefore are an unnecessary continuing education requirement.[14]

The bill amends the definition of "basic life support" to update the definition to include the name of the new National EMS Education Standards and removes outdated competencies that are captured within the training curriculum. The bill makes conforming changes by removing "emergency medical technician basic training course" and adding "National EMS Education Standards," which aligns with the most current national standard. The bill also increases the timeframe that EMT or paramedic can take the state examination following successful completion of an approved training program from 1 to 2 years.

The bill amends the timeline that the state emergency medical services plan is updated from biennially to every five years.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.0034, F.S., relating to the requirements for instruction on HIV and AIDS.
Section 2. Amends s. 401.23, F.S., relating to definitions.
Section 3. Amends s. 401.24, F.S., relating to emergency medical services state plan.
Section 4. Amends s. 401.27, F.S., relating to personnel standards and certification.
Section 5. Amends s. 401.2701, F.S., relating to emergency medical services training programs.
Section 6. Provides an effective date of July 1, 2011.

---

[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] U.S. Department of Transportation, National Emergency Medical Services Education Standards, available at: http://www.ems.gov/education/nationalstandardandncs.html (last viewed March 20, 2011),
[12] s. 401.24, F.S.
[13] Under universal precautions all patients were considered to be possible carriers of blood-borne pathogens to include HIV/AIDS.
[14] Per telephone conversation with DOH, Division of Emergency Operations staff (March 2011).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None identified at this time.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The department has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to emergency medical services; amending s. 381.0034, F.S.; deleting the requirement for emergency medical technicians and paramedics to complete an educational course on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome; amending s. 401.23, F.S.; redefining the term "basic life support" for purposes of the Raymond H. Alexander, M.D., Emergency Medical Transportation Services Act; amending s. 401.24, F.S.; revising the period for review of the comprehensive state plan for emergency medical services and programs; amending s. 401.27, F.S.; revising the requirements for certification or recertification as an emergency medical technician or paramedic; revising the requirements for certification for an out-of-state trained emergency medical technician or paramedic; amending s. 401.2701, F.S.; revising requirements for an institution that conducts an approved program for the education of emergency medical technicians and paramedics; revising the requirements that students must meet in order to receive a certificate of completion from an approved program; providing an effective date.

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

Section 1. Subsection (1) of section 381.0034, Florida Statutes, is amended to read:

381.0034 Requirement for instruction on HIV and AIDS.—

(1) As of July 1, 1991, the Department of Health shall require each person licensed or certified under ~~chapter 401,~~ chapter 467, part IV of chapter 468, or chapter 483, as a condition of biennial relicensure, to complete an educational course approved by the department on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome. Such course shall include information on current state ~~Florida~~ law on acquired immune deficiency syndrome and its impact on testing, confidentiality of test results, and treatment of patients. Each such licensee or certificateholder shall submit confirmation of having completed the ~~said~~ course, on a form provided by the department, when submitting fees or application for each biennial renewal.

Section 2. Subsection (7) of section 401.23, Florida Statutes, is amended to read:

401.23 Definitions.—As used in this part, the term:

(7) "Basic life support" means treatment of medical emergencies by a qualified person through the use of techniques ~~such as patient assessment, cardiopulmonary resuscitation (CPR), splinting, obstetrical assistance, bandaging, administration of oxygen, application of medical antishock trousers, administration of a subcutaneous injection using a premeasured autoinjector of epinephrine to a person suffering an anaphylactic reaction, and other techniques~~ described in the Emergency Medical Technician Basic Training Course Curriculum or the National EMS Education Standards of the United States

Department of Transportation as approved by the department. The term ~~"basic life support"~~ also includes other techniques that ~~which~~ have been approved and are performed under conditions specified by rules of the department.

Section 3. Section 401.24, Florida Statutes, is amended to read:

401.24 Emergency medical services state plan.—The department is responsible, at a minimum, for the improvement and regulation of basic and advanced life support programs. The department shall develop, and ~~biennially~~ revise every 5 years, a comprehensive state plan for basic and advanced life support services, the emergency medical services grants program, trauma centers, the injury control program, and medical disaster preparedness. The state plan shall include, but need not be limited to:

(1) Emergency medical systems planning, including the prehospital and hospital phases of patient care, and injury control effort and unification of such services into a total delivery system to include air, water, and land services.

(2) Requirements for the operation, coordination, and ongoing development of emergency medical services, which includes: basic life support or advanced life support vehicles, equipment, and supplies; communications; personnel; training; public education; state trauma system; injury control; and other medical care components.

(3) The definition of areas of responsibility for regulating and planning the ongoing and developing delivery service requirements.

Section 4. Subsections (4) and (12) of section 401.27, Florida Statutes, are amended to read:

401.27 Personnel; standards and certification.—

(4) An applicant for certification or recertification as an emergency medical technician or paramedic must:

(a) Have completed an appropriate training course as follows:

1. For an emergency medical technician, an emergency medical technician training course equivalent to the most recent National EMS Education Standards ~~emergency medical technician basic training course~~ of the United States Department of Transportation as approved by the department;

2. For a paramedic, a paramedic training program equivalent to the most recent national standard curriculum or National EMS Education Standards ~~paramedic course~~ of the United States Department of Transportation as approved by the department;

(b) Certify under oath that he or she is not addicted to alcohol or any controlled substance;

(c) Certify under oath that he or she is free from any physical or mental defect or disease that might impair the applicant's ability to perform his or her duties;

(d) Within 2 years ~~1 year~~ after course completion have passed an examination developed or required by the department;

(e)1. For an emergency medical technician, hold ~~either~~ a current American Heart Association cardiopulmonary resuscitation course card or an American Red Cross cardiopulmonary resuscitation course card or its equivalent as defined by

department rule;

2. For a paramedic, hold a certificate of successful course completion in advanced cardiac life support from the American Heart Association or its equivalent as defined by department rule;

(f) Submit the certification fee and the nonrefundable examination fee prescribed in s. 401.34, which examination fee will be required for each examination administered to an applicant; and

(g) Submit a completed application to the department, which application documents compliance with paragraphs (a), (b), (c), (e), (f), (g), and, if applicable, (d). The application must be submitted so as to be received by the department at least 30 calendar days before the next regularly scheduled examination for which the applicant desires to be scheduled.

(12) An applicant for certification who is an out-of-state trained emergency medical technician or paramedic must provide proof of current emergency medical technician or paramedic certification or registration based upon successful completion of the United States Department of Transportation emergency medical technician or paramedic training curriculum or the National EMS Education Standards as approved by the department and hold a current certificate of successful course completion in cardiopulmonary resuscitation (CPR) or advanced cardiac life support for emergency medical technicians or paramedics, respectively, to be eligible for the certification examination. The applicant must successfully complete the certification examination within 1 year after the date of the receipt of his

or her application by the department. After 1 year, the applicant must submit a new application, meet all eligibility requirements, and submit all fees to reestablish eligibility to take the certification examination.

Section 5. Paragraph (a) of subsection (1) and subsection (5) of section 401.2701, Florida Statutes, are amended to read:

401.2701 Emergency medical services training programs.—

(1) Any private or public institution in Florida desiring to conduct an approved program for the education of emergency medical technicians and paramedics shall:

(a) Submit a completed application on a form provided by the department, which must include:

1. Evidence that the institution is in compliance with all applicable requirements of the Department of Education.

2. Evidence of an affiliation agreement with a hospital that has an emergency department staffed by at least one physician and one registered nurse.

3. Evidence of an affiliation agreement with a current ~~Florida licensed~~ emergency medical services provider <u>that is licensed in this state</u>. Such agreement shall include, at a minimum, a commitment by the provider to conduct the field experience portion of the education program.

4. Documentation verifying faculty, including:

a. A medical director who is a licensed physician meeting the applicable requirements for emergency medical services medical directors as outlined in this chapter and rules of the department. The medical director shall have the duty and responsibility of certifying that graduates have successfully

completed all phases of the education program and are proficient in basic or advanced life support techniques, as applicable.

b. A program director responsible for the operation, organization, periodic review, administration, development, and approval of the program.

5. Documentation verifying that the curriculum:

a. Meets the ~~course guides and instructor's lesson plans in the~~ most recent Emergency Medical Technician-Basic National Standard Curricula or the National EMS Education Standards for emergency medical technician programs and paramedic ~~Emergency Medical Technician-Paramedic National Standard Curricula for paramedic~~ programs as approved by the department.

b. Includes 2 hours of instruction on the trauma scorecard methodologies for assessment of adult trauma patients and pediatric trauma patients as specified by the department by rule.

~~c. Includes 4 hours of instruction on HIV/AIDS training consistent with the requirements of chapter 381.~~

6. Evidence of sufficient medical and educational equipment to meet emergency medical services training program needs.

(5) Each approved program must notify the department within 30 days after ~~of~~ any change in the professional or employment status of faculty. Each approved program must require its students to pass a comprehensive final written and practical examination evaluating the skills described in the current United States Department of Transportation EMT-Basic or EMT-Paramedic, National Standard Curriculum or the National EMS

Education Standards as approved by the department. Each approved program must issue a certificate of completion to program graduates within 14 days after ~~of~~ completion.

Section 6. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4151 Standards for Compressed Air
SPONSOR(S): Porter
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Holt	Schoolfield
2) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill repeals section 381.895, F.S., which requires the Department of Health ("DOH") to set standards for compressed air, requires rule making, requires testing of compressed air by providers, and reporting of test results to DOH. Florida is the only state that has a law governing the regulation of compressed air standards in recreational sport diving.

According to professional dive organizations, repealing this provision in Florida will not have an impact on the quality of compressed air. Currently, dive organizations are required to monitor air quality to maintain certification or membership in recreational dive associations. These private associations also require consumers to have their tanks inspected before receiving compressed air refills.

Repealing this provision will not affect the funding to any existing programs.

The bill appears to have no fiscal impact on state or local government.

The bill takes effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill repeals section 381.895, F.S., which requires the Department of Health ("DOH") to set standards for compressed air, requires rule making, requires testing of compressed air by providers, and reporting of test results to the department. Repealing this provision will not affect the funding to any existing programs.

Current Situation

In 1999, section 381.895, F.S., was enacted and requires DOH to establish by rule the maximum allowable levels for contaminants in compressed air used for recreational sport diving.[1] These standards must take into consideration the levels of contaminants allowed by the Grade "E" Recreational Diving Standards of the Compressed Gas Association.[2]

Moreover, section 381.895(3), F.S., requires any compressed air provider receiving compensation for providing compressed air for recreational sport diving to have the air tested quarterly by specified accredited laboratories.[3] In addition, the compressed air provider must provide DOH a copy of the quarterly test result and DOH is required to maintain a record of all results.[4] The compressed air provider must post a certificate certifying that the compressed air meets the standards for contaminate levels.[5] The certificate must be posted in conspicuous location where it can readily be seen by any person purchasing air.[6]

It is a second degree misdemeanor[7] if:

- A compressed air provider does not receive a valid certificate that certifies that the compressed air meets the standards for contaminate levels established by DOH; and
- The certificate is not posted in a conspicuous location.[8]

The following entities are exempt from these requirements:

- Individuals who provide compressed air for their own use;
- Any governmental entity that owns its own compressed air source, which is used for work related to the governmental entity; or
- Any foreign registered vessel that uses a compressor to compressed air for its own work-related purposes.[9]

Since enactment, the provision has been amended once to delete the January 1, 2000 implementation date.[10] Florida is the only state that has a law governing the regulation of compressed air standards in recreational diving.[11]

Currently, DOH maintains a database that contains twelve years of test results from approximately 250 compressed air providers located throughout the state.[12] According to DOH, since 1999 none of the

---

[1] This includes any compressed air that may be provided as part of a dive package of equipment rental, or dive boat charter.
[2] Section 381.895(1), F.S.
[3] The laboratory must be accredited by either the American Industrial Hygiene Association or the American Association for Laboratory Accreditation
[4] Section 381.895(3),(4), F.S.
[5] Section 381.895(3), F.S.
[6] *Id.*
[7] A person who has been convicted of a second degree misdemeanor may be sentenced for a definite term of imprisonment not exceeding 60 days and a fine of up to $500. *See* ss. 775.082(4) and 775.083(1), F.S.
[8] Section 381.895(5), F.S.
[9] Section 381.895(2), F.S.
[10] Chapter 2002-1, L.O.F.
[11] Westlaw search for state statutory provisions requiring compressed air standards for recreational diving.
[12] Per email correspondence with DOH staff on file with the Health & Human Services Access Subcommittee staff (March 1, 2011).

submitted reports[13] show any evidence of contamination.[14] Additionally, there have been no reports of injury, illness, or death associated with contaminated compressed air.[15]

DOH recommended repeal of section 381.895, F.S., in its 2008 legislative package. When the provision was enacted DOH did not receive an appropriation to support the database, enforcement, or rule promulgation.

The dive industry considers it a self-regulating body[16] and has mechanisms in place to ensure customers have quality compressed air.[17] According to professional organizations in the field, repealing this provision in Florida will not have an impact on current business practices. Currently, dive shops are required to monitor air quality to maintain certification or membership in worldwide recreational dive associations. Consumers will still be required to have their tanks inspected by dive shops or instructors, as this is an industry-mandated requirement.[18]

There are three major organizations that that engage in recreational diving training and certification: Professional Association of Diving Instructors (PADI), National Association of Underwater Instructors (NAUI), and Scuba Schools International (SSI).[19] According to NAUI, these three organizations represent 90 percent of the recreational diving market for training certification and professional association memberships worldwide. Many recreational dive operations hold certifications and/or memberships with all three organizations. This practice tends to make them more marketable to consumers who are seeking certain types of dive certifications.[20]

According to the Professional Association of Diving Instructors (PADI)[21], members of their organization are required to constantly maintain Compressed Gas Association, Grade "E" Recreational Diving Compressed Air Standards. If a member does not meet these standards their membership is revoked. PADI posts a list of all expelled members on-line.[22] According to PADI, many dive operations are starting to utilize a constant air quality monitoring devices, which self-monitor compressed air quality and just need to be calibrated every 90 days.[23]

The National Association of Underwater Instructors (NAUI)[24], requires certified businesses to provide medical grade compressed air, which NAUI considers a community standard. Dive operations that receive certification from NAUI are required to have their air checked and tested by an accredited nationally recognized lab every two years and the test results must be posted and available for consumers to view. According to NAUI, they have sales representatives that interact with dive shop owners multiple times a year. When NAUI sales men are on site they are required to check compliance with NAUI policies. If a dive operator is not in compliance it will lose their NAUI certification. NAUI posts a list of all suspended and revoked certifications on-line.[25]

---

[13] As of March 3, 2011, the DOH has received approximately a total of 12,000 reports.
[14] Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 4151 (March 2, 2011).
[15] *Id.*
[16] "PADI has worked very hard over the years to keep the scuba diving industry as free from legislation as possible." *See* Professional Association of Diving Instructors, History of PADI, available at: http://www.padi.com/scuba/about-padi/PADI-history/default.aspx (last viewed March 1, 2011).
[17] Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 4151 (March 2, 2011).
; telephone conversation with staff with the Professional Association of Diving Instructors and the National Association of Underwater Instructors (March 1, 2011).
[18] Per telephone conversation with staff with the Professional Association of Diving Instructors and the National Association of Underwater Instructors (March 1, 2011).
[19] *Id.*
[20] *Id.*
[21] PADI represents approximately 125 dive operations located throughout Florida.
[22] Professional Association of Diving Instructors, Quality Management: Consumer Alerts, *available* at: http://www.padi.com/scuba/about-padi/quality-management/consumer-alerts/default.aspx (last viewed March 1, 2011).
[23] Per email correspondence with Professional Association of Diving Instructors staff on file with Health & Human Services Access Subcommittee staff (February 24, 2010).
[24] NAUI represents approximately 120 dive operations located throughout Florida.
[25] National Association of Underwater Instructors Worldwide, Quality and Ethics: Revoked and Suspended Memberships, *available* at: http://www.naui.org/quality_assurance.aspx (last viewed March 1, 2011).

Effects of the Bill

The bill repeals section 381.895, F.S., which requires DOH to set standards for compressed air, requires rule making, requires testing of compressed air by providers, and reporting of test results to DOH. Repealing this provision will not affect funding to any existing programs.

B. SECTION DIRECTORY:

Section 1. Repeals s. 381.895, F.S., relating to standards for compressed air used for recreational diving.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Not applicable.

2. Expenditures:

3. Not applicable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Not applicable.

2. Expenditures:

   Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Compressed air providers submit quarterly test results to DOH by various methods. Some providers have authorized the lab to send the results directly to DOH while others utilize fax or mail. As a result, compressed air providers may save on the cost of postage for mailing test results to DOH.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

No rule-making authority required to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to standards for compressed air; repealing s. 381.895, F.S., relating to standards for compressed air used for recreational diving; providing an effective date.

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

Section 1. Section 381.895, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2011.

PCB HSAS 11-01

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HSAS 11-01 Repeals Obsolete Language relating to Vulnerable Children and Adults
SPONSOR(S): Health & Human Services Access Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health & Human Services Access Subcommittee		Batchelor	Schoolfield

SUMMARY ANALYSIS

PCB HSAS 11-01 repeals the following sections of law, which are outdated, no longer effective, applicable or being implemented:

- s. 39.0015, F.S., relating to child abuse prevention training in the district school system;
- s. 39.305, F.S., relating to the development by the Department of Children and Family Services of a model plan for intervention and treatment in sexual abuse cases;
- ss. 39.311 to 318, F.S., relating to the Family Builders Program;
- s. 39.816, F.S., relating to authorization for pilot and demonstration projects;
- s. 39.817, F.S., relating to a foster care privatization demonstration pilot project;
- s. 383.0115, F.S., relating to the Commission on Marriage and Family Support Initiatives;
- s. 393.22, F.S., relating to financial commitment to community services programs;
- s. 393.503, F.S., relating to respite and family care subsidy expenditures and funding recommendations;
- s. 394.922, F.S., relating to involuntary civil commitments of sexually violent predators;
- s. 402.3045, F.S., relating to a requirement that the Department of Children and Family Services adopt distinguishable definitions of child care programs by rule;
- s. 402.50, F.S., relating to the development of administrative infrastructure standards by the Department of Children and Family Services;
- s. 402.55, F.S., relating to the Management Fellows Program;
- s. 409.1672, F.S., relating to incentives for department employees;
- s. 409.1673, F.S., relating to legislative findings regarding the foster care system and the development of alternate care plans;
- s. 409.1685, F.S., relating to an annual report to the Legislature by the Department of Children and Family Services with respect to children in foster care;
- ss. 409.801 to 803, F.S., relating to the creation of the Family Policy Act;

The bill does not appear to have a fiscal impact on state or local governments.

The bill becomes effective on July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill repeals the following sections of statute which either are outdated, no longer effective or no longer being implemented:

Child Abuse Prevention Training in the District School System
Repeals s. 39.0015, F.S., which created the "Child Abuse Prevention Training Act of 1985". This Act encouraged the Department of Education to implement abuse prevention training for all school teachers, guidance counselors, parents, and children in the district school system. No rules were created relating to this section and the program was never implemented by the Department of Education (DOE).

Intervention and Treatment in Sexual Abuse Cases; Model Plan
Repeals s. 39.305, F.S., which requires the Department of Children and Family Services (DCF) to develop a model plan for community intervention and treatment of intra-family sexual abuse in conjunction with the Department of Law Enforcement, the Department of Health, Department of Education, the Attorney General, the state Guardian Ad Litem Program, the Department of Corrections, representatives of the judiciary, and professionals and advocates from the mental health and child welfare community. The model plan was never developed. However, other sections of law already provide collaborative efforts including but not limited to child protection teams,[1] agreements with local law enforcement regarding investigations[2] and mandatory notification requirements regarding abuse[3].

Family Builders Program
Repeals s. 39.311, F.S., which establishes the "Family Builders Program" (program). Repeals s. 39.312, F.S., which outlines goals for the program. Repeals s. 39.313, F.S., as it relates to contracting of services for the program. Repeals s. 39.314, F.S., establishing eligibility for the program. Repeals s. 39.315, F.S., regarding delivery of services for the program. Repeals s. 39.316, F.S., regarding qualifications of program workers. Repeals s. 39.317, F.S., relating to outcome evaluation of the program. Repeals s. 39.318, F.S., relating to funding of the program. The program was established in the department to provide family preservation services. The department no longer operates the program and recommended repeal of the program and relating sections of statute during the 2009 legislative session.

Authorization for Pilot and Demonstration Projects
Repeals s. 39.816, F.S., which was enacted in 1998 and requires DCF, contingent on a grant from the federal Adoption Safe Families Act (ASFA), to establish one or more pilots for the purpose of furthering the goals of the Act. It also authorizes DCF to establish demonstration projects to identify barriers to adoption, to address parental substance abuse problems that endanger children, and to address kinship care. It is unknown whether the pilots were ever established. As such, the statutory language for pilots is outdated.

Foster Care Privatization Demonstration Pilot Project
Repeals s. 39.817, F.S., which requires the establishment of a pilot project through The Ounce of Prevention Fund of Florida to contract with a private entity for a foster care privatization demonstration project. The statute is outdated and foster care and related services are currently privatized statewide through community based care organizations.

[1] s. 39.303, F.S.
[2] s. 36.306, F.S.
[3] s. 39.301, F.S.

The Commission on Marriage and Family Support Initiatives
Repeals s. 383.0115, F.S., which creates the Commission on Marriage and Family Support Initiatives (Commission), which essentially replaced the Commission of Responsible Fatherhood created in 1996. The Commission is authorized to hire an executive director, a researcher, and an administrative assistant and to also create documents related to marriage and family initiatives. The Commission is also required to develop a community awareness campaign related to marriage promotion. The Commission was funded following its inception in 2003, but has not been funded since 2008. As a result, the Commission is no longer operating.

Financial Commitment to Community Services Program
Repeals s. 393.22, F.S., which provides specific guidelines for transferring funds from the institution budget to the community budget when a developmental disabilities center discharges enough persons to close a residential unit. The section also provides that the funds to support at least 80 percent of the direct cost to serve people in the unit that closes must be shifted to community services. The language is not needed as the use of funds which become available from the closing or downsizing of an institution are handled through the Legislative budgeting process. Legislative findings and intent already cover preference of community services instead of services in a developmental disabilities center.[4] This section of law is no longer needed.

Respite and Family Care Subsidy Expenditures
Repeals s. 393.503, F.S., which requires the Agency for Persons with Disabilities (APD) to report to the Family Care Councils and others the annual expenditures for respite care and family care subsidies for individuals living at home. The law also requires the Family Care Council to review the information and make recommendations to APD when new funds become available. This section of law is no longer effective since the Family Care Council no longer needs to submit recommendations to plan for funding of respite care and family care subsidies and APD no longer needs to report the information to the Council each year. Under current law, clients of APD are served based on their assessed need within the funds available.[5] The services are not provided to individuals based on the funding of specific programs such as respite or family care subsidies. Therefore, this section of law is no longer effective and inconsistent with the current Legislative policy.

Constitutional Requirements for Involuntary Civil Commitment
Repeals s. 394.922, which requires the long-term control, care and treatment of a sexually violent predator who is involuntarily civilly committed to conform to constitutional protections. The personal protections afforded to all citizens under the Florida Constitution and the U.S. Constitution are not impeded by involuntary civil commitment. The redundancy of this section is not necessary as the personal protections provided by both Constitutions remain in effect without restating such in statute.

Requirement for distinguishable definitions of child care.
Repeals s. 402.3045, F.S., which requires DCF to adopt by rule a definition for child care. This is redundant language and not needed in statute since the exact same language is contained in s. 402.305(1)(c).

Administrative Infrastructure; legislative intent; establishment of standards
Repeals s. 402.50, which was enacted in 1991 that requires DCF to develop standards for administrative infrastructure funding and staffing to support the department and contract providers. DCF has undergone several reorganizations since this statute was enacted including a restructuring of administration. This section of statute is outdated and no longer necessary.

Management Fellows Program
Repeals s. 402.55, F.S., which established the Management Fellows Program at DCF and the Department of Health (DOH). The program was enacted in 1991 to identify, train designate and promote employees with high levels of administrative and management potential to fill the needs of the departments. One Career Service employee is to be identified each year and placed in the training

[4] s. 393.062, F.S.
[5] s. 393.0661, F.S.

program for these purposes. A special pay increase is allowed upon completion of the program. The program is no longer being used by either department.

Incentives for Department Employees
Repeals s. 409.1672, F.S., was enacted in 1994 to authorize DCF to, within existing resources, develop monetary performance incentives such as bonuses, salary increases, and educational enhancements for department employees engaged in positions or activities related to the child welfare system under Chapter 39, relating to dependent children, or Chapter 409, relating to social and economic assistance. It appears this section has never been used due to lack of funds.

Alternative Care Plans; Legislative Findings
Repeals s. 409.1673, F.S., which provides legislative findings related to out-of-home placements for children in the legal custody of the department. It also requires DCF, in collaboration with community service providers, to develop and administer plans for services for dependent children. This section of law was enacted at the early stages of the change to community-based care and it is now outdated as a result of subsequent changes to chapter 39, F.S., and s. 409.1671, F.S.

Annual Report to Legislature relating to Children in Foster Care
Repeals s. 409.1685, F.S., which requires DCF to submit a report each year to the Legislature concerning the status of children in foster care. The report with the specific content referenced in statute is not needed. This section of law is outdated as the information in this report is available from other sources.

Family Policy Act
Repeals s. 409.801, F.S., which creates the "Family Policy Act." Repeals s. 409.802, F.S., which requires the Legislature to seek to provide families certain benefits. Repeals s. 409.803, F.S., which requires DCF to establish a two year pilot program in a rural and an urban county to provide funding and resources for shelters, foster homes, and the children in their care. Provisions regarding these services exist in chapters 39 and 402 and other sections of chapter 409, which more accurately reflect the current philosophy and practice relating to foster children and their parents. This section of statute is outdated.

B. SECTION DIRECTORY:

Section 1: Repeals ss. 39.0015, 39.305, 39.311, 39.312, 39.313, 39.314, 39.315, 39.316, 39.317, 39.318, 39.816, 39.817, 383.0115, 393.22, 393.503, 394.922, 402.3045, 402.50, 402.55, 409.1672, 409.1673, 409.1685, 409.801, 409.802, 409.803, F.S.

Section 2: Amends s. 39.3031, F.S., relating to rules of implementation for ss. 39.303 and 39.305, F.S.

Section 3: Amends s. 390.01114, F.S., relating to parental notice of abortion act.

Section 4: Amends s. 753.03, F.S., relating to standards for supervised visitation and supervised exchange programs.

Section 5: 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:

   None.

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:

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to vulnerable children and adults; repealing s. 39.0015, relating to child abuse prevention training in the district school system; repealing s. 39.305, F.S., relating to the development by the Department of Children and Family Services of a model plan for community intervention and treatment in intrafamily sexual abuse cases; repealing ss. 39.311, 39.312, 39.313, 39.314, 39.315, 39.316, 39.317, and 39.318, F.S., relating to the Family Builders Program; repealing 39.816, F.S., related to authorization for pilot and demonstration projects; repealing s. 39.817, F.S., relating to foster care privatization demonstration project; repealing s. 383.0115, F.S., relating to the Commission on Marriage and Family Support Initiatives; repealing s. 393.22, F.S., relating to financial commitment to community services programs; repealing s. 393.503, F.S., relating to respite and family care subsidy expenditures and funding recommendations; repealing s. 394.922, F.S., relating to constitutional requirements; repealing s. 402.3045, F.S., relating to a requirement that the Department of Children and Family Services adopt distinguishable definitions of child care programs by rule; repealing s. 402.50, F.S., relating to the development of administrative infrastructure standards by the Department of Children and Family Services; repealing s. 402.55, F.S., relating to management fellows program; repealing s. 409.1672, F.S., relating to incentives for department employees; repealing

s. 409.1673, F.S., relating to legislative findings regarding the foster care system and the development of alternate care plans; repealing s. 409.1685, F.S., relating to an annual report to the Legislature by the Department of Children and Family Services with respect to children in foster care; repealing ss. 409.801 and 409.802, F.S., relating to the Family Policy Act; repealing s. 409.803, F.S., relating to pilot programs to provide shelter and foster care services to dependent children; amending ss. 39.3031, 390.01114, and 753.03, F.S.; conforming references to changes made by the act; providing an effective date.

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

Section 1. Sections 39.0015, 39.305, 39.311, 39.312, 39.313, 39.314, 39.315, 39.316, 39.317, 39.318, 39.816, 39.817, 383.0115, 393.22, 393.503, 394.922, 402.3045, 402.50, 402.55, 409.1672, 409.1673, 409.1685, 409.801, 409.802, and 409.803, Florida Statutes, are repealed.

Section 2. Section 39.3031, Florida Statutes, is amended to read:

39.3031 Rules for implementation of s. ~~ss.~~ 39.303 ~~and 39.305~~.—The Department of Health, in consultation with the Department of Children and Family Services, shall adopt rules governing the child protection teams ~~and the sexual abuse treatment program~~ pursuant to s. ~~ss.~~ 39.303 ~~and 39.305~~, including definitions, organization, roles and responsibilities,

eligibility, services and their availability, qualifications of staff, and a waiver-request process.

Section 3. Paragraph (b) of subsection (2) of section 390.01114, Florida Statutes, is amended to read:

390.01114 Parental Notice of Abortion Act.—

(2) DEFINITIONS.—As used in this section, the term:

(b) "Child abuse" means abandonment, abuse, harm, mental injury, neglect, physical injury, or sexual abuse of a child as those terms are defined in ss. 39.01, 827.04, and 984.03 ~~has the same meaning as s. 39.0015(3)~~.

Section 4. Paragraph (j) of subsection (2) of section 753.03, Florida Statutes, is redesignated as paragraph (i), and present paragraph (i) of that subsection is amended to read:

753.03 Standards for supervised visitation and supervised exchange programs.—

(2) The clearinghouse shall use an advisory board to assist in developing the standards. The advisory board must include:

~~(i) A representative of the Commission on Marriage and Family Support Initiatives.~~

Section 5. This act shall take effect July 1, 2011.

`HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1241 Independent Living
SPONSOR(S): Glorioso and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1902

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Batchelor	Schoolfield
2) Rulemaking & Regulation Subcommittee			
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

This bill makes significant changes to the Department of Children and Family Services independent living transition services program for children and young adults. The bill amends, ss. 39.013 and 409.903, and creates ss. 39.605, 39.911 and 39.922, of the Florida Statutes.

The bill provides for the extension of independent living services under the court's jurisdiction for certain youth up to their 21st birthday.

The bill also changes and restructures the current Independent Living Transitional Services program from s. 409.4151, F.S., and establishes new programs including: Pre- independent Living, Pathways to Success, Foundations for Success, and Jumpstart to Success programs. The new programs have specific criteria for eligibility and include requirements for continued participation in the programs.

The bill requires DCF and community based partners to establish a performance accountability system to measure progress of the child, caregivers and providers. The bill includes specific measures for accountability measurement.

The bill has a fiscal impact. However, DCF anticipates increased federal Title IV-E funding will be obtained to cover additional expenditures in the new program. (see fiscal comments section)

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Independent Living Transition Services

The Department of Children and Family Services (DCF) administers a system of independent living transition services to assist older children in foster care and 18 year olds exiting foster care to transition into self-sufficient adults.[1] This program was created in 2002, utilizing both state and federal funds to provide a continuum of services and financial assistance to prepare current and former foster youth to live independently.[2] Under the program, DCF serves children who have reached 13 years of age but are not 18 years of age and are in foster care.[3] DCF also serves young adults who have turned 18 years old but are not 23 years old and were in foster care when they turned 18 years old. They also serve youth, who after turning 16 years old were adopted from foster care or placed with a court approved dependency guardian and spent at least 6 months in foster care within the 12 months preceding placement or adoption.[4]

The DCF program provides services to assist young adults in obtaining life skills and education for independent living and employment.[5] DCF contracts with community based care lead agencies (CBC's) to provide these services.[6]

Florida's Independent Living Program has 6 service categories:[7]

- **Pre-Independent Living**: All 13-14 year old foster youth are eligible to receive services, those services include: life skills training, educational field trips and conferences.
- **Life Skills**: All 15-17 year old foster youth are eligible to receive services which include banking, and budgeting skills, educational support and employment training.
- **Subsidized Independent Living**: Some 16-17 year old youth who demonstrate self sufficiency skills may be chosen to participate in this program. The program allows youth to live independently of the daily care and supervision of an adult.
- **Road to Independence**: Eligible 18-22 year old young adults can receive financial assistance up to $1,256 per month for educational and vocational training.
- **Aftercare**: Eligible 18-22 year old young adults can receive aftercare services to help develop the skills and abilities for independent living including tutoring, counseling and skills training.
- **Transition**: Eligible 18-22 year old young adults can receive short term services including financial, housing, counseling and employment.

---

[1] s. 409.1451, F.S.
[2] *Id*
[3] s. 409.1451(2)(a)
[4] s. 409.1451(2)(b), F.S.
[5] s. 409.1451(1)(b), F.S.
[6] s. 409.1671, F.S.
[7] OPPAGA Report, *Comparisons to Other States and Funding Options for the Independent Living Program,* 2/2/11 (on file with committee staff).

Recent Reviews of the Independent Living Program

A recent report[8] by the Independent Living Advisory Council (council) [9]provided a status report on independent living services for youth annually. According to the council, attention to the needs of children in care and young adults formerly in care has increased significantly over the past decade.[10] However, the services intended to help prepare young adults to live independently upon aging out of the child welfare system remain limited and fragmented. The council recommends increased accountability for the program, including improved data collection methods and processes that ensure measurable outcomes for youth aging out of foster care are being achieved. The outcomes must address areas of critical need including: education, employment, housing, financial stability and permanency. [11]

A 2010 report on the Independent Living Program by the Office of Program Policy Analysis and Government Accountability (OPPAGA) found that an effective mechanism to track whether 13 to 17 year-old youth receive services is still not in place. In addition, the report found that DCF does not routinely monitor whether lead agencies meet standards for independent living services.[12] DCF has improved its fiscal oversight of lead agency Independent Living expenditures for young adults age 18 and older to help ensure that federal funds for this age group are spent in compliance with federal law. The department also has broadened its contract monitoring and quality assurance systems to better address key elements of the Independent Living Program.

Fostering Connections Act[13]:

The Fostering Connections to Success and Increasing Adoptions Act was established by Congress in 2008 to provide new supports and services to promote permanency and the improved well-being of older youth in foster care. [14] The new supports include foster care, adoption or guardianship assistance payments to children after the age of 18. One feature of the Act provides for the extension of foster care assistance to youth up to age 21. The Act also provides DCF the opportunity to receive additional federal funding.[15]

In order for Florida to participate in the Foster Connections Act, DCF must amend their state plan for Title IV E services. DCF has identified the following options to include in their amended state plan in order to become eligible for the Program: [16]

- Extend services to children up to age 21.
- Require youth to meet one of the following requirements:

  - Complete secondary education or a program leading to an equivalent credential. (Example: a youth could be finishing high school or taking classes in preparation for a general equivalency diploma exam.)

  - Enroll in an institution which provides post-secondary or vocational education.(Example: a youth could be enrolled full-time or part-time in a university or college, or enrolled in a vocational or trade school.)

---

[8] 2008 Report on Independent Living Services for Florida's Foster Youth, Independent Living Services Advisory Council.
[9] The Independent Living Services Advisory Council is established in s.409.1451(7), F.S., to review and make recommendations to DCF regarding the operation of the independent living transition services program.
[10] 2008 Report on Independent Living Services for Florida's Foster Youth, Independent Living Services Advisory Council.
[11] *Id*
[12] OPPAGA Report 10-30, DCF Has Improved Some Aspects of Independent Living Program Oversight; Other Long-Standing Problems Remain (March 2010).
[13] P.L.110-351.
[14] Fostering Connections Resource Program, http://www.fosteringconnections.org/. (last visited on 3/18/2011).
[15] DCF Staff Analysis of HB 1241, March 9, 2011.
[16] Email from DCF 3/18/2011. (on file with committee staff).

- Participate in a program or activity designed to promote, or remove barriers to employment. (Example: a youth could be in Job Corps or attending classes on resume writing and interview skills.)
- Be employed for at least 80 hours per month.(Example: a youth could be employed part time or full time, at one or more places of employment.)

Effect of Proposed Changes

Court Jurisdiction of Children

The bill amends s. 39.013, F.S., to extend court jurisdiction of a child until age 21 under certain circumstances. The court involvement is contingent upon a child requesting to participate in the Foundations for Success Services program which is a new program introduced by this bill. The current law is removed which limits the courts continued jurisdiction for a period of time not to exceed one year after the young adult reaches 18 years of age

The bill provides that jurisdiction of the court for youth ages 18-21 who participate in the Foundations to Success program is for the review of the child's transition and permanency plans and the status of services. The court does not have jurisdiction to review the amount of the stipend for the child. The courts are required to hold an annual review hearing, but may review the child's status more frequently if requested to do so by any party.

Restructuring of Independent Living Transition Services Program

The bill creates s. 39.605, F.S., "Services to Older Children in Out of Home Care" which restructures the current system for providing independent transition services to children less than 18 years of age, including the following:

- Combining current pre-independent living services (age 13 and 14) with current life skills services (age 15-17) into one category that includes children who are 13-17 years of age.
- Creates a provision relating to "quality parenting initiatives" and requires DCF to provide caregivers the training, support, and services needed to teach children in out-of-home care the necessary life skills and to assist the children to build a transition to independent, self-sufficient adulthood;
- Requires DCF and community based providers to establish a performance accountability system to measure progress of the child, caregivers and providers. The bill includes specific measures for accountability measurement.
- Provides for the early entry into the Foundations for Success program and provides that children may enter the program beginning at age 16, but not yet 18 if they are adjudicated dependent and are able to demonstrate independent living skills.

New Provision of Services for the Independent Living Program

The bill creates sections. 39.911 and 39.912, F.S., providing for *definitions* and the *provision of services* in the newly created Pathways to Success, Foundations for Success and Jumpstart to Success programs. The programs in this section will eventually replace the independent living programs s. 409.1451, F.S.

- Pathways to Success Program: This is an education program for eligible young adults between the ages of 18 and 22 who are fulltime students at postsecondary institutions approved by the department. The program is intended to help eligible students who are former foster children receive the educational and vocational training needed to achieve independence. A young adult who has earned a standard high school diploma or its equivalent and who is attending a postsecondary or vocational school approved by the department full-time is eligible for the program. A stipend (annually reviewed and renewed) is provided based on a needs assessment which

includes consideration of other grants, scholarships, waivers and earnings of the young adult. The young adult must meet certain specified progress requirements for continued eligibility.

- Foundations for Success Program: This is a program of services for children who reach 18 years of age and opt to remain in out-of-home care up to their 21st birthday and agree to receive case management services on at least a monthly basis. These services include case work, support services, financial assistance, housing, and an annual judicial review. The program provides two levels of services; one providing greater supervision and financial direction and the other providing greater independence. Youth participating in the program receive cash assistance paid directly to the child with the amount to be determined by a needs assessment;

  Youth participating in the program must choose one of the following mandatory activities to equal a full-time or 40-hour week:

  - Working to complete secondary education or a program leading to an equivalent credential, including high school or preparation for a general equivalency diploma exam;

  - Full-time enrollment in a university, college, or vocational or trade school that provides postsecondary or vocational education;

  - Part-time enrollment in an institution that provides postsecondary or vocational education or a program designed to promote or remove barriers to employment and part-time employment at one or more places of employment; or

  - Participation in a full-time program or activity designated to promote or remove barriers to employment;

- Jumpstart to Success Program: This program is a temporary support system that serves young adults between the ages of 18 and 21 who decide not to participate in the Foundations for Success program or do not meet the eligibility requirements for other services. Services under this program include limited cash assistance, access to an independent living counselor, and other supportive services. The program is limited to a total of 12 cumulative months between the ages of 18 – 21. In extenuating circumstances, services may be extended to age 23 for a total of 18 cumulative months.

The bill provides for an appeals process for a child or young adult who is the subject of an adverse eligibility requirement. If the child or young adult is under the jurisdiction of the court, they shall appeal to the court. If the child or young adult is not under the jurisdiction of the court, DCF shall adopt by rule procedures for appeal.

The bill also provides for a transition period from the existing independent living program in s.409.1451, F.S. to the newly created program described above.

The bill also provides for termination of youth who disregard requirements of the program.

Other Provisions

- The bill requires DCF to develop outcome and other performance measures for the Independent Living Program and submit an annual report to the Legislature.

- The bill retains the Independent Living Services Council to make recommendations concerning implementation and operation of the program.

- The bill also retains the requirement for DCF to enroll each eligible young adult into the Florida KidCare program when they do not have access to Medicaid or 3rd party insurance.

The bill amends s. 409.903, F.S. to include young adults who are eligible to receive transitional services pursuant to s. 409.175, F.S. in the eligible group of people that DCF makes medical assistance and related services payments on behalf of.

B. SECTION DIRECTORY:

Section 1: Amends s. 39.013, F.S., relating to procedures and jurisdiction; right to counsel.

Section 2: Creates s. 39.605, F.S., relating to Services to Children in out-of- home care.

Section 3: Creates s. 39.911, F.S., relating to definitions.

Section 4: Creates s. 39.912, F.S., relating to Provision of Services.

Section 5: Amends s. 409.903, F.S., relating to Mandatory Payments for Eligible Persons.

Section 6: Creates in an unspecified section of law, relating to participation in the road to independence or transitional support services program.

Section 7: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See fiscal comments.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

DCF (in their analysis of HB 1241) indicated that under the new program model, DCF will receive additional federal Title IV-E funding to help serve young adults age 18 up to age 21 who choose to remain in foster care. DCF expresses that the new program will cost, in total, approximately the same as the total spent in FY 2010 ($52 million). DCF believes that the additional federal earnings will allow the CBC's to reduce the amount shifted from other child welfare services to maintain Independent Living services.[17]

DCF indicated they will request budget authority from the Legislature for FY 2011-2012 to spend approximately $5.6 million in federal Title IV-E funds to transition to this new program model. For FY 2012-2013, DCF intends to request Legislative budget authority to spend $11.2 million in federal Title IV-E funds to sustain full implementation of the new program model.[18]

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.

[17] According to DCF fiscal comments in their Bill Analysis of HB 1241, During FY 2009-2010 the Community Based Care organizations spent $52 million to sustain the current Independent Living Program model. This was $22 million more than what they were specifically appropriated for the Independent Living Program. Funding was shifted from other child welfare services to supplement the deficit

[18] DCF Staff Analysis of HB 1241, March 9, 2011.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the department with adequate rule making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- Line 552 provides a definition for the term, "needs assessment" the definition contains rulemaking authority for the department. The reference to rulemaking should be in a separate section on rulemaking and not embedded in the definition.
- Line 578 provides a definition for the term, "qualifying residential facility", and, the term is not used in the bill.
- Line 728 refers to two levels of services in the Foundations for Success program, but the bill does not provide any information about what services are included in each level.
- Line 1002 addresses mandatory payments for eligible persons and includes adults who are eligible to receive transitional services, pursuant to 409.175, F.S., this section of law relates to licensure of family foster homes, residential child-caring agencies, and child-placing agencies. It is unclear why this statute is referenced here.
- Line 740 addresses that a child who has not yet completed high school shall receive basic services. The bill does not define basic services.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to independent living; amending s. 39.013, F.S.; requiring the court to exercise jurisdiction until a child is 21 years of age if the child elects to receive Foundations for Success services; retaining jurisdiction for the purpose of reviewing the child's transition and permanency plans and services; creating s. 39.605, F.S.; directing the Department of Children and Family Services to administer a system of independent living transition services to enable older children in out-of-home care to make the transition to self-sufficiency as adults; providing that the goals of independent living transition services are to assist older children in planning successful futures that lead to independence and assist caregivers of older children in out-of-home care to teach life skills to all children in their care; providing for eligibility to receive independent living services; requiring the department to provide these children with skills for out-of-home, independent, self-sufficient living; specifying the training, support, and services the department must give to prepare a child for independent living; providing for a detailed transition plan for each child in the program; establishing educational goals; requiring all children in out-of-home care to take part in learning opportunities that result from participation in community service activities; specifying services for children living in foster care, including preindependent living services, quality parenting services, performance

accountability, and early entry into the Foundations for Success program; requiring the department to adopt rules for the independent living program; creating s. 39.911, F.S.; defining terms; creating s. 39.912, F.S.; requiring the department to provide or arrange services for the Pathways to Success, Foundations for Success, and Jumpstart to Success programs; providing for portability of services between counties; providing that the Pathways to Success program is intended to help eligible students who were foster children in this state to receive the educational and vocational training needed to achieve independence; providing for a stipend that is based on a needs assessment of the young adult's educational and living needs; providing for the permissible use of the stipend; providing for the termination of the stipend; authorizing eligible children to participate in the Foundations for Success program; describing the structure and operations of the two Foundations for Success components; detailing eligibility criteria for the Foundations for Success program; requiring a review of the child's progress on the anniversary of his or her approval for Foundations for Success services; providing eligibility for the Jumpstart to Success program; providing for an appeals process for any decision relating to the three programs; directing the department to develop outcome measures; requiring the department to prepare a report for the Legislature; specifying the contents of the report; requiring the department to establish the

Independent Living Services Advisory Council; providing the functions and duties of the advisory council; requiring a report; providing for the membership of the advisory council; requiring the department to provide administrative support to the advisory council; requiring a report to the Legislature by a specified date; requiring the department to enroll eligible children in the Florida Kidcare program; requiring the department to adopt rules; amending s. 409.903, F.S., conforming a cross-reference; authorizing a child or young adult receiving Road-to-Independence or transitional support services to choose to terminate their existing services or continue in their existing services until their eligibility for that benefit program expires; providing an effective date.

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

Section 1. Section 39.013, Florida Statutes, is amended to read:

39.013 Procedures and jurisdiction; right to counsel.—

(1) All procedures, including petitions, pleadings, subpoenas, summonses, and hearings, in this chapter shall be conducted according to the Florida Rules of Juvenile Procedure unless otherwise provided by law. Parents must be informed by the court of their right to counsel in dependency proceedings at each stage of the dependency proceedings. Parents who are unable to afford counsel must be appointed counsel.

(2) The circuit court has exclusive original jurisdiction

of all proceedings under this chapter, of a child voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and of the adoption of children whose parental rights have been terminated under this chapter. Jurisdiction attaches when a petition for an injunction pursuant to s. 39.504, the initial shelter petition, the dependency petition, or the termination of parental rights petition is filed or when a child is taken into the custody of the department. The circuit court may assume jurisdiction over any such proceeding regardless of whether the child was in the physical custody of both parents, was in the sole legal or physical custody of only one parent, caregiver, or some other person, or was in the physical or legal custody of no person when the event or condition occurred which ~~that~~ brought the child to the attention of the court. When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 18 years of age. ~~However, if a youth petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the juvenile court may retain jurisdiction under this chapter for a period not to exceed 1 year following the youth's 18th birthday for the purpose of determining whether appropriate aftercare support, Road to Independence Program, transitional support, mental health, and developmental disability services, to the extent otherwise authorized by law, have been provided to the formerly dependent child who was in the legal custody of the department immediately before his or her 18th birthday.~~

(3) When any child requests, or is approved for, continuing Foundations for Success services pursuant to s. 39.912, the court shall exercise jurisdiction over the child until the child reaches 21 years of age, or until Foundations for Success services are terminated. Jurisdiction of the court is retained for children between the ages of 18 to 21 in order that the court may review the child's transition and permanency plans and the status of the services provided. The court does not have jurisdiction to review the amount of the stipend provided to the child. The court shall hold an annual review hearing for children between the ages of 18 and 21 but may review the child's status more frequently at the request of any party.

(4) If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the transitional services available to a young adult from the department pursuant to s. 409.175 ~~under s. 409.1451~~. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday.

(5) ~~(3)~~ When a child is under the jurisdiction of the circuit court pursuant to this chapter, the circuit court assigned to handle dependency matters may exercise the general and equitable jurisdiction over guardianship proceedings under chapter 744 and proceedings for temporary custody of minor children by extended family under chapter 751.

(6) ~~(4)~~ Orders entered pursuant to this chapter which affect the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for a minor child shall take precedence over other orders entered in civil actions or proceedings. However, if the court has terminated jurisdiction, the order may be subsequently modified by a court of competent jurisdiction in any other civil action or proceeding affecting placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same minor child.

(7) ~~(5)~~ The court shall expedite the resolution of the placement issue in cases involving a child who has been removed from the parent and placed in an out-of-home placement.

(8) ~~(6)~~ The court shall expedite the judicial handling of all cases when the child has been removed from the parent and placed in an out-of-home placement.

(9) ~~(7)~~ Children removed from their homes shall be provided equal treatment with respect to goals, objectives, services, and case plans, without regard to the location of their placement.

(10) ~~(8)~~ For any child who remains in the custody of the department, the court shall, within the month that ~~which~~ constitutes the beginning of the 6-month period before the

child's 18th birthday, hold a hearing to review the progress of the child while in the custody of the department.

(11)~~(9)~~(a) At each stage of the proceedings under this chapter, the court shall advise the parents of the right to counsel. The court shall appoint counsel for indigent parents. The court shall ascertain whether the right to counsel is understood. When right to counsel is waived, the court shall determine whether the waiver is knowing and intelligent. The court shall enter its findings in writing with respect to the appointment or waiver of counsel for indigent parents or the waiver of counsel by nonindigent parents.

(b) Once counsel has entered an appearance or been appointed by the court to represent the parent of the child, the attorney shall continue to represent the parent throughout the proceedings. If the attorney-client relationship is discontinued, the court shall advise the parent of the right to have new counsel retained or appointed for the remainder of the proceedings.

(c)1. A waiver of counsel may not be accepted if it appears that the parent is unable to make an intelligent and understanding choice because of mental condition, age, education, experience, the nature or complexity of the case, or other factors.

2. A waiver of counsel made in court must be of record.

3. If a waiver of counsel is accepted at any hearing or proceeding, the offer of assistance of counsel must be renewed by the court at each subsequent stage of the proceedings at which the parent appears without counsel.

(d) This subsection does not apply to any parent who has voluntarily executed a written surrender of the child and consents to the entry of a court order terminating parental rights.

(12) ~~(10)~~ Court-appointed counsel representing indigent parents at shelter hearings shall be paid from state funds appropriated by general law.

(13) ~~(11)~~ The court shall encourage the Statewide Guardian Ad Litem Office to provide greater representation to those children who are within 1 year of transferring out of foster care.

Section 2. Section 39.605, Florida Statutes, is created to read:

39.605 Services to older children in out-of-home care.—

(1) SYSTEM OF SERVICES.—

(a) The Department of Children and Family Services, its agents, or community-based providers operating pursuant to s. 409.1671 shall administer a system of independent living transition services to enable older children in out-of-home care to make the transition to self-sufficiency as adults.

(b) The system for preparing children shall be comprehensive, measure progress, and include all the key participants working toward the same goals.

(c) The goals of independent living transition services are to assist older children to plan for successful futures that lead to independence and to assist caregivers of older children in out-of-home care to teach life skills to all children in their care. Independent living transition services shall help

older children establish a quality of life appropriate for their age and assume personal responsibility for becoming self-sufficient adults.

(d) State and federal funds for out-of-home care shall be used to establish a continuum of services for eligible children in out-of-home care.

(e) For children in out-of-home care, independent living transition services are not an alternative to adoption. Independent living transition services are never a replacement for the permanency goals of reunification, adoption, or permanent guardianship.

(2) ELIGIBILITY.—Children who are at least 13 years of age but are not yet 18 years of age and who are in out-of-home care are eligible to receive preindependent living services.

(3) PREPARATION FOR INDEPENDENT LIVING.—

(a) It is the intent of the Legislature that the Department of Children and Family Services and its community-based providers assist children in out-of-home care to make the transition to independent living and self-sufficiency as adults. The department shall encourage the adoption of quality parenting initiatives that will allow children to learn age-appropriate life skills in their families and communities, with consideration for addressing the special needs of the children. To facilitate this process, the department shall:

1. Provide caregivers the training, support, and services needed to allow the caregivers to teach children in out-of-home care the necessary life skills and to assist the children to build a transition to independent, self-sufficient adulthood.

2. Ensure that training is provided to appropriate staff and out-of-home caregivers in order to address the unique issues of older children as they transition into adulthood. These issues include, but are not limited to, providing information on high school completion, grant applications, vocational school opportunities, education and employment opportunities, and opportunities to participate in appropriate daily activities.

3. Develop procedures to maximize the authority of caregivers to approve a child's participation in age-appropriate activities for out-of-home children in their care. The age-appropriate activities and the authority of the caregiver to approve participating in such activities shall be specified in a written plan that the caregiver, the child, and the case manager develop together, sign, and follow. This plan must include specific goals and objectives and must be reviewed and updated at least quarterly. Caregivers who develop a written plan are not responsible for the acts of a child engaged in approved, age-appropriate activities identified in the plan.

4. Provide opportunities for older children in out-of-home care to interact with mentors.

5. Allow older children to directly access and manage the personal allowance they receive from the department in conjunction with training in financial literacy, budgeting, and banking.

6. Make a good faith effort to fully explain, before the execution of any required signatures, the content and import of any document, report, form, or other record, whether written or electronic, presented to a child pursuant to this chapter. The

department shall allow the child to ask appropriate questions necessary to fully understand the document. It is the responsibility of the person presenting the document to the child to fully comply with this subparagraph.

(b) It is further the intent of the Legislature that each child in out-of-home care, his or her caregivers, if applicable, and the department or community-based provider, create a detailed transition plan to regularly assess and monitor the child's progress in developing educational, social, developmental, and independent living skills. The transition plan must set early achievement and career goals for the child's postsecondary educational and work experience and shall emphasize high school completion for each child in care, with consideration for children with special needs. The department and community-based providers shall ensure that children in out-of-home care complete specific educational goals and be ready for postsecondary education and the workplace. For public school students in middle school and high school, the mandatory educational plan outlined in ss. 1003.4156(1) and 1009.531(4) shall be included in the educational path required for children in out-of-home care. Receiving a high school diploma shall take precedence as an educational goal over the receipt of an equivalent diploma or a GED.

1. The child, the child's caregivers, and the child's teacher or other school staff members shall be included to the fullest extent possible in developing the transition plan. The transition plan shall be reviewed at each judicial hearing as part of the case plan and shall accommodate the needs of

children served in exceptional education programs. Children in out-of-home care, with the assistance of their caregivers and the department or community-based provider, shall choose one of the following postsecondary goals:

a. Attending a 4-year college or university, a community college and a university, or a military academy;

b. Receiving a 2-year postsecondary degree;

c. Attaining a postsecondary career and technical certificate or credential; or

d. Beginning immediate employment, including apprenticeship, after completion of a high school diploma or its equivalent, or enlisting in the military.

2. In order to assist the child in out-of-home care in achieving his or her chosen goal, the department or community-based provider shall, with the participation of the child and the child's caregivers, identify:

a. The core courses necessary to qualify for a chosen goal.

b. Any elective courses that would provide additional help in reaching a chosen goal.

c. The grade point requirement and any additional information necessary to achieve a specific goal.

d. A teacher, other school staff member, employee of the department or community-based care provider, or community volunteer who would be willing to work with the child as an academic advocate or mentor if caregiver involvement is insufficient or unavailable.

e. The standardized tests that are necessary in order to

be eligible to attain future goals as well as tutoring and support services needed to succeed in standardized testing.

3. In order to complement educational goals, the department and community-based providers are encouraged to form partnerships with the business community to support internships, apprenticeships, or other work-related opportunities.

4. The department and community-based providers shall ensure that children in out-of-home care and their caregivers are made aware of these postsecondary goals and shall assist in identifying the coursework necessary to enable the child to reach identified goals.

(c) All children in out-of-home care are required to take part in learning opportunities that result from participating in community service activities, taking into account the child's level of functioning and educational achievement.

(d) Children in out-of-home care shall be provided with the opportunity to change from one postsecondary goal to another, and each postsecondary goal shall take into consideration changes in the child's needs and preferences. Any change, particularly a change that will require additional time to achieve a goal, shall be made with the guidance and assistance of the department or the community-based provider.

(4) SERVICES FOR CHILDREN IN OUT-OF-HOME CARE.—The department and its community-based providers shall provide the following services to older children in out-of-home care who meet prescribed conditions and are determined eligible by the department.

(a) *Preindependent living services.*—

1. Although preparation for independence starts the moment a child enters care, regardless of age or development, the department shall offer preindependent living services to children in out-of-home care starting at the age of 13. These services must include, but are not limited to:

a. An annual life skills assessment conducted by community-based providers to assess each child's competency in demonstrating age-appropriate and developmentally appropriate life skills. This assessment must include information from the caregiver and the child and be included in the child's transition plan.

b. Identification by the caregiver, case manager, and child of needed life skills, how these skills will be taught to the child, and how the child's progress will be evaluated.

c. The development and regular updating of a comprehensive transition plan that includes all of the child's annual life skills assessments and educational records and status, a description of the child's progress in acquiring life skills, and an individualized educational plan.

2. The department shall meet with appropriate staff before each judicial review for each child who has reached 13 years of age but is not yet 17 years of age. The meeting shall include a review of the transition plan, particularly the most recent life skills assessment, and an evaluation of the progress the child has made acquiring the needed independent living skills. Based on the results of the independent living assessment, services and training identified in the assessment meeting shall be added to the child's transition plan. The revised plan shall be

provided to the court as part of the next scheduled judicial review hearing.

3. At the first annual assessment meeting that occurs after a child's 13th birthday, and at each subsequent annual meeting, the department or the community-based provider shall ensure that the child's transition plan includes an educational and career path based upon his or her unique abilities and interests. The department or community-based provider shall provide to each child detailed and personalized information on the Pathways to Success program, and the grants, scholarships, and tuition waivers that may be available to the child with assistance from the department.

4. The transition plan, signed by the child participant, shall be included as a part of the written report required to be provided to the court at each judicial review held pursuant to s. 39.701.

(b) *Quality parenting services.*—

1. Recognizing that the child-parent learning environment is an effective and normal means of teaching life skills, the department shall provide training, services, and support to enable caregivers to teach independent life skills to children in their care, including, but not limited to, banking and budgeting, self-care, nutrition and food preparation, time-management and organization, studying, transportation, and interviewing and employment.

2. The department shall conduct a assessment meeting at least once every 6 months for each child who has reached 16 years of age but is not yet 18 years of age. The meeting shall

ensure that the independent living training and services determined appropriate by the independent life skills assessment are being received by the child and include an evaluation of the progress the child is making in developing the needed independent living skills. The results of the independent living assessment meeting shall be included in the child's case plan and provided to the court as part of the next scheduled judicial review hearing.

3. The department shall provide to each child in licensed out-of-home care during the calendar month following the child's 17th birthday an independent living assessment to determine the child's skills and abilities to live independently and become self-sufficient. The department shall conduct a assessment meeting with the child and all other appropriate participants to review the assessment and to assist the child in developing a transition plan. The necessary services and training identified in the assessment meeting shall be included in the transition plan and provided to the court as part of the judicial review required by s. 39.701. The transition plan must be completed during the 90-day period before the child turns 18.

(c) *Performance accountability.*—The department and its community-based providers shall establish a system that measures progress on the part of the child, caregivers, and providers. This system shall track performance in preparing the child for adulthood and measure progress toward and achievement of key self-care, social, educational, prevocational, and vocational skills and goals using the following:

1. Starting at age 13, annual surveys of older children in

out-of-home care designed to specifically determine the level of independent life skills achieved and how those skills are acquired.

2. Annual surveys of the adult caregivers living with and caring for the child.

3. Exit interviews for children leaving an out-of-home care setting where they have lived for more than 30 days.

4. Related data regarding educational progress, meeting case planning requirements, and biennial meetings.

5. Visits to the home to assess and report the child's progress in attaining developmental milestones and life skills.

(d) *Early entry into the Foundations for Success program.*—

1. Early entry into Foundations for Success under ss. 39.911-39.912 allows a child to live independently of the daily care and supervision of an adult in a setting that may be, but is not required to be, licensed under s. 409.175.

2. A child who has reached 16 years of age but is not yet 18 years of age is eligible for early entry into Foundations for Success if he or she is:

a. Adjudicated dependent under chapter 39, has been placed in licensed out-of-home care for at least 6 months before entering Foundations for Success, and has any permanency goal other than reunification; and

b. Able to demonstrate independent living skills, as determined by the department, using established procedures and assessments.

3. Early entry into Foundations for Success must be part of an overall plan leading to the total independence of the

child from the department's supervision. The plan must include, but need not be limited to, a description of the skills of the child and a plan for learning additional identified skills; the behavior that the child has exhibited which demonstrates responsibility and a plan for developing additional responsibilities, as appropriate; a plan for future educational, vocational, and training skills; present financial and budgeting capabilities and a plan for improving resources and ability; a description of the proposed residence; documentation that the child understands the specific consequences of his or her conduct in the Foundations for Success program; documentation of proposed services to be provided by the department and other agencies, including the type of service and the nature and frequency of contact; and a plan for maintaining or developing relationships with the child's family, other adults, friends, and the community, as appropriate.

4. Stipends to the child shall be determined as part of the Foundations for Success application and approval process.

(5) RULEMAKING.-The department shall adopt by rule procedures to administer this section which balance the goals of normalcy and safety for the child and provide caregivers with skills that will enable the child to participate in normal life experiences.

Section 3. Section 39.911, Florida Statutes, is created to read:

39.911 Definitions.—As used in ss. 39.911-39.912, the term:

(1) "Child" means an individual younger than 21 years of

age who requests Foundations for Success services, is adjudicated dependent, and, on his or her 18th birthday, lives in out-of-home care under the supervision of the department. An individual who meets this definition remains eligible as an adult for other agency programs for which the individual qualifies.

(2) "Foundations for Success" means a program for children who opt into extended out-of-home care, who meet the eligibility criteria set forth in ss. 39.911-39.912, and who agree to receive case management services on at least a monthly basis. The following services shall be provided by the program to eligible children:

(a) Case work.

(b) Support services, to be determined by the case manager and the child, which are in keeping with the child's transition plan. These services include, but are not limited to:

1. Mentoring and tutoring;

2. Mental health services;

3. Substance abuse treatment counseling;

4. Life skills activities and classes, including financial literacy, credit management, and preventive health activities;

5. Parenting classes;

6. Job and career skills training; and

7. Financial assistance in an amount to be determined by a needs assessment. The amount of financial assistance paid directly to a child participating in the Foundations for Success program shall be determined by the bills and expenses that the child must pay directly, as noted in the transition plan.

(c) Housing, which includes, but is not limited to, licensed foster family homes, child-care institutions, and supervised settings.

(d) Annual judicial reviews.

(3) "Jumpstart to Success" means a temporary support system that serves young adults from their 18th birthday to their 21st birthday who opt out of the Foundations for Success program or who do not meet the eligibility criteria for Pathways to Success or Foundations for Success. The following services shall be provided by the program to eligible young adults:

(a) Limited cash assistance, with the amount determined by a needs assessment and taking into consideration the goal of moving the young adult to self-sufficiency, as identified in a transition plan;

(b) Access to an independent living counselor in the county in which the young adult resides, who will provide information and referral services upon request; and

(c) Supportive services available to children in the Foundations for Success program.

(4) "Needs assessment" means an assessment of a child's or young adult's need for cash assistance, through the Pathways to Success, Foundations for Success, or Jumpstart to Success programs, which considers his or her out-of-pocket educational expenses, including tuition, books and supplies, and necessary computer and other equipment; housing and utilities; daily living expenses, including, but not limited to, food, transportation, medical, dental, and vision care, and day care; and clothing. The needs assessment shall take into consideration

the child's or young adult's income, both earned and unearned, and savings. The needs assessment shall be adjusted to consider any emergency needs that the child or young adult experiences. The department may adopt rules that provide incentives for earning and saving, including income and savings protection allowances, and further definition of, and response to, emergency needs.

(5) "Pathways to Success" means an education program for eligible young adults from age 18 through age 22 who are attending a postsecondary institution approved by the department full-time and are continuing to progress toward independence through educational success. After a needs assessment, independent living assessment, and the creation of a transition plan, a monthly cash stipend may be offered of up to 100 percent of the federal minimum wage. Progress shall be reviewed annually for successful completion of a full-time attendance course load at or above a passing level.

(6) "Qualifying residential facility" means a juvenile residential commitment or secure detention facility or an adult correctional facility that is owned, operated, or licensed by a governmental entity and that provides housing, including all utilities and meals.

(7) "Young adult" means an individual who is at least 21 years of age but not more than 23 years of age.

Section 4. Section 39.912, Florida Statutes, is created to read:

39.912 Provision of services.—

(1)(a) Based on the availability of funds, the department

shall provide or arrange for Pathways to Success, Foundations for Success, and Jumpstart to Success programs for children and young adults who meet prescribed conditions and are determined eligible by the department.

(b) The department or a community-based care lead agency shall develop a plan to implement those services. A plan must be developed for each community-based care service area in the state. Each plan that is developed by a community-based care lead agency shall be submitted to the department.

(c) Each plan must include:

1. The number of young adults to be served each month of the fiscal year and must specify the number of young adults who will reach 18 years of age and be eligible for services;

2. The number of young adults who will reach 21 years of age and who will be eligible for Foundations to Success and Jumpstart to Success;

3. The number of young adults in the Pathways to Success program who will reach 23 years of age and who will become ineligible for the program or who are otherwise ineligible during each month of the fiscal year;

4. The staffing requirements and all related costs to administer the services and program;

5. The expenditures to or on behalf of the eligible recipients; costs of services provided to young adults through an approved plan for housing, transportation, and employment; and reconciliation of these expenses and any additional related costs with the funds allocated for these services; and

6. An explanation of and a plan to resolve any shortages

or surpluses in order to end the fiscal year with a balanced budget.

(2) The services available to assist a child or young adult to achieve independence must be provided through the Pathways to Success, Foundations for Success, or Jumpstart to Success programs. An eligible child or young adult may participate in only one program at any given time, although an eligible child or young adult may move from one program to another at any time until his or her 23rd birthday for the Pathways to Success program, or until his or her 21st birthday for the Foundations for Success and Jumpstart to Success programs.

(3)(a) For all children or young adults who move between counties in this state and remain otherwise eligible for services, the transition plan must be modified to reflect the change of residence. The revised transition plan must be signed by the case manager from the original county where the child or young adult resided as well as the case manager in the receiving county that will provide the services outlined in the transition plan. The services for the child or young adult will be provided by the county where the young adult resides, but the services will be paid by the county of former residence.

(b) The department may enter into an agreement with another state to provide independent living services to eligible individuals from another state, but, unless it is required to do so by federal law and funding is available, the department is not required to accept financial responsibility for the provision of independent living services for a child or young

adult from another state.

(4) A child or a young adult who spent a minimum of 6 months in out-of-home care under the jurisdiction of a court in this state and, on his or her 18th birthday, was living in out-of-home care under supervision of the department is eligible for independent living services provided through one of the three independent living programs.

(5) For all children or young adults who participate in any of the three independent living programs, a transition plan must be updated within 30 days after the child or young adult receives services or cash assistance from the independent living program. At each review to determine a renewal of services, the transition plan must be updated to reflect the child's or young adult's progress to ensure as complete a preparation for independence as possible. If necessary, the needs assessment and independent living assessment shall be amended as the child's or young adult's situation requires.

(6) The Pathways to Success program is intended to help eligible students who are former foster children to receive the educational and vocational training needed to achieve independence. The amount of the stipend received by the participant shall be based on a needs assessment of the student's educational and living needs and may be up to, but may not exceed, the amount of earnings that the student would have been eligible to earn working a 40-hour-a-week federal minimum wage job.

(a) A young adult who has earned a standard high school diploma or its equivalent, as described in s. 1003.43 or s.

1003.435, is eligible for the Pathways to Success program if he or she meets the eligibility requirements for independent living services and is attending a postsecondary or vocational institution approved by the department. Full-time enrollment in school is required for program eligibility unless the young adult has a recognized disability preventing full-time enrollment. The department shall adopt a rule to define what constitutes full-time enrollment in postsecondary and vocational institutions.

(b) A young adult is eligible to receive a stipend as a full-time student at an educational institution in which he or she is enrolled. The stipend shall be based on a needs assessment considering the young adult's living and educational costs and other grants, scholarships, waivers, earnings, and other income received by the young adult. A stipend is available only to the extent that other grants and scholarships are not sufficient to meet the living and educational needs of the young adult. The amount of the stipend may be disregarded for purposes of determining the eligibility for, or the amount of, any other federal or federally supported assistance administered by this state.

(c) The department shall annually evaluate and renew each stipend during the 90-day period before the young adult's birthday. In order to be eligible for a renewal stipend for the subsequent year, the young adult must:

1. Complete the required number of hours, or the equivalent considered full-time by the educational institution, unless the young adult has a recognized disability preventing

full-time attendance, in the last academic year in which the young adult earned a stipend.

2. Maintain appropriate progress as required by the educational institution.

3. Make substantial progress toward meeting the goals outlined in the transition plan. In order to be eligible for reinstatement, the young adult must meet the eligibility criteria, create a transition plan in conjunction with the case manager, and meet the criteria for stipend renewal for the program.

(d) The stipend shall be terminated when the young adult attains the postsecondary goals in the transition plan or reaches 23 years of age, whichever occurs earlier. Funds may be terminated during the interim between a stipend and the evaluation for a renewal stipend if the department determines that the stipend recipient is no longer enrolled in an educational institution. If the case manager determines that the young adult has disregarded eligibility criteria, failed to make progress toward goals within the reasonable timelines established in the transition plan, or provided false documentation, the young adult may be terminated for cause. The department shall notify a recipient who is terminated and inform the recipient of his or her right to appeal.

(7) All children who meet the eligibility requirements and who desire to participate in the extension of out-of-home care services to age 21 may voluntarily opt into the Foundations For Success program of services.

(a) Foundations For Success consists of two levels of

services, one providing greater supervision and financial direction for the child and the other providing greater independence both as to supervision and financial direction, based upon the child's demonstration of progress toward achieving the goals identified in his or her transition plan. Each time a child requests Foundations For Success services, the case manager, in consultation with the child, shall determine which services are appropriate. Foundations For Success includes providing cash assistance paid directly to the child, with the amount to be determined by a needs assessment.

1. A child who has not yet completed high school shall receive basic services. A child who wishes to continue in the Foundations For Success program after completing high school shall receive more advanced services, subject to a determination of and compliance with the services entry criteria described in the transition plan.

2. Access to advanced services shall be based on a demonstration of an acceptable level of independence and high school graduation or its equivalent or successful completion of a trade school.

3. The case manager, in consultation with the child, shall determine whether the child exhibits an acceptable level of independence to benefit from advanced services, and that determination must be included in the transition plan. The determination shall, at a minimum, consider whether the child will benefit from activities related to successful completion of financial literacy training and will comply with behavior standards.

(b) To be eligible for Foundations For Success, the case manager, in consultation with the child, shall choose from the following mandatory activities to equal a full-time or 40-hour week:

1. Working to complete secondary education or a program leading to an equivalent credential, including high school or preparation for a general equivalency diploma exam;

2. Full-time enrollment in a university, college, or vocational or trade school that provides postsecondary or vocational education;

3. Part-time enrollment in an institution that provides postsecondary or vocational education or a program designed to promote or remove barriers to employment and part-time employment at one or more places of employment; or

4. Participation in a full-time program or activity designated to promote or remove barriers to employment.

(c) The application process for Foundations For Success starts at the age of 17, although exceptionally independent child may apply as early as 16. Once a child's application for participation is approved, a transition plan shall be created at least 90 days before the child's 18th birthday and shall be approved at least 30 days before the child's 18th birthday. An eligibility decision regarding an application by a child who is no longer in out-of-home care shall be made within 10 days after the application is received and a transition plan shall be completed for the child within 30 days. Jumpstart to Success services may be provided to the child for the 30 days during which eligibility is being determined and the transition plan is

being developed and approved.

(d) There shall be a judicial review on the 1-year anniversary of the child's Foundations For Success application approval date. The court shall review the child's progress toward achieving independence, with reference to the specific goals and activities in the transition plan. The court shall also review the child's progress toward achieving permanent connections with adults. There shall be an administrative review, as defined by the department in rule, at the 6-month anniversary of the child receiving the Foundations For Success stipends. The administrative review shall include a determination of the child's progress toward achieving independence, with reference to the specific goals and activities in the transition plan.

(e) Foundations For Success services, including any direct cash assistance, shall be awarded for a 6-month period and may be renewed in 6-month increments. In order to be eligible for Foundations For Success renewal, the child must make substantial progress toward the goals outlined in the transition plan, as determined during the judicial or administrative review.

(f) The transition plan shall include specific activities and goals for the child which are crucial to achieving independence, taking into account the child's specific circumstances. The activities and goals shall include timeframes for completion of specific activities, and must include indicators of progress for any activities that will continue beyond the Foundations For Success stipend period. At any time during the Foundations For Success stipend period, the case

manager or child may request a reevaluation and modification of the chosen eligibility activity or goals and progress indicators.

(g) If at any point the child is determined to have disregarded eligibility criteria, failed to make progress toward goals within the reasonable timelines established in his or her transition plan, or provided false documentation, the child may be terminated for cause. The department shall notify a child who is terminated and inform the child of his or her right to appeal. During the process of court review, the child may receive Jumpstart to Success services until a determination has been reached. The child shall be terminated from the program on his or her 21st birthday or in accordance with the provisions of this section.

(8) A child who meets the eligibility requirements may voluntarily opt into the Jumpstart to Success program. An eligible child may opt into this program at any time until his or her 21st birthday; however, the Jumpstart to Success program is limited to a total of 12 cumulative months between the ages of 18 and 21. In extenuating circumstances, Jumpstart to Success services may be extended to the young adult's 23rd birthday or a total of 18 cumulative months. If a child requests entry into Foundations for Success after his or her 18th birthday and does not have a current transition plan, any cash assistance that is provided under Jumpstart to Success until the transition plan is developed does not count toward these time limitations.

(a) After the child submits the application for Jumpstart to Success services, the department shall, within 3 business

days, determine if child is eligible for Jumpstart to Success services and what services will be offered to him or her. For Jumpstart to Success services offered beyond 30 days, a transition plan is required. If no agreement on a transition plan has been reached within 30 days, Jumpstart to Success services are limited to a 30-day period. If necessary and available, community services and emergency cash assistance may be provided.

(b) The case manager will evaluate renewing Jumpstart to Success services according to the specifications of each child's individualized transition plan. As long as the case manager determines the child to be showing substantial compliance in completing the goals outlined in the transition plan, Jumpstart to Success services may be continued and renewed up to 12 months, or 18 months in extenuating circumstances only. If the case manager finds that the child is not in substantial compliance with the transition plan, the child may be denied a continuation of services. The department shall notify a child who is terminated and inform the child of his or her right to appeal.

(9)(a)1. If the child is under the jurisdiction of the court, the child shall appeal all adverse decisions to the court. Any appeal challenging the amount of any stipend to be paid to the child and any appeal objecting to a decision that the child is not eligible for termination of program services shall be decided solely by the court.

2. For a child or young adult who is not under the jurisdiction of the court, the department shall adopt by rule a

procedure by which the child may appeal a decision finding that the child is not eligible for services, that the department has failed to provide the services promised, or that the department has unfairly terminated the child's access to the Pathways to Success, Foundations for Success, or Jumpstart to Success program services.

(b) Whenever cash assistance continues to be paid to a child or young adult through the Jumpstart to Success program pending a due process hearing, upon a ruling in favor of the department, the months for which this assistance is paid shall count against the time limitations for receipt of Jumpstart to Success cash assistance.

(10) The department shall develop outcome and other performance measures for the independent living program. The department shall prepare a report on the outcome measures and the department's oversight activities and submit the report to the President of the Senate, the Speaker of the House of Representatives, and the legislative committees in both houses having jurisdiction over issues relating to children and families by January 31 of each year. The report must include:

(a) An analysis of performance on the outcome measures developed under this section, reported for each community-based care lead agency and compared with the performance of the department on the same measures.

(b) A description of the department's oversight of the program, including, by lead agency, any programmatic or fiscal deficiencies found and corrective actions required and the current status of compliance.

(c) Any rules adopted or proposed under this section since the last report. For the purposes of the first report, any rules adopted or proposed under this section must be included.

(11) The Secretary of Children and Family Services shall establish the Independent Living Services Advisory Council. The council shall review the independent living program and make recommendations concerning the implementation and operation of independent living transition services. The advisory council shall continue to function until the Legislature determines that the advisory council is no longer necessary and beneficial to the furtherance of the department's efforts to achieve the goals of the independent living transition services.

(a) The advisory council shall:

1. Assess the implementation and operation of the system of independent living transition services and advise the department on actions that would improve the ability of the independent living transition services to meet established goals. The advisory council shall keep the department informed of problems with service delivery, barriers to the effective and efficient integration of services and support across systems, and successes.

2. Report to the secretary on the status of the implementation of the system of independent living transition services; efforts to publicize the availability of aftercare support services, the Road-to-Independence Program, and transitional support services; the success of the services; problems identified; recommendations for department or legislative action; and the department's implementation of the

recommendations contained in the Independent Living Services Integration Workgroup Report submitted to the Legislature on December 31, 2002. The department shall submit a report by December 31 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives which includes a summary of the factors reported on by the council, identifies the recommendations of the advisory council, and describes the department's actions to implement the recommendations or provides the department's rationale for not implementing the recommendations.

(b) Members of the advisory council shall be appointed by the secretary of the department. The membership of the advisory council must include, at a minimum, representatives from the headquarters and district offices of the department, community-based care lead agencies, the Agency for Workforce Innovation, the Department of Education, the Agency for Health Care Administration, the State Youth Advisory Board, Workforce Florida, Inc., the Statewide Guardian Ad Litem Office, caregivers, recipients of Independent Living funding, and advocates for foster children. The secretary shall determine the length of the term to be served by each member appointed to the advisory council, which may not exceed 4 years.

(c) The department shall provide administrative support to the Independent Living Services Advisory Council to accomplish its assigned tasks. The advisory council shall be afforded access to all appropriate data from the department, each community-based care lead agency, and other relevant agencies in order to accomplish the tasks set forth in this subsection. The

data collected may not include any information that would identify a specific child or young adult.

(d) The advisory council report shall be submitted to the substantive committees of the Senate and the House of Representatives by December 31, 2012, and must include an analysis of the system of independent living transition services for young adults who attain 18 years of age while in out-of-home care prior to completing high school or its equivalent and recommendations for department or legislative action. The council shall assess and report on the most effective method of assisting these young adults to complete high school or its equivalent by examining the practices of other states.

(12) Property acquired on behalf of clients of this program shall become the personal property of the clients and are not subject to the requirements of chapter 273 relating to state-owned tangible personal property. Such property continues to be subject to applicable federal laws.

(13) The department shall enroll each young adult who is eligible and who has not yet reached his or her 19th birthday in the Florida Kidcare program.

(a) A young adult who has not yet reached 19 years of age and who, at the time of his or her 18th birthday, had previously been in out-of-home care, may participate in the Kidcare program by paying the premium for the Florida Kidcare program as required in s. 409.814.

(b) A young adult who has health insurance coverage from a third party through his or her employer or who is eligible for Medicaid is not eligible for enrollment under this subsection.

(14) The department shall adopt rules necessary to administer this section.

Section 5. Subsection (4) of section 409.903, Florida Statutes, is amended to read:

409.903 Mandatory payments for eligible persons.—The agency shall make payments for medical assistance and related services on behalf of the following persons who the department, or the Social Security Administration by contract with the Department of Children and Family Services, determines to be eligible, subject to the income, assets, and categorical eligibility tests set forth in federal and state law. Payment on behalf of these Medicaid eligible persons is subject to the availability of moneys and any limitations established by the General Appropriations Act or chapter 216.

(4) A child who is eligible under Title IV-E of the Social Security Act for subsidized board payments, foster care, or adoption subsidies, and a child for whom the state has assumed temporary or permanent responsibility and who does not qualify for Title IV-E assistance but is in foster care, shelter or emergency shelter care, or subsidized adoption. This category includes ~~a~~ young adults ~~adult~~ who are ~~is~~ eligible to receive transitional services pursuant to s. 409.175 ~~under s. 409.1451(5)~~, until the young adult reaches 21 years of age, without regard to any income, resource, or categorical eligibility test that is otherwise required. This category also includes a person who as a child was eligible under Title IV-E of the Social Security Act for foster care or the state-provided foster care and who is a participant in the Pathways to Success,

Foundations for Success, and Jumpstart to Success programs of the Road-to-Independence Program.

Section 6. Effective July 1, 2011, a child or young adult who is currently receiving Road-to-Independence or transitional support services shall choose to terminate his or her participation in the existing program or continue in the existing program until the term of that benefit program expires. Road-to-Independence services continue for a maximum of 1 year and transitional support services continue for up to 3 months. There shall be no renewals, extensions, or new applications for Road-to-Independence and transitional support services on or after July 1, 2011. Aftercare services expire October 1, 2011. Any child or young adult who turns 18 on or after July 1, 2011, may apply for program services only as provided in this act.

Section 7. This act shall take effect July 1, 2011.

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	_____

Committee/Subcommittee hearing bill: Health & Human Services Access Subcommittee

Representative Glorioso offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (2) of section 39.013, Florida Statutes, is amended to read:

39.013 Procedures and jurisdiction; right to counsel.—

(2) The circuit court has exclusive original jurisdiction of all proceedings under this chapter, of a child voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and of the adoption of children whose parental rights have been terminated under this chapter. Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition is filed or when a child is taken into the custody of the department. The circuit court may assume jurisdiction over any such proceeding regardless of whether the child was in the

physical custody of both parents, was in the sole legal or physical custody of only one parent, caregiver, or some other person, or was in the physical or legal custody of no person when the event or condition occurred that brought the child to the attention of the court. When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 18 years of age. However, if a young adult chooses to participate in the Foundations First Program, the court shall retain jurisdiction until the young adult leaves the program as provided for in s. 409.1451(4). The court shall review the status of the young adult at least every 12 months or more frequently if the court deems it necessary ~~youth petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the juvenile court may retain jurisdiction under this chapter for a period not to exceed 1 year following the youth's 18th birthday~~ for the purpose of determining whether appropriate ~~aftercare support~~, Road-to-Independence Program~~, transitional support, mental health, and developmental disability~~ services~~, to the extent otherwise authorized by law,~~ have been provided ~~to the formerly dependent child who was in the legal custody of the department immediately before his or her 18th birthday~~. If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the

continued consideration of the petition and application by federal authorities. Review hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under s. 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday.

Section 2. Subsections (2) and (3) of section 39.6012, Florida Statutes, are amended to read:

39.6012 Case plan tasks; services.—

(2) The case plan must include all available information that is relevant to the child's care including, at a minimum:

(a) A description of the identified needs of the child while in care.

(b) A description of the plan for ensuring that the child receives safe and proper care and that services are provided to the child in order to address the child's needs. To the extent available and accessible, the following health, mental health, and education information and records of the child must be attached to the case plan and updated throughout the judicial review process:

1. The names and addresses of the child's health, mental health, and educational providers;

2. The child's grade level performance;

3. The child's school record;

4. Assurances that the child's placement takes into account proximity to the school in which the child is enrolled at the time of placement and that efforts were made to allow the child to remain in that school if it is in the best interest of the child;

5. A record of the child's immunizations;

6. The child's known medical history, including any known problems;

7. The child's medications, if any; and

8. Any other relevant health, mental health, and education information concerning the child.

(3) In addition to any other requirement, if the child is in an out-of-home placement, the case plan must include:

(a) A description of the type of placement in which the child is to be living.

(b) A description of the parent's visitation rights and obligations and the plan for sibling visitation if the child has siblings and is separated from them.

(c) When appropriate, for a child who is in middle school or high school ~~13 years of age or older~~, a written description of the programs and services that will help the child prepare for the transition from ~~foster~~ care to independent living.

(d) A discussion of the safety and the appropriateness of the child's placement, which placement is intended to be safe, and the least restrictive and the most family-like setting available consistent with the best interest and special needs of the child and in as close proximity as possible to the child's home.

Section 3. Section 39.6015, Florida Statutes, is created to read:

39.6015 Services for older children in licensed care.—

(1) PURPOSE AND INTENT.—The Legislature recognizes that education and the other positive experiences of a child are key to a successful future as an adult and that it is particularly important for a child in care to be provided with opportunities to succeed. The Legislature intends that individuals and communities become involved in the education of a child in care, address issues that will improve the educational outcomes for the child, and find ways to ensure that the child values and receives a high-quality education. Many professionals in the local community understand these issues, and it is the intent of the Legislature that, in fulfilling their responsibilities to the child, biological parents, caregivers, educators, advocates, the department and its community-based care providers, guardians ad litem, and judges work together to ensure that an older child in care has access to the same academic resources, services, and extracurricular and enrichment activities that are available to all children. Engaging an older child in a broad range of the usual activities of family, school, and community life during adolescence will help to empower the child in his or her transition into adulthood and in living independently. The Legislature intends for services to be delivered in an age-appropriate and developmentally appropriate manner, along with modifications or accommodations as may be necessary to include every child, specifically including a child with a disability. It is also the intent of the Legislature that while services to

prepare an older child for life on his or her own are important, these services will not diminish efforts to achieve permanency goals of reunification, adoption, or permanent guardianship.

(2) EDUCATION PROVISIONS.—Perhaps more than any other population, an older child in care is in need of a quality education. The child depends on the school to provide positive role models, to provide a network of relationships and friendships that will help the child gain social and personal skills, and to provide the educational opportunities and other activities that are needed for a successful transition into adulthood.

(a) *School stability.*—The mobility of a child in care can disrupt the educational experience. Whenever a child enters care, or is moved from one home to another, the proximity of the new home to the child's school of origin shall be considered. If the child is relocated outside the area of the school of origin, the department and its community-based providers shall provide the necessary support to the caregiver so that the child can continue enrollment in the school of origin if it is in the best interest of the child. As used in this paragraph, the term "school of origin" means the school that the child attended before coming into care or the school in which the child was last enrolled. The case plan shall include tasks or a plan for ensuring the child's educational stability while in care. As part of this plan, the community-based care provider shall document assurances that:

1. When an child comes into care, the appropriateness of the current educational setting and the proximity to the school

in which the child is enrolled at the time of coming into care have been taken into consideration.

2. The community-based care provider has coordinated with appropriate local school districts to determine if the child can remain in the school in which he or she is enrolled.

3. The child in care has been asked about his or her educational preferences and needs, including his or her view on whether to change schools when the living situation changes.

4. A child with a disability is allowed to continue in an appropriate educational setting, regardless of changes to the location of the home, and transportation is addressed and provided in accordance with the child's individualized education program. A children with a disability shall receive the protections provided in federal and state law, including timelines for evaluations, implementation of an individualized education plan or an individual family service plan, and placement in the least restrictive environment, even when the child changes school districts.

5. If the school district does not provide transportation, or the individualized education plan does not include transportation as a service, the department and its community-based providers shall provide special reimbursement for expenses associated with transporting a child to his or her school of origin. Transportation arrangements shall follow a route that is as direct and expedient for the child as is reasonably possible.

(b) *School transitions.*—When a change in schools is necessary, it shall be as least disruptive as possible and the support necessary for a successful transition shall be provided

by the department, the community-based provider, and the caregiver. The department and the community-based providers shall work with school districts to develop and implement procedures to will ensure that a child in care:

1. Is enrolled immediately in a new school and can begin classes promptly.

2. Does not experience a delay in enrollment and delivery of appropriate services due to school or record requirements as required by s. 1003.22.

3. Has education records that are comprehensive and accurate and promptly follow the child to a new school.

4. Is allowed to participate in all academic and extracurricular programs when arriving at a new school in the middle of a school term, even if normal timelines have passed or programs are full.

5. Receives credit and partial credit for coursework completed at the prior school.

6. Has the ability to receive a high school diploma even when the child has attended multiple schools that have varying graduation requirements.

(c) *School attendance.*—A child in care shall attend school as required by s. 1003.26.

1. The community-based care provider and caregiver shall eliminate any barriers to attendance such as required school uniforms or school supplies.

2. Appointments and court appearances for a child in care shall be scheduled to minimize the impact on the child's education and to ensure that the child is not penalized for

school time or work missed because of court or child-welfare-case-related activities.

3. A caregiver who refuses or fails to ensure that a child who is in his or her care attends school regularly shall be subject to the same procedures and penalties as a parent under s. 1003.27.

(d) *Education advocacy.*—

1. A child in care should have an adult who is knowledgeable about schools and children in care and who serves as an education advocate to reinforce the value of the child's investment in education, to ensure that the child receives a high-quality education, and to help the child plan for middle school, high school, and postschool training, employment, or college. The advocate may be a caregiver, care manager, guardian ad litem, educator, or individual hired and trained for the specific purpose of serving as an educational advocate.

2. A child in care with disabilities who is eligible for the appointment of a surrogate parent, as required in s. 39.0016, shall be assigned a surrogate in a timely manner, but no later than 30 days after a determination that a surrogate is needed.

3. The community-based provider shall document in the child's case plan that an education advocate has been identified for each child in care or that a surrogate parent has been appointed for each child in care with a disability.

(e) *Academic requirements and support; middle school students.*—In order to be promoted from a state school composed of middle grades 6, 7, and 8, a child must complete the required

courses that include mathematics, English, social studies, and science.

1. In addition to other academic requirements, a child must complete one course in career and education planning in 7th or 8th grade. As required by s. 1003.4156, the course must include career exploration using Florida CHOICES Explorer or Florida CHOICES Planner and must include educational planning using the online student advising system known as Florida Academic Counseling and Tracking for Students at the Internet website FACTS.org.

a. Each child shall complete an electronic personal academic and career plan that must be signed by the child, the child's teacher, guidance counselor, or academic advisor, and the child's parent, caregiver, or other designated education advocate.

b. The required personalized academic and career plan must inform students of high school graduation requirements, high school assessment and college entrance test requirements, Florida Bright Futures Scholarship Program requirements, state university and Florida college admission requirements, and programs through which a high school student may earn college credit, including Advanced Placement, International Baccalaureate, Advanced International Certificate of Education, dual enrollment, career academy opportunities, and courses that lead to national industry certification.

c. A caregiver shall attend the parent meeting held by the school to inform parents about the career and education planning course curriculum and activities associated with it.

2. For a child with disabilities, the decision whether to work toward a standard diploma or a special diploma shall be addressed at the transition individual education plan meeting conducted during the child's 8th grade year or the year the child turns 14 years of age, whichever occurs first. The child shall be invited to participate in this and each subsequent transition individual education plan meeting. At this meeting, the transition individual education plan team, including the child, the caregiver, or other designated education advocate, shall determine whether a standard or special diploma best prepares the child for his or her education and career goals after high school.

a. The team shall plan the appropriate course of study, which may include basic education courses, career education courses, and exceptional student education courses.

b. The team shall identify any special accommodations and modifications needed to help the child participate fully in the educational program.

c. All decisions shall be documented on the transition individual education plan, and this information shall be used to guide the child's educational program as he or she enters high school.

3. A caregiver or the community-based care provider shall provide the child with all information related to the Road-to-Independence Program as provided in s. 409.1451.

4. A caregiver or another designated education advocate shall attend parent-teacher conferences and monitor each child's academic progress.

5. Each district school board, as required by s. 1002.23, shall develop and implement a well-planned, inclusive, and comprehensive program to assist parents and families in effectively participating in their child's education. A school district shall have available resources and services for parents and their children, such as family literacy services; mentoring, tutorial, and other academic reinforcement programs; college planning, academic advisement, and student counseling services; and after-school programs. A caregiver shall access these resources as necessary to enable the child in their care to achieve educational success.

6. A child in care, particularly a child with a disability, shall be involved and engaged in all aspects of his or her education and educational planning and must be empowered to be an advocate for his or her education needs. Community-based care providers shall enter into partnerships with school districts to deliver curriculum on self-determination or self-advocacy to engage and empower the child to be his or her own advocate, along with support from the caregiver, community-based care provider, guardian ad litem, teacher, school guidance counselor, or other designated education advocate.

7. The community-based care provider shall document in the case plan evidence of the child's progress toward, and achievement of, academic, life, social, and vocational skills. The case plan shall be amended to fully and accurately reflect the child's academic and career plan, identify the services and tasks needed to support that plan, and identify the party

responsible for accomplishing the tasks or providing the needed services.

(f) *Academic requirements and support; high school students.*—Graduation from high school is essential for a child to be able to succeed and live independently as an adult. In Florida, 70 percent of children in care reach 18 years of age without having obtained a high school diploma. It is the responsibility of the department, its community-based providers, and caregivers to ensure that a child in care is able to take full advantage of every resource and opportunity in order to be able to graduate from high school and be adequately prepared to pursue postsecondary education at a college or university or to acquire the education and skills necessary to enter the workplace. In preparation for accomplishing education and career goals after high school, the child must select the appropriate course of study that best meets his or her needs.

1. An older child who plans to attend a college or university after graduation must take certain courses to meet state university admission requirements. The course requirements for state university admission are the same for two Bright Futures Scholarship awards, the Florida Academic Scholars, and Florida Medallion Scholars. By following this course of study, which is required for state university admission and recommended if the child intends to pursue an associate in arts degree at a state college and transfer to a college or university to complete a bachelor's degree, the child will meet the course requirements for high school graduation, state university admission, and two Bright Futures Scholarship awards.

2. Older children who plan to focus on a career technical program in high school in order to gain skills for work or continue after graduation at a state college, technical center, or registered apprenticeship program should choose a course of study that will meet the course requirements for high school graduation, the third Bright Futures Scholarship award, and the Gold Seal Vocational Scholars. This course of study is recommended if the child intends to pursue a technical certificate or license, associate's degree, or bachelor's degree, or wishes to gain specific career training.

3. Older children with disabilities may choose to work toward a standard diploma, a special diploma, or a certificate of completion. The child shall be assisted in choosing a diploma option by school and district staff through the development of the individual educational plan. The diploma choice shall be reviewed each year at the child's individual education plan meeting.

a. Older children or young adults with disabilities who have not earned a standard diploma or who have been awarded a special diploma, certificate of completion, or special certificate of completion before reaching 22 years of age may stay in school until they reach 22 years of age.

b. The school district shall continue to offer services until the young adult reaches 22 years of age or until he or she earns a standard diploma, whichever occurs first, as required by the Individuals with Disabilities Education Act.

4. The provisions of this paragraph do not preclude an older child from seeking the International Baccalaureate Diploma or the Advanced International Certificate of Education Diploma.

5. Educational guidance and planning for high school shall be based upon the decisions made during middle school. Caregivers shall remain actively involved in the child's academic life by attending parent-teacher conferences and taking advantage of available resources to enable the child to achieve academic success.

6. The community-based care provider shall document in the case plan evidence of the child's progress toward, and achievement of, academic, life, social, and vocational skills. The case plan shall be amended to completely reflect the child's academic and career plan, identify the services and tasks needed to support that plan, and identify the party responsible for accomplishing the tasks or providing the needed services.

7. At the high school level, participation in workforce readiness activities is essential to help a child in care prepare himself or herself to be a self-supporting and productive adult. The caregiver and the community-based care provider shall ensure that each child:

a. Who is interested in pursuing a career after high school graduation is exposed to job-preparatory instruction in the competencies that prepare students for effective entry into an occupation, including diversified cooperative education, work experience, and job-entry programs that coordinate directed study and on-the-job training.

b. Is provided with the opportunity to participate in enrichment activities that are designed to increase the child's understanding of the workplace, to explore careers, and to develop goal-setting, decisionmaking, and time-management skills.

c. Is provided with volunteer and service learning opportunities in order to begin developing workplace and planning skills, self esteem, and personal leadership skills.

d. Is provided with an opportunity to participate in activities and services provided by the Agency for Workforce innovation and its regional workforce boards which are designed to prepare all young adults, including those with disabilities, for the workforce.

(3) EXTRA CURRICULAR ACTIVITIES.—An older child in care shall be accorded to the fullest extent possible the opportunity to participate in the activities of community, school, and family life.

(a) A caregiver shall encourage and support participation in age-appropriate extracurricular and social activities for an older child, including a child with a disability.

(b) A caregiver shall be expected to provide transportation for such activities and community-based care providers shall provide special reimbursement for expenses for such activities, including mileage reimbursement.

(c) The department and its community-based providers may not place an older child in a home if the caregiver does not encourage and facilitate participation in and provide transportation to the extracurricular activities of the child's

choice, unless other arrangements can be made by the community-based care provider to enable the child's participation in such activities.

(d) A caregiver is not responsible under administrative rules or laws pertaining to state licensure, and a caregiver's licensure status is not subject to jeopardy in any manner, for the actions of a child in their care who engages in age-appropriate activities.

(4) DEVELOPMENT OF THE TRANSITION PLAN.—If a child is planning to leave care upon reaching 18 years of age, during the 90-day period before the child reaches 18 years of age, the department and community-based care provider, in collaboration with the caregiver, any other designated education advocate, and any other individual whom the child would like to have included, shall assist and support the older child in developing a transition plan. The transition plan must take into account all of the education and other skills achieved by the child in middle and high school, include specific options for the child on housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce support and employment services, and must be reviewed by the court during the last review hearing before the child reaches 18 years of age. In developing the plan, the department and community-based provider shall:

(a) Provide the child with the documentation required in s. 39.701(7);

(b) Coordinate with local public and private entities in designing the transition plan as appropriate;

(c) Coordinate the transition plan with the independent living provisions in the case plan and the Individuals with Disabilities Education Act transition plan for a child with a disability; and

(d) Create a clear and developmentally appropriate notice specifying the options available for a young adult who chooses to remain in care for a longer period. The notice must include information about what services the child is eligible for and how such services may be obtained.

(5) ACCOUNTABILITY.—

(a) The community-based care lead agencies and its contracted providers shall report to the department the following information:

1. The total number of children in care who are enrolled in middle school or high school and, in a breakdown by age, how many had their living arrangements change one time and how many were moved two or more times. For the children who were moved, how many had to change schools and how many of those changes were due to a lack of transportation.

2. For those children for whom transportation was provided, how many children were provided transportation, how was it provided, how was the transportation paid for, and the amount of the total expenditure by the lead agency.

3. The same information required in subparagraphs 1. and 2., specific to children in care with a disability.

4. In a breakdown by age, for those children who change schools at least once, how many children experienced problems in the transition, what kinds of problems were encountered, and

what steps did the lead agency and the caregiver take to remedy those problems.

5. In a breakdown by age, out of the total number of children in care, the number of children who were absent from school more than 10 days in a semester and the steps taken by the lead agency and the caregiver to reduce absences.

6. Evidence that the lead agency has established a working relationship with each school district in which a child in care attends school.

7. In a breakdown by age, out of the total number of children in care, the number who have documentation in the case plan that either an education advocate or a surrogate parent has been designated or appointed.

8. In a breakdown by age, out of the total number of children in care, the number of children who have documentation in the case plan that they have an education advocate who regularly participates in parent-teacher meetings and other school-related activities.

9. For those children in care who have finished 8th grade, the number of children who have documentation in the case plan that they have completed the academic and career plan required by s. 1003.4156 and that the child and the caregiver have signed the plan.

10. For those children in care who have a disability and have finished 8th grade, the number of children who have documentation in the case plan that they have had a transition individual education plan meeting.

11. The total number of children in care who are in middle school or high school, with a breakdown by age. For each age, the number of children who are reading at or above grade level, the number of children who have successfully completed the FCAT and end-of-course assessments, the number of children who have dropped out of school, the number of children who have enrolled in any dual enrollment or advanced placement courses, and the number of children completing the required number of courses, assessments, and hours needed to be promoted to the next grade level.

12. The total number of children in care who are in middle school or high school, with a breakdown by age. For each age, the number of children who have documentation in the case plan that they are involved in at least one extracurricular activity, whether it is a school-based or community-based activity, whether they are involved in at least one service or volunteer activity, and who provides the transportation.

13. The total number of children in care who are 17 years of age and who are obtaining services from the lead agency or its contracted providers and how many of that total number have indicated that they plan to remain in care after turning 18 years of age, and for those children who plan to leave care, how many children have a transition plan.

14. A breakdown of documented expenses for children in middle and high school.

(b) Each community-based care lead agency shall provided its report to the department by September 30 of each year. The department shall compile the reports from each community-based

care lead agency and provide them to the Legislature by December 31 of each year, with the first report due to the Legislature on December 31, 2011.

Section 4. Subsections (7), (8), and (9) of section 39.701, Florida Statutes, are amended to read:

39.701 Judicial review.—

(7)(a) In addition to paragraphs (1)(a) and (2)(a), the court shall hold a judicial review hearing within 90 days after a child's ~~youth's~~ 17th birthday. The court shall also issue an order, separate from the order on judicial review, that the disability of nonage of the child ~~youth~~ has been removed pursuant to s. 743.045. The court shall continue to hold timely judicial review hearings thereafter. In addition, the court may review the status of the child more frequently during the year prior to the child's ~~youth's~~ 18th birthday if necessary. At each review held under this subsection, in addition to any information or report provided to the court, the caregiver ~~foster parent~~, legal custodian, guardian ad litem, and the child shall be given the opportunity to address the court with any information relevant to the child's best interests, particularly as it relates to the requirements of s. 39.6015 and the Road-to-Independence Program under s. 409.1451 ~~independent living transition services~~. In addition to any information or report provided to the court, the department shall include in its judicial review social study report written verification that the child has been provided with:

1. ~~Has been provided with~~ A current Medicaid card and ~~has been provided~~ all necessary information concerning the Medicaid

program sufficient to prepare the child ~~youth~~ to apply for coverage upon reaching age 18, if such application would be appropriate.

2. ~~Has been provided with~~ A certified copy of his or her birth certificate and, if the child does not have a valid driver's license, a Florida identification card issued under s. 322.051.

3. A social security card and ~~Has been provided~~ information relating to Social Security Insurance benefits if the child is eligible for these benefits. If the child has received these benefits and they are being held in trust for the child, a full accounting of those funds must be provided and the child must be informed about how to access those funds.

~~4. Has been provided with information and training related to budgeting skills, interviewing skills, and parenting skills.~~

4.~~5.~~ ~~Has been provided with~~ All relevant information related to the Road-to-Independence Program, including, but not limited to, eligibility requirements, information on how ~~forms necessary~~ to participate ~~apply~~, and assistance in gaining admission to the program ~~completing the forms~~. The child shall also be informed that, if he or she is eligible for the Road-to-Independence Program, he or she may reside with the licensed ~~foster~~ family or group care provider with whom the child was residing at the time of attaining his or her 18th birthday or may reside in another licensed ~~foster~~ home or with a group care provider arranged by the department.

5.~~6.~~ An opportunity to ~~Has an~~ open a bank account, or obtain ~~has~~ identification necessary to open an account, and has been provided with essential banking and budgeting skills.

6.~~7.~~ ~~Has been provided with~~ Information on public assistance and how to apply.

7.~~8.~~ ~~Has been provided~~ A clear understanding of where he or she will be living on his or her 18th birthday, how living expenses will be paid, and what educational program or school he or she will be enrolled in.

8.~~9.~~ Information related to the ability ~~Has been provided with notice~~ of the child ~~youth's right~~ to remain in care until he or she reaches 21 years of age ~~petition for the court's continuing jurisdiction for 1 year after the youth's 18th birthday~~ as specified in s. 39.013(2) and ~~with~~ information on how to participate in the Road-to-Independence Program ~~obtain access to the court~~.

9. A letter providing the dates that the child was under the jurisdiction of the court.

10. A letter stating that the child was in care, in compliance with financial aid documentation requirements.

11. His or her entire educational records.

12. His or her entire health and mental health records.

13. The process for accessing his or her case file.

14.~~10.~~ Encouragement ~~Has been encouraged~~ to attend all judicial review hearings occurring after his or her 17th birthday.

(b) At the first judicial review hearing held subsequent to the child's 17th birthday, in addition to the requirements of

subsection (8), the department shall provide the court with an updated case plan that includes specific information related to the provisions of s. 39.6015, ~~independent living services that have been provided~~ since the child entered middle school ~~child's 13th birthday~~, or since the date the child came into ~~foster~~ care, whichever came later.

(c) At the last judicial review hearing held before the child's 18th birthday, in addition of the requirements of subsection (8), the department shall provide for the court to review the transition plan for a child who is planning to leave care after reaching his or her 18th birthday.

(d) ~~(c)~~ At the time of a judicial review hearing held pursuant to this subsection, if, in the opinion of the court, the department has not complied with its obligations as specified in the written case plan or in the provision of ~~independent living~~ services as required by s. 39.6015, s. 409.1451, and this subsection, the court shall issue a show cause order. If cause is shown for failure to comply, the court shall give the department 30 days within which to comply and, on failure to comply with this or any subsequent order, the department may be held in contempt.

(8)(a) Before every judicial review hearing or citizen review panel hearing, the social service agency shall make an investigation and social study concerning all pertinent details relating to the child and shall furnish to the court or citizen review panel a written report that includes, but is not limited to:

1. A description of the type of placement the child is in at the time of the hearing, including the safety of the child and the continuing necessity for and appropriateness of the placement.

2. Documentation of the diligent efforts made by all parties to the case plan to comply with each applicable provision of the plan.

3. The amount of fees assessed and collected during the period of time being reported.

4. The services provided to the caregiver ~~foster family~~ or legal custodian in an effort to address the needs of the child as indicated in the case plan.

5. A statement that either:

a. The parent, though able to do so, did not comply substantially with the case plan, and the agency recommendations;

b. The parent did substantially comply with the case plan; or

c. The parent has partially complied with the case plan, with a summary of additional progress needed and the agency recommendations.

6. A statement from the caregiver ~~foster parent~~ or legal custodian providing any material evidence concerning the return of the child to the parent or parents.

7. A statement concerning the frequency, duration, and results of the parent-child visitation, if any, and the agency recommendations for an expansion or restriction of future visitation.

8. The number of times a child has been removed from his or her home and placed elsewhere, the number and types of placements that have occurred, and the reason for the changes in placement.

9. The number of times a child's educational placement has been changed, the number and types of educational placements which have occurred, and the reason for any change in placement.

10. If the child has entered middle school ~~reached 13 years of age~~ but is not yet 18 years of age, the specific information contained in the case plan related to the provisions of s. 39.6015 ~~results of the preindependent living, life skills, or independent living assessment~~; the specific services needed; and the status of the delivery of the identified services.

11. Copies of all medical, psychological, and educational records that support the terms of the case plan and that have been produced concerning the parents or any caregiver since the last judicial review hearing.

12. Copies of the child's current health, mental health, and education records as identified in s. 39.6012.

(b) A copy of the social service agency's written report and the written report of the guardian ad litem must be served on all parties whose whereabouts are known; to the caregivers ~~foster parents~~ or legal custodians; and to the citizen review panel, at least 72 hours before the judicial review hearing or citizen review panel hearing. The requirement for providing parents with a copy of the written report does not apply to those parents who have voluntarily surrendered their child for

adoption or who have had their parental rights to the child terminated.

(c) In a case in which the child has been permanently placed with the social service agency, the agency shall furnish to the court a written report concerning the progress being made to place the child for adoption. If the child cannot be placed for adoption, a report on the progress made by the child towards alternative permanency goals or placements, including, but not limited to, guardianship, long-term custody, long-term licensed custody, or independent living, must be submitted to the court. The report must be submitted to the court at least 72 hours before each scheduled judicial review.

(d) In addition to or in lieu of any written statement provided to the court, the caregiver ~~foster parent~~ or legal custodian, or any preadoptive parent, shall be given the opportunity to address the court with any information relevant to the best interests of the child at any judicial review hearing.

(9) The court and any citizen review panel shall take into consideration the information contained in the social services study and investigation and all medical, psychological, and educational records that support the terms of the case plan; testimony by the social services agency, the parent, the caregiver ~~foster parent~~ or legal custodian, the guardian ad litem or surrogate parent for educational decisionmaking if one has been appointed for the child, and any other person deemed appropriate; and any relevant and material evidence submitted to the court, including written and oral reports to the extent of

their probative value. These reports and evidence may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of their probative value, even though not competent in an adjudicatory hearing. In its deliberations, the court and any citizen review panel shall seek to determine:

(a) If the parent was advised of the right to receive assistance from any person or social service agency in the preparation of the case plan.

(b) If the parent has been advised of the right to have counsel present at the judicial review or citizen review hearings. If not so advised, the court or citizen review panel shall advise the parent of such right.

(c) If a guardian ad litem needs to be appointed for the child in a case in which a guardian ad litem has not previously been appointed or if there is a need to continue a guardian ad litem in a case in which a guardian ad litem has been appointed.

(d) Who holds the rights to make educational decisions for the child. If appropriate, the court may refer the child to the district school superintendent for appointment of a surrogate parent or may itself appoint a surrogate parent under the Individuals with Disabilities Education Act and s. 39.0016.

(e) The compliance or lack of compliance of all parties with applicable items of the case plan, including the parents' compliance with child support orders.

(f) The compliance or lack of compliance with a visitation contract between the parent and the social service agency for contact with the child, including the frequency, duration, and

results of the parent-child visitation and the reason for any noncompliance.

(g) The compliance or lack of compliance of the parent in meeting specified financial obligations pertaining to the care of the child, including the reason for failure to comply if such is the case.

(h) Whether the child is receiving safe and proper care according to s. 39.6012, including, but not limited to, the appropriateness of the child's current placement, including whether the child is in a setting that is as family-like and as close to the parent's home as possible, consistent with the child's best interests and special needs, and including maintaining stability in the child's educational placement, as documented by assurances from the community-based care provider that:

1. The placement of the child takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement.

2. The community-based care agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement.

(i) A projected date likely for the child's return home or other permanent placement.

(j) When appropriate, the basis for the unwillingness or inability of the parent to become a party to a case plan. The court and the citizen review panel shall determine if the

efforts of the social service agency to secure party participation in a case plan were sufficient.

(k) For a child who has entered middle school ~~reached 13 years of age~~ but is not yet 18 years of age, the progress the child has made in achieving the goals outlined in s. 39.6015 ~~adequacy of the child's preparation for adulthood and independent living~~.

Section 5. Section 409.1451, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 409.1451, F.S., for present text).

409.1451 The Road-to-Independence Program.—The Legislature recognizes that most children and young adults are resilient and, with adequate support, can expect to be successful as independent adults. Not unlike all young adults, some young adults who have lived in care need additional resources and support for a period of time after reaching 18 years of age. The Legislature intends for these young adults to receive the education, training, and health care services necessary for them to become self-sufficient through the Road-to-Independence Program. Young adults who participate in the Road-to-Independence Program may choose to remain in care until 21 years of age and receive help achieving their postsecondary goals by participating in the Foundations First Program, or they may choose to receive financial assistance to attend college through the College Bound Program.

(1) THE FOUNDATIONS FIRST PROGRAM.—The Foundations First Program is designed for young adults who have reached 18 years

of age but are not yet 21 years of age, and who need to finish high school or who have a high school diploma, or its equivalent, and want to achieve additional goals. These young adults are ready to try postsecondary or vocational education, try working part-time or full-time, or need help with issues that might stand in their way of becoming employed. Young adults who are unable to participate in any of these programs or activities full time due to an impairment, including behavioral, developmental, and cognitive disabilities, might also benefit from remaining in out-of-home care longer.

(a) *Eligibility; termination; and reentry.*—

1. A young adult in licensed care who spent at least 6 months in care before reaching 18 years of age and who is a resident of this state, as defined in s. 1009.40, is eligible for the Foundations First Program if he or she is:

a. Completing secondary education or a program leading to an equivalent credential;

b. Enrolled in an institution that provides postsecondary or vocational education;

c. Participating in a program or activity designed to promote, or eliminate barriers to, employment;

d. Employed for at least 80 hours per month; or

e. Unable to participate in these programs or activities full time due to a physical, intellectual, emotional, or psychiatric condition that limits participation. Any such restriction to participation must be supported by information in the young adult's case file or school or medical records of a physical, intellectual, or psychiatric condition that impairs

the young adult's ability to perform one or more life activities.

2. The young adult in care must leave the Foundations First Program on the earliest of the date the young adult:

a. Knowingly and voluntarily withdraws his or her consent to participate;

b. Leaves care to live in a permanent home consistent with his or her permanency plan;

c. Reaches 21 years of age;

d. Becomes incarcerated in an adult or juvenile justice facility; or

e. In the case of a young adult with a disability, reaches 22 years of age.

3. Notwithstanding the provisions of this paragraph, the department may not close a case and the court may not terminate its jurisdiction until it finds, following a hearing held after notice to all parties, that the following criteria have been met:

a. Attendance of the young adult at the hearing; or

b. Findings by the court that:

(I) The young adult has been informed by the department of his or her right to attend the hearing and has provided written consent to waive this right;

(II) The young adult has been informed of the potential negative effects of terminating care early, the option to reenter care before reaching 21 years of age, the procedure to, and limitations on, reentering care, the availability of alternative services, and that the young adult has signed a

document attesting that he or she has been so informed and understands these provisions; and

(III) The department and the community-based care provider have complied with the case plan and any individual education plan. At the time of this judicial hearing, if, in the opinion of the court, the department and community-based provider have not complied with their obligations as specified in the case plan and any individual education plan, the court shall issue a show cause order. If cause is shown for failure to comply, the court shall give the department and community-based provider 30 days within which to comply and, on failure to comply with this or any subsequent order, the department and community-based provider may be held in contempt.

4. A young adult who left care at or after reaching his or her 18th birthday, but before reaching age 21, may petition the court to resume jurisdiction and for the department to reopen its case. The court shall resume jurisdiction and the department shall reopen the case if the young adult is engaged in the programs or activities described in this paragraph. If the young adult comes back into the Foundations First Program, the department and community-based provider shall update the case plan within 30 days after reentry.

(b) *The transition plan.*—For all young adults during the 90-day period immediately before leaving care before reaching 21 years of age or after leaving care on or after reaching 21 years of age, the department and the community-based care provider, in collaboration with the caregiver, any other designated education advocate, and any other individual whom the young adult would

like to have included, shall assist and support the young adult in developing a transition plan. The transition plan must take into account all of the education and other achievements of the young adult, include specific options for the young adult on housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce support and employment services, and must be reviewed by the court during the last review hearing before the child leaves care. In developing the plan, the department and community-based provider shall:

1. Provide the young adult with the documentation required in s. 39.701(7);

2. Coordinate with local public and private entities in designing the transition plan as appropriate;

3. Coordinate the transition plan with the independent living provisions in the case plan and the Individuals with Disabilities Education Act transition plan for a young adult with disabilities; and

4. Create a clear and developmentally appropriate notice specifying the rights of a young adult who is leaving care. The notice must include information about what services the young adult may be eligible for and how such services may be obtained. The plan must clearly identify the young adult's goals and the work that will be required to achieve those goals.

(c) *Periodic reviews for young adults.*—

1. For any young adult who continues to remain in care on or after reaching 18 years of age, the department and community-

based provider shall implement a case review system that requires:

a. A judicial review at least once a year;

b. That the court maintain oversight to ensure that the department is coordinating with the appropriate agencies, and, as otherwise permitted, maintains oversight of other agencies involved in implementing the young adult's case plan and individual education plan;

c. That the department prepare and present to the court a report, developed in collaboration with the young adult, addressing the young adult's progress in meeting the goals in the case plan and individual education plan, and shall propose modifications as necessary to further those goals;

d. That the court determine whether the department and any service provider under contract with the department is providing the appropriate services as provided in the case plan and any individual education plan. If the court believes that the young adult is entitled to additional services in order to achieve the goals enumerated in the case plan, under the department's policies, or under a contract with a service provider, the court may order the department to take action to ensure that the young adult receives the identified services; and

e. That the young adult or any other party to the dependency case may request an additional hearing or review.

2. In all permanency hearings or hearings regarding the transition of the young adult from care to independent living, the court shall consult, in an age-appropriate manner, with the

young adult regarding the proposed permanency, case plan, and individual education plan for the young adult.

(2) THE COLLEGE BOUND PROGRAM.—

(a) *Purpose.*—This program is designed for young adults who have reached 18 years of age but are not yet 23 years of age, have graduated from high school, have been accepted into college, and need a minimum of support from the state other than the financial resources to attend college.

(b) *Eligibility; termination; and reentry.*—

1. A young adult who has earned a standard high school diploma or its equivalent as described in s. 1003.43 or s. 1003.435, has earned a special diploma or special certificate of completion as described in s. 1003.438, or has been admitted for full-time enrollment in an eligible postsecondary educational institution as defined in s. 1009.533, and has reached 18 years of age but is not yet 23 years of age is eligible for the College Bound Program if he or she:

a. Was a dependent child, as provided under chapter 39, and was living in licensed care at the time of his or her 18th birthday or is currently living in licensed care, or, after reaching 16 years of age, was adopted from care or placed with a court-approved dependency guardian and has spent a minimum of 6 months in care immediately preceding such placement or adoption;

b. Spent at least 6 months in care before reaching his or her 18th birthday; and

c. Is a resident of this state as defined in s. 1009.40.

2. A young adult with a disability may attend school part time and be eligible for this program.

3. An eligible young adult may receive a stipend for the subsequent academic years if, for each subsequent academic year, the young adult meets the standards by which the approved institution measures a student's satisfactory academic progress toward completion of a program of study for the purposes of determining eligibility for federal financial aid under the Higher Education Act. Any young adult who is placed on academic probation may continue to receive a stipend for one additional semester if the approved institution allows the student to continue in school. If the student fails to make satisfactory academic progress in the semester or term subsequent to the term in which he received academic probation, stipend assistance shall be discontinued for the period required for the young adult to be reinstated by the college or university. Upon reinstatement, a young adult who has not yet reached 23 years of age may reapply for financial assistance.

(3) PORTABILITY.—The provision of services pursuant to this section must be portable across county and state lines.

(a) The services provided for in the original transition plan shall be provided by the county where the young adult resides but shall be funded by the county where the transition plan was initiated. The care managers of the county of residence and the county of origination must coordinate to ensure a smooth transition for the young adult.

(b) If a child in care under 18 years of age is placed in another state, the sending state is responsible for care maintenance payments, case planning, including a written description of the programs and services that will help a child

16 years of age or older prepare for the transition from care to independence, and a case review system as required by federal law. The sending state has placement and care responsibility for the child.

(c) If a young adult formerly in care moves to another state from the state in which he or she has left care due to age, the state shall certify that it will provide assistance and federally funded independent living services to the young adult who has left care because he or she has attained 18 years of age. The state in which the young adult resides is responsible for services if the state provides the services needed by the young adult.

(4) ACCOUNTABILITY.—

(a) The community-based care lead agencies and their contracted providers shall report the following information to the department:

1. Out of the total number of young adults who decided to remain in care upon reaching 18 years of age, the number of young adults who do not have a high school diploma or its equivalent, a special diploma, or a certificate of completion. Out of those young adults without a diploma or its equivalent, a special diploma, or a certificate of completion, the number of young adults who are receiving assistance through tutoring and other types of support.

2. Out of the total number of young adults who decided to remain in care upon reaching 18 years of age, a breakdown of academic and career goals and type of living arrangement.

3. The same information required in subparagraphs 1. and 2., specific to young adults in care with a disability.

4. Out of the total number of young adults remaining in care, the number of young adults who are enrolled in an educational or vocational program and a breakdown of the types of programs.

5. Out of the total number of young adults remaining in care, the number of young adults who are working and a breakdown of the types of employment held.

6. Out of the total number of young adults remaining in care, the number of young adults who have a disability and a breakdown of how many young adults are in school, are training for employment, are employed, or are unable to participate in any of these activities.

7. Evidence that the lead agency has established a working relationship with the Agency for Workforce Innovation and its regional workforce boards, the Able Trust, and other entities that provide services related to gaining employment.

8. Out of the total number of young adults in care upon reaching 18 years of age, the number of young adults who are in the Road-to-Independence Program and a breakdown by the schools or other programs they are attending.

9. Out of the total number of young adults who are in postsecondary institutions, a breakdown of the types and amounts of financial support received from sources other than the Road-to-Independence Program.

10. Out of the total number of young adults who are in postsecondary institutions, a breakdown of the types of living arrangements.

(b) Each community-based care lead agency shall provide its report to the department by September 31 of each year. The department shall compile the reports from each community-based care lead agency and provide them to the Legislature by December 31 of each year, with the first report due to the Legislature on December 31, 2011.

(5) INDEPENDENT LIVING SERVICES ADVISORY COUNCIL.—The secretary shall establish the Independent Living Services Advisory Council for the purpose of reviewing and making recommendations concerning the implementation and operation of the provisions of s. 39.6015 and the Road-to-Independence Program. This advisory council shall continue to function as specified in this subsection until the Legislature determines that the advisory council can no longer provide a valuable contribution to the department's efforts to achieve the goals of the services designed to enable a young adult to live independently.

(a) Specifically, the advisory council shall assess the implementation and operation of the provisions of s. 39.6015 and the Road-to-Independence Program and advise the department on actions that would improve the ability of those Road-to-Independence Program services to meet the established goals. The advisory council shall keep the department informed of problems being experienced with the services, barriers to the effective and efficient integration of services and support across

systems, and successes that the system of services has achieved. The department shall consider, but is not required to implement, the recommendations of the advisory council.

(b) The advisory council shall report to the secretary on the status of the implementation of the Road-To-Independence Program; efforts to publicize the availability of the Road-to-Independence Program; the success of the services; problems identified; recommendations for department or legislative action; and the department's implementation of the recommendations contained in the Independent Living Services Integration Workgroup Report submitted to the appropriate substantive committees of the Legislature by December 31, 2002. The department shall submit a report by December 31 of each year to the Governor and the Legislature which includes a summary of the factors reported on by the council and identifies the recommendations of the advisory council and either describes the department's actions to implement the recommendations or provides the department's rationale for not implementing the recommendations.

(c) Members of the advisory council shall be appointed by the secretary of the department. The membership of the advisory council must include, at a minimum, representatives from the headquarters and district offices of the Department of Children and Family Services, community-based care lead agencies, the Agency for Workforce Innovation, the Department of Education, the Agency for Health Care Administration, the State Youth Advisory Board, Workforce Florida, Inc., the Statewide Guardian Ad Litem Office, foster parents, recipients of services and

funding through the Road-to-Independence Program, and advocates for children in care. The secretary shall determine the length of the term to be served by each member appointed to the advisory council, which may not exceed 4 years.

(d) The department shall provide administrative support to the Independent Living Services Advisory Council to accomplish its assigned tasks. The advisory council shall be afforded access to all appropriate data from the department, each community-based care lead agency, and other relevant agencies in order to accomplish the tasks set forth in this section. The data collected may not include any information that would identify a specific child or young adult.

(e) The advisory council report required under paragraph (b) to be submitted to the substantive committees of the Senate and the House of Representatives by December 31, 2008, shall include an analysis of the system of independent living transition services for young adults who attain 18 years of age while in care prior to completing high school or its equivalent and recommendations for department or legislative action. The council shall assess and report on the most effective method of assisting these young adults to complete high school or its equivalent by examining the practices of other states.

(6) PERSONAL PROPERTY.—Property acquired on behalf of clients of this program shall become the personal property of the clients and is not subject to the requirements of chapter 273 relating to state-owned tangible personal property. Such property continues to be subject to applicable federal laws.

(7) MEDICAL ASSISTANCE FOR YOUNG ADULTS FORMERLY IN CARE.—The department shall enroll in the Florida Kidcare program, outside the open enrollment period, each young adult who is eligible as described in paragraph (1)(a) and who has not yet reached his or her 19th birthday.

(a) A young adult who was formerly in care at the time of his or her 18th birthday and who is 18 years of age but not yet 19, shall pay the premium for the Florida Kidcare program as required in s. 409.814.

(b) A young adult who has health insurance coverage from a third party through his or her employer or who is eligible for Medicaid is not eligible for enrollment under this subsection.

(8) RULEMAKING.—The department shall adopt by rule procedures to administer this section. The rules shall describe the procedure and requirements necessary to administer the Road-to-Independence Program. The rules shall reflect that the program is for young adults who have chosen to remain in care for an extended period of time or who are planning to attain post secondary education and should be designed to accommodate a young adult's busy life and schedule. The rules shall make the program easy to access for a qualified young adult and facilitate and encourage his or her participation.

Section 6. The Department of Children and Family Services shall amend the format of the case plan and the judicial review social service report to reflect the provisions of s. 39.6015, Florida Statutes, and the changes to s. 409.1451, Florida Statutes.

Section 7. Effective October 1, 2011, a child or young adult who is currently participating in the Road-to-Independence Program may continue in the program as it exists as of September 30, 2011. A child or young adult applying for the Road-to-Independence program on or after October 1, 2011, may apply for program services only as provided in this act.

Section 8. The Department of Children and Family Services shall develop a request for proposal for the purpose of establishing and operating a system to provide educational advocates for a child in care who is in middle and high school. Competitive proposals shall be solicited by the department pursuant to chapter 287, Florida Statutes. Entities responding to the request for proposal must have child advocacy as their primary focus, have an established statewide infrastructure, and have experience in working with paid staff and volunteers.

Section 9. The Department of Children and Family Services shall contract with a national nonprofit organization that advocates for and provides services to older children in care and young adults formerly in care for the purpose of administering the Road-to-Independence Program. The organization must have experience and expertise in administering scholarship programs, providing mentoring and academic coaching to help young adults at risk of failing or dropping out of school, and assisting young adults locate internship opportunities. The organization must also be able to report enrollment, attendance, academic progress, and financial data for each young adult to the state at an agreed-upon interval.

Section 10. Funding for postsecondary education students who are age 21 through age 23 shall be contingent upon available funding.

Section 11. This act shall take effect July 1, 2011.

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

Remove the entire title and insert:

A bill to be entitled

An act relating to independent living; amending s. 39.013, F.S.; requiring the court to retain jurisdiction over a child until the child is 21 years of age if the child elects to receive Foundations First Program services; providing for an annual judicial review; amending s. 39.6012, F.S.; requiring assurance in a child's case plan that efforts were made to avoid a change in the child's school; creating s. 39.6015, F.S.; providing purpose and legislative intent with respect to the provision of services for older children who are in licensed care; requiring the documentation of assurances that school stability is considered when a child in care is moved; providing for the same assurances for children with disabilities; defining the term "school or origin"; requiring that the Department of Children and Family Services or the community-based provider provide reimbursement for the costs of transportation provided for a child in care; requiring changes in a child's school to

be minimally disruptive; specifying criteria to be considered by the department and community-based provider during the transition of a child to another school; requiring children in care to attend school; requiring scheduled appointments to consider the child's school attendance; providing penalties for caregivers who refuse or fail to ensure that the child attends school regularly; specifying who may serve as an education advocate; requiring documentation that an education advocate or surrogate parent has been designated or appointed for a child in care; requiring a child in middle school to complete an electronic personal academic and career plan; requiring caregivers to attend school meetings; specifying requirements for transition individual education plan meetings for children with disabilities; requiring that a child be provided with information relating to the Road-to-Independence Program; requiring that the caregiver or education advocate attend parent-teacher conferences; requiring that a caregiver be provided with access to school resources in order to enable a child to achieve educational success; requiring the delivery of a curriculum model relating to self-advocacy; requiring documentation of a child's progress, the services needed, and the party responsible for providing services; specifying choices for a child with respect to diplomas and certificates for high school graduation or completion; providing that a child with a disability may stay in school until 22 years of age under certain circumstances;

requiring caregivers to remain involved in the academic life of child in high school; requiring documentation of a child's progress, the services needed, and the party who is responsible for providing services; providing for a child to be exposed to job-preparatory instruction, enrichment activities, and volunteer and service opportunities, including activities and services offered by the Agency for Workforce Innovation; requiring that children in care be afforded opportunities to participate in the usual activities of school, community, and family life; requiring caregivers to encourage and support a child's participation in extracurricular activities; requiring that transportation be provided for a child; providing for the development of a transition plan; specifying the contents of a transition plan; requiring that the plan be reviewed by the court; requiring that a child be provided with specified documentation; requiring that the transition plan be coordinated with the case plan and a transition plan prepared pursuant to the Individuals with Disabilities Education Act for a child with disabilities; requiring the creation of a notice that specifies the options that are available to the child; requiring that community-based care lead agencies and contracted providers report specified data to the department and Legislature; amending s. 39.701, F.S.; conforming terminology; specifying the required considerations during judicial review of a child under the jurisdiction of the court; specifying additional documents

that must be provided to a child and that must be verified at the judicial review; requiring judicial review of a transition plan; conforming references; amending s. 409.1451, F.S., relating to the Road-to-Independence Program; creating the Foundations First Program for young adults who want to remain in care after reaching 18 years of age; providing eligibility, termination, and reentry requirements for the program; requiring a court hearing before termination; providing for the development of a transition plan; specifying the contents of the transition plan; requiring that a young adult be provided with specified documentation; requiring that the transition plan be coordinated with the case plan and a transition plan prepared pursuant to the Individuals with Disabilities Education Act for a young adult with disabilities; requiring the creation of a notice that specifies the options that are available to the young adult; requiring annual judicial reviews; creating the College Bound Program for young adults who have completed high school and have been admitted to an eligible postsecondary institution; providing eligibility requirements; providing for a stipend; requiring satisfactory academic progress for continuation of the stipend; providing for reinstatement of the stipend; providing for portability of services for a child or young adult who moves out of the county or out of state; specifying data required to be reported to the department and Legislature; conforming terminology relating to the

Independent Living Services Advisory Council; providing rulemaking authority to the Department of Children and Family Services; requiring the department to amend the case plan and judicial social service review formats; providing for young adults receiving transition services to continue to receive existing services until their eligibility for that benefit program expires; requiring the department to develop a request for proposal for the creation of an education advocacy system; requiring the department to contract with a national nonprofit organization to administer the Road-to-Independence Program; providing that funding for certain postsecondary education students is contingent upon available funding; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 479 Medical Malpractice
SPONSOR(S): Civil Justice Subcommittee; Horner and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1590, SB 1892

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 3 N, As CS	Billmeier	Bond
2) Health & Human Services Access Subcommittee		Poche	Schoolfield
3) Judiciary Committee			

SUMMARY ANALYSIS

This bill makes numerous changes to affect medical malpractice litigation in Florida.

This bill creates an "expert witness certificate" that an expert witness who is licensed in another jurisdiction must obtain before testifying in a medical negligence case or providing an affidavit in the presuit portion of a medical negligence case.

This bill provides for discipline against the license of a physician or osteopathic physician that provides misleading, deceptive, or fraudulent expert witness testimony related to the practice of medicine.

This bill provides for the creation of an informed consent form related to cataract surgery. Such a form is admissible in evidence and its use creates a rebuttable presumption that the physician properly disclosed the risks of cataract surgery.

This bill provides that medical malpractice insurance contracts must contain a clause stating whether the physician has a right to "veto" any admission of liability or offer of judgment made within policy limits by the insurer. Current law prohibits such provisions in medical malpractice insurance contracts.

This bill provides that records, policies, or testimony of an insurer's reimbursement policies or reimbursement decisions relating to the care provided to the plaintiff are not admissible in any civil action and provides that a health care provider's failure to comply with, or breach of, any federal requirement is not admissible in any medical negligence case.

This bill provides that a plaintiff in a medical negligence action must prove by clear and convincing evidence that the failure of a health care provider to order, perform, or administer supplemental diagnostic tests is a breach of the standard of care.

This bill provides that a defendant or defense counsel in a medical negligence case may interview a claimant's health care providers without notice to the claimant or claimant's counsel. The bill also creates an authorization form to allow the defendant access to a claimant's health care providers and medical records.

This bill provides that a hospital is not liable for the negligence of a health care provider with whom the hospital has entered into a contract unless the hospital expressly directs or exercises actual control over the specific conduct which caused the injury.

The fiscal impact of the bill on private parties is speculative. The Department of Health reports that the expert witness certificate provision will require the hiring of additional staff but has not yet completed a fiscal analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview of Medical Malpractice Litigation

This bill makes changes to numerous statutes relating to medical malpractice litigation. In general, a medical malpractice action proceeds as follows.

- Prior to the filing of a lawsuit, the claimant (the person injured by medical negligence or a party bringing a wrongful death action arising from an incidence of medical malpractice) and defendant (a physician, other medical professional, hospital, or other healthcare facility) are required to conduct "presuit" investigations to determine whether medical negligence occurred and what damages, if any, are appropriate.[1]

- Upon completion of its presuit investigation, the claimant must provide each prospective defendant with a notice of intent to initiate litigation ("presuit notice").[2]

- For a period of 90 days after the presuit notice is mailed to each potential defendant, no lawsuit can be filed and the statute of limitations is tolled.[3] During that time, the parties are required to conduct informal discovery, including the taking of unsworn statements, the exchange of relevant documents, written questions, and an examination of the claimant.[4]

- Upon completion of the presuit investigation and informal discovery process, each potential defendant is required to respond to the claimant and either (1) reject the claim; (2) make a settlement offer; or (3) offer to admit liability and proceed to arbitration to determine damages.[5] At that point, the claimant can either accept the defendant's offer or proceed with the filing of a lawsuit.[6]

- If the case proceeds to trial, economic damages are not capped and noneconomic damages are capped at $1 million recoverable from practitioners and $1.5 million recoverable from nonpractitioners.[7] Damages are apportioned based on comparative fault.[8]

The 2003 Legislation

In 2003, the Legislature adopted ch. 2003-416, L.O.F., in response to dramatic increases in medical malpractice liability insurance premiums and the "functional unavailability" of malpractice insurance for some physicians.[9] The legislation, among other things, created a cap on noneconomic damages, created requirements for expert witness testimony, provided for additional presuit discovery, and required the Office of Insurance Regulation to report yearly on the medical malpractice insurance market in Florida. The reports[10] show the number of closed claims, the amount of damages paid, and

---

[1] Section 766.203, F.S.
[2] Section 766.106, F.S.
[3] Section 766.106, F.S.
[4] Section 766.205, F.S.
[5] Section 766.106, F.S.
[6] Section 766.106, F.S.
[7] Section 766.118, F.S.
[8] Section 766.112, F.S.
[9] Section 766.201(1), F.S.
[10] Information compiled from the Medical Malpractice Closed Claim Database and Rate Filing Annual Reports created by the Office of Insurance Regulation, 2005-2010. The closed claim and damages information are contained in the "Executive Summary" of each report. These reports can be accessed at http://www.floir.com/DataReports/datareports.aspx

the total gross medical malpractice insurance premium reported to the Office of Insurance Regulation since the enactment of ch. 2003-416, L.O.F.:

Claims, Damages and Insurance Premiums			
Year	Closed Claims	Total Damages	Total Premiums
2004	3,574	$664 million	$860 million
2005	3,753	$677 million	$850 million
2006	3,811	$602 million	$847 million
2007	3,553	$523 million	$663 million
2008	3,336	$519 million	$596 million
2009	3,087	$570 million	$550 million

The Office of Insurance Regulation report summarized the insurance rate filings in 2009:

> On average, rates for companies writing physicians and surgeons' malpractice insurance in the admitted market decreased 8.2%.[11]

The report noted, regarding the decrease in premium:

> This represents a dramatic decrease (36%) in the overall medical malpractice premium reported in Florida in 2009 from what was reported in 2004. This is attributable to the lowering of rates. However, it may also be due to new arrangements by physicians including the use of individual bonding, purchasing malpractice insurance through hospitals/employers as well as utilization of self-insurance funds, or other non-traditional insurance mechanisms.[12]

The report summarized the growth of Florida's medical malpractice insurance market since 2004. In 2009, the Office of Insurance Regulation reported that 22 companies wrote 80% of the direct written premium in medical malpractice insurance and compared that number to prior years:

> This year, achieving the 80% market share requirement again required the inclusion of 22 insurers as in the previous year; 17 were required in the 2007 report, 15 insurers for the 2006 annual report, 12 in the 2005 annual report, and only 11 for the 2004 report.[13]

According to information provided by the Office of State Court Administrator, 1,248 medical malpractice cases were filed in Florida in 2010.

Issues Addressed by the Bill

Presuit Investigation, Presuit Notice, and Presuit Discovery

Background

Section 766.203(2), F.S., requires a claimant to investigate whether there are any reasonable grounds to believe whether any named defendant was negligent in the care and treatment of the claimant and whether such injury resulted in injury to the claimant prior to issuing a presuit notice. The claimant must corroborate reasonable grounds to initiate medical negligence litigation by submitting an affidavit from a medical expert.[14] After completion of presuit investigation, a claimant must send a presuit notice

[11] Florida Office of Insurance Regulation, "2010 Annual Report – October 1, 2010 - Medical Malpractice Financial Information Closed Claim Database and Rate Filings" at page 4.
[12] Florida Office of Insurance Regulation, "2010 Annual Report – October 1, 2010 - Medical Malpractice Financial Information Closed Claim Database and Rate Filings" at page 12.
[13] Florida Office of Insurance Regulation, "2010 Annual Report – October 1, 2010 - Medical Malpractice Financial Information Closed Claim Database and Rate Filings" at page 11.
[14] Section 766.203(2), F.S.

to each prospective defendant.[15] The presuit notice must include a list of all known health care providers seen by the claimant for the injuries complained of subsequent to the alleged act of negligence, all known health care providers during the 2-year period prior to the alleged act of negligence who treated or evaluated the claimant, and copies of all of the medical records relied upon by the expert in signing the affidavit.[16] However, the requirement of providing the list of known health care providers may not serve as grounds for imposing sanctions[17] for failure to provide presuit discovery.[18]

Once the presuit notice is provided, no suit may be filed for a period of 90 days. During the 90-day period, the statute of limitations is tolled and the prospective defendant must conduct an investigation to determine the liability of the defendant.[19] Once the presuit notice is received, the parties must make discoverable information available without formal discovery.[20] Informal discovery includes:

1. Unsworn statements - Any party may require other parties to appear for the taking of an unsworn statement.

2. Documents or things - Any party may request discovery of documents or things.

3. Physical and mental examinations - A prospective defendant may require an injured claimant to appear for examination by an appropriate health care provider. Unless otherwise impractical, a claimant is required to submit to only one examination on behalf of all potential defendants.

4. Written questions - Any party may request answers to written questions.

5. Medical information release - The claimant must execute a medical information release that allows a prospective defendant to take unsworn statements of the claimant's treating physicians. The claimant or claimant's legal representative has the right to attend the taking of such unsworn statements.[21]

Section 766.106(7), F.S., provides that a failure to cooperate during the presuit investigation may be grounds to strike claims made or defenses raised. Statements, discussions, documents, reports, or work product generated during the presuit process are not admissible in any civil action and participants in the presuit process are immune from civil liability arising from participation in the presuit process.[22]

At or before the end of the 90 days, the prospective defendant must respond by rejecting the claim, making a settlement offer, or making an offer to arbitrate in which liability is deemed admitted, at which point arbitration will be held only on the issue of damages.[23] Failure to respond constitutes a rejection of the claim.[24] If the defendant rejects the claim, the claimant can file a lawsuit.

Effect of the Bill

This bill allows the court to impose sanctions for a claimant's failure to provide the list of health care providers required by statute.

---

[15] Section 766.166(2)(a), F.S.
[16] Section 766.106(2)(a), F.S.
[17] Sanctions can include the striking of pleadings, claims, or defenses, the exclusion of evidence, or, in extreme cases, dismissal of the case.
[18] Section 766.106(2)(a), F.S.
[19] Section 766.106(3), (4), F.S.
[20] Section 766.106(6)(a), F.S. The statute also provides that failure to make information available is grounds for dismissal of claims or defenses.
[21] Section 766.106(6), F.S.
[22] Section 766.106(5), F.S.
[23] Section 766.106(3)(b), F.S.
[24] Section 766.106(3)(c), F.S.

This bill amends s. 766.106(5), F.S., to provide that immunity from civil liability does not prevent the Department of Health from taking disciplinary action against a physician that provides a false, misleading, or deceptive expert opinion during the presuit process.

Ex Parte Interviews with Physicians by Defense Counsel

Background

In many civil cases, counsel for any party can meet with any potential witness who is willing to speak without notice to the opposing counsel. In 1984, the Florida Supreme Court ruled that there was no common law or statutory privilege of confidentiality as to physician-patient communications[25] and that there was no prohibition on defense counsel communicating with a claimant's physicians. In 1988, the Legislature enacted a statute to create a physician-patient privilege.[26] The current version of the statute provides, in relevant part:

> Except as otherwise provided in this section and in s. 440.13(4)(c), [patient medical records] may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient.[27]

The statute provides some exceptions to the confidentiality in medical malpractice cases but the Florida Supreme Court has ruled that defense counsel are barred by the statute from having an ex parte conference with a claimant's current treating physicians.[28]

The Governor's Select Task Force on Healthcare Professional Liability Insurance noted problems caused by the inability of defense counsel to interview a claimant's treating physicians:

> [T]he defendant is frequently in the position of having to investigate the plaintiff's medical history or current condition in order to discover other possible causes of the plaintiff's injury that could be used in defending the action. In addition, this information is often useful in determining the strength of the plaintiff's case, which the defendant could use to decide whether to settle the claim or proceed to trial. It is often necessary to interview several of the plaintiff's treating healthcare providers in order to acquire this information. But, because formal discovery is an expensive and time consuming process, defendants are often unable to adequately gather this information in preparation of their defense.[29]

Opponents of allowing defendants access to ex parte interviews with treating physicians argued the system was not broken. The report continued:

> The problem the Legislature corrected was the private, closed-door meetings between insurance adjusters, defense lawyers, and the person being sued. Typically, the person being sued would speak with his or her colleagues and say "I need your help here. I'm getting sued. I need you to help me out on either the causation issue or the liability issue or the damage issue".
>
> The present system is not broken. Crafting language to go back prior to 1988, to allow unfettered access, is not appropriate. To allow a situation where a defense lawyer or an

---

[25] See *Coralluzzo v. Fass*, 671 So. 2d 149 (Fla. 1984),
[26] Chapter 88-208, Laws of Florida
[27] Section 456.057(7)(a), F.S.
[28] *See Acosta v. Richter*, 671 So. 2d 149 (Fla. 1996).
[29] Report of the Governor's Select Task Force on Healthcare Professional Liability Insurance (2003) at p. 231. The Report can be accessed at www.doh.state.fl.us/myflorida/DOH-Large-Final%20Book.pdf

insurance adjuster and the doctor go to see a patient's treating physician on an informal basis would further drive a wedge between that physician and the patient."[30]

In 2003, the Legislature amended s. 706.106, F.S., to require a claimant to execute a medical information release to allow prospective defendants to take unsworn statements of the claimant's treating physician on issues relating to the personal injury or wrongful death during the presuit process. The claimant and counsel are entitled to notice, an opportunity to be heard, and to attend the taking of the statement. The legislation did not provide for ex parte interviews by defense counsel with a claimant's treating physicians.[31]

Effect of the Bill

This bill provides that a prospective defendant or his or her legal representative may interview the claimant's treating health care providers without notice or the presence of the claimant or the claimant's legal representative.

This bill also makes changes to the presuit provision relating to unsworn statements. It removes the provision requiring a claimant to execute a medical release from s. 766.106, F.S., and creates a new release provision.

This bill requires a claimant to execute an "authorization for release of protected health information" and include it with the presuit notice of intent to initiate litigation. The form is provided in the bill and authorizes the disclosure of protected health information that is potentially relevant to the claim of personal injury or wrongful death. The bill provides that the presuit notice is void if it is not accompanied by the executed authorization form. It further provides that the presuit notice is retroactively void from the date of issuance if the authorization is revoked and that "any tolling effect that the presuit notice may have had on any applicable statute-of-limitations period is retroactively rendered void."

Specifically, the form that claimants are required to execute provides that representatives of the potential defendant may obtain and disclose information from health care providers for facilitating the investigation and evaluation of the medical negligence claim described in the presuit notice or defending against any litigation arising out of the medical negligence claim made on the basis of the presuit notice.

The form informs the claimant of the type of health information that may be obtained by defendants and defendant's counsel and from whom that information can be obtained. The form informs claimants of the extent of the authorization, that the authorization expires upon the resolution of the claim, that executing the authorization is not a condition of continued treatment, and that the claimant has the right to revoke the authorization at any time. The form has a section where claimants can list health providers to which the authorization does not apply. The claimant must certify that such health care information is not potentially relevant to the claim.

The language in the authorization form set forth in the bill appears to comply with federal requirements. In recent years, courts have been dealing with the effect of the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") on state medical malpractice litigation. The HIPAA privacy rules prohibit the disclosure of protected health information except in specified circumstances.[32] With limited exceptions, HIPAA's privacy rules preempt any contrary requirement of state law unless the state law is more stringent than the federal rules.[33]

---

[30] Report of the Governor's Select Task Force on Healthcare Professional Liability Insurance (2003) at p. 233 (internal footnotes omitted).
[31] Chapter 2003-416, Laws of Florida
[32] 45 C.F.R. s. 164.502
[33] 45 C.F.R. s. 160.203

HIPAA rules permit disclosure of health information in a number of circumstances.[34] Health care information may be disclosed if the patient has executed a valid written authorization.[35]

States with statutory provisions that allow for ex parte interviews with claimant's physicians have had to determine whether HIPAA preempted state laws allowing such interviews. Some courts have held that state laws permitting ex parte interviews violate HIPAA.[36] Other courts have held that HIPAA does not prohibit such interviews.[37] Texas dealt with the issue by enacting a law that required a claimant to execute a form authorizing the release of health information. The Texas Supreme Court held that the authorization form complied with the HIPAA requirements.[38] The court specifically rejected the argument that the authorization was not freely given because it was a requirement to proceed with a lawsuit:

> First, while it is true that the [claimants] could not have proceeded with their suit if [the injured person] had not executed the authorization, it was their choice to file the suit in the first instance. Moreover, on several occasions, courts have ordered plaintiffs to execute authorizations compliant with section 164.508.
>
> HIPAA preempts state law only if it would be impossible for a covered entity to comply with both the state and federal requirement, or if it would undermine HIPAA's purposes. While several courts have held that HIPAA preempts state law procedures that would allow ex parte contacts between health care providers and defendants and their representatives, none of them involve situations in which the patient has executed a written release compliant with 45 C.F.R. s. 164.508. Because [the Texas statute at issue] authorizes disclosure under the exact same terms as 45 C.F.R. s. 164.508, it would not be impossible for a health care provider to comply with both laws. Moreover, while the privacy of medical information is the primary goal of the privacy rules, the rules balance that interest against other important needs. Reducing the costs of medical care is a concern underlying both HIPAA and [the Texas statute]. In this case, the legislatively prescribed form authorizes disclosure only to the extent the information would "facilitate the investigation and evaluation" or defense of the health care claim described in the [claimants'] notice. Accordingly, under the circumstances presented, we conclude that HIPAA does not preempt [the Texas statute].[39]

The language in the authorization form in the bill is substantially similar to the language approved by the Texas Supreme Court. This bill also expands the court's authority to dismiss a claim and assess fees if the authorization form is not completed in good faith.

Expert Witness Qualifications

Background

Florida law requires expert witnesses in medical negligence cases to meet certain qualifications. The witness must be a licensed health care provider. If the health care provider against whom or on whose behalf the testimony[40] is offered is a specialist, the expert witness must:

---

[34] Circumstances in which health information may be disclosed include in a judicial proceeding, protected information may be disclosed in response to a court order. It may also be disclosed without a court order in response to a subpoena or discovery request if the health care provider receives satisfactory assurances that the requestor has made reasonable efforts to ensure that the subject of the information has been given notice of the request. *See* 45 C.F.R. s. 164.512(3)(1)(i), 45 C.F.R. s. 164.512(e)(1)(ii)(A).

[35] 45 C.F.R. s. 164.508

[36] *See Law v. Zuckerman*, 307 F.Supp.2d 705 (D. Maryland 2004); *Moreland v. Austin*, 670 S.E.2d 68 (Georgia 2008).

[37] *See Holmes v. Nightingale*, 158 P.3d 1039 (Oklahoma 2007).

[38] *In re: Collins*, 286 S.W.3d 911 (Tex. 2009)

[39] *In re: Collins*, 286 S.W.3d 911, 920 (Tex. 2009)(internal citations omitted).

[40] Section 766.102, F.S., provides qualifications for expert witnesses testifying at trial. Sections 766.202(6) and 766.203, F.S., provide qualifications for expert witnesses that must provide presuit corroboration of negligence claims. The qualifications for trial experts and presuit experts are the same.

(1) Specialize in the same or similar specialty as the health care provider against whom or on whose behalf the testimony is offered and

(2) Have devoted professional time during the 3 years immediately preceding the date of the occurrence that is the basis for the action to:

a. The active clinical practice of, or consulting with respect to, the same or similar specialty that includes the evaluation, diagnosis, or treatment of the medical condition that is the subject of the claim and have prior experience treating similar patients;

b. Instruction of students in an accredited health professional school or accredited residency or clinical research program in the same or similar specialty; or

c. A clinical research program that is affiliated with an accredited health professional school or accredited residency or clinical research program in the same or similar specialty.[41]

If the health care provider against whom or on whose behalf the testimony is offered is a general practitioner, the expert witness must:

(1) Have devoted professional time during the 5 years immediately preceding the date of the occurrence that is the basis for the action to:

a. The active clinical practice or consultation as a general practitioner;

b. The instruction of students in an accredited health professional school or accredited residency program in the general practice of medicine; or

c. A clinical research program that is affiliated with an accredited medical school or teaching hospital and that is in the general practice of medicine.[42]

If the health care provider against whom or on whose behalf the testimony is offered is a health care provider other than a specialist or a general practitioner, the expert witness must:

(1) Have devoted professional time during the 3 years immediately preceding the date of the occurrence that is the basis for the action to:

a. The active clinical practice of, or consulting with respect to, the same or similar health profession as the health care provider against whom or on whose behalf the testimony is offered;

b. The instruction of students in an accredited health professional school or accredited residency program in the same or similar health profession in which the health care provider against whom or on whose behalf the testimony is offered; or

c. A clinical research program that is affiliated with an accredited medical school or teaching hospital and that is in the same or similar health profession as the health care provider against whom or on whose behalf the testimony is offered.[43]

---

[41] Section 766.102(5), F.S.
[42] Section 766.102(5), F.S.
[43] Section 766.102(5), F.S.

Chapter 458, F.S., governs the regulation of medical practice. Chapter 459, F.S., governs the regulation of osteopathic medicine. Each chapter creates a board to deal with issues relating to licensing and discipline of physicians and osteopathic physicians. Under current law, an expert witness is not required to possess a Florida license to practice medicine or osteopathic medicine.[44]

Effect of the Bill

This bill changes the amount of "professional time" an expert witness must have devoted to active practice, clinical research, or instruction of students from 3 years to 5 years if the expert is to provide testimony against a specialist or health care provider other than a specialist or general practitioner. The bill will make the "professional time" requirement the same for all three categories of expert witnesses.

The bill requires the Department of Health to issue an "expert witness certificate" to a physician licensed in another state or Canada to provide expert witness testimony in this state. The bill requires the Department to issue the certificate if the physician or osteopathic physician submits a completed application, pays an application fee of $50, and has not had a previous expert witness certificate revoked by the appropriate board. The application must contain the physician's legal name; mailing address, telephone number, and business locations; the names of jurisdictions where the physician holds an active and valid license; and the license numbers issued to the physician by other jurisdictions.

The department must approve or deny the certificate within seven business days after receipt of the application and payment of the fee or the application is approved by default. A physician must notify the appropriate department of his or her intent to rely on a certificate approved by default. The certificate is valid for two years.

The certificate authorizes a physician or osteopathic physician to provide a verified expert opinion in the presuit stage of a medical malpractice case and to provide testimony about the standard of care in medical negligence litigation. The certificate does not authorize the physician or osteopathic physician to practice medicine and does not require the certificate holder to obtain a license to practice medicine.

This bill amends s. 766.102, F.S., relating to the qualifications of expert witness in cases against physicians licensed under ch. 458 or ch. 459, F.S. The bill requires that the expert witness testifying about the standard of care in such cases must be licensed under ch. 458 or 459, F.S., or possess a valid expert witness certificate.

This bill also amends s. 766.102(5), F.S., to require that an expert witness conduct a complete review of the pertinent medical records before the witness can give expert testimony.

License Disciplinary Actions

Background

Chapter 458, F.S., regulates medical practice. Chapter 459, F.S., regulates the practice of osteopathic medicine. Each chapter creates a board to deal with issues relating to discipline of physicians and osteopathic physicians. In general, the discipline process under ch. 458, F.S., and ch. 459, F.S., begins when a complaint is filed against a health care provider alleging a violation of the disciplinary statutes. The Department of Health reviews the case and a department prosecutor presents the case to the appropriate board or probable cause panel of the appropriate board. If probable cause is found, the Department of Health files an administrative complaint. If the health care provider disputes the allegations of the complaint, the provider can request a hearing before an administrative law judge. An attorney for the Department of Health prosecutes the case and the provider may be represented by

[44] *See Baptist Medical Center of the Beaches, Inc. v. Rhodin*, 40 So. 3d 112, 117 (Fla. 1st DCA 2010)(noting that Florida's expert witness statute "does not encompass a universe limited only to Florida licensees").

counsel. The administrative law judge issues a recommended order upon the conclusion of the hearing. The recommended order and any exceptions filed by the parties are considered by the appropriate board and the board determines the appropriate discipline which can include a fine, suspension of the license, or revocation of the license.[45]

Sections 456.072, 458.331, and 459.015, F.S., create grounds for which disciplinary action may be taken against a licensee.[46] It is not clear from those statutes whether the boards can impose discipline against a licensee for providing misleading, deceptive, or fraudulent expert witness testimony related to the practice of medicine or osteopathic medicine. "Statutes providing for the revocation or suspension of a license to practice are deemed penal in nature and must be strictly construed, with any ambiguity interpreted in favor of the licensee."[47] Section 458.331(1)(k), F.S., provides the following ground for discipline:

> Making deceptive, untrue, or fraudulent representations in or related to the practice of medicine or employing a trick or scheme in the practice of medicine.[48]

It is not clear whether a court would find deceptive or untrue expert testimony in a medical negligence case to be "related to the practice" of medicine or osteopathic medicine.[49]

Current law allows discipline against a licensee for "being found by any court in this state to have provided corroborating written medical expert opinion attached to any statutorily required notice of claim or intent or to any statutorily required response rejecting a claim, without reasonable investigation."[50]

Effect of the Bill

The bill amends ss. 458.331 and 459.015, F.S., to provide that the appropriate board may impose discipline on a physician or osteopathic physician that provides "misleading, deceptive, or fraudulent expert witness testimony related to the practice of medicine." The disciplinary statutes allow the board to impose discipline against licensees who violate the statutes. The bill provides that an expert witness certificate shall be treated as a license in any disciplinary action and that the holder of an expert witness certificate is subject to discipline by the appropriate board.

The bill also amends ss. 458.331 and 459.015, F.S., to provide that the purpose of the disciplinary sections is to "facilitate uniform discipline for those acts made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference."

Incorporation by Reference

Background

Current law allows for one section of statute to reference another, or "incorporation by reference." This is commonly done to prevent the repetition of a particular text. There are two kinds of references. A "specific reference" incorporates the language of the statute referenced and becomes a part of the new statute even if the referenced statute is later altered or repealed. The law presumes that the Legislature intends to incorporate the text of the current law as it existed when the reference was created. A law review article explained:

---

[45] *See* ss. 456.072 and 456.073, F.S.
[46] Section 456.072(2), F.S., deals with discipline against licensees.
[47] *Elmariah v. Board of Medicine*, 574 So. 2d 164, 165 (Fla. 1st DCA 1990).
[48] Section 459.015(1)(m), F.S., contains the same language related to osteopathic physicians.
[49] In *Elmariah*, 574 So. 2d at 165, the court held that a deceptive application for staff privileges at a hospital was not made "in" the practice of medicine but noted that such an application might be "related" to the practice of medicine. The case demonstrates how a court will construe a statute very strictly in favor of the licensee.
[50] *See* ss. 458.331(1)(jj) and 459.015(1)(mm), F.S.

> From a very early time, it has been generally agreed that the legal effect of a specific statutory cross reference is to incorporate the language of the referenced statute into the adopting statute as though set out verbatim, and that in the absence of express legislative intent to the contrary, the Legislature intends that the incorporation by reference shall not be affected by a subsequent change to the referenced law – even its repeal. In other words, each referenced provision has two separate existences – as substantive provision and as an incorporation by reference – and neither is thereafter affected by anything that happens to the other.[51]

The second type of referenced statute is a "general reference." The general reference differs from the specific reference in that it presumes that the referenced section may be amended in the future, and any such changes are permitted to be incorporated into the meaning of the adopting statute. Again, Means explained in his article that "when the reference is not to a specific statute, but to the law in general as it applies to a specified subject, the reference takes the law as it exists at the time the law is applied. Thus, in cases of general references, the incorporation does include subsequent changes to the referenced law."[52]

Currently, other provisions of statutes provide statutory intent which allow for references to that statute to be construed as a general reference under the doctrine of incorporation by reference. For example, the statutes which deal with the punishments for criminal offenses contain clauses which allow for any reference to them to constitute a general reference.[53] This means that any time the Legislature amends a criminal offense, these punishment statutes do not have to be reenacted within the text of a bill because it is understood that their text or interpretation may change in the future.

Effect of the Bill

This bill contains a provision providing that the changes to the disciplinary statutes constitute a general reference under the doctrine of incorporation by reference. The incorporation by reference language in this bill could be interpreted to allow amendments to statutes which reference the disciplinary statute so that the reference takes the law as it exists at the time the law is applied.

Informed Consent

Background

The Mayo Clinic website describes cataract surgery as follows:

> Cataract surgery is a procedure to remove the lens of your eye and, in most cases, replace it with an artificial lens. Cataract surgery is used to treat a cataract — the clouding of the normally clear lens of your eye.[54]

Complications after cataract surgery are uncommon and risks include inflammation, infection, bleeding, swelling, retinal detachment, glaucoma, or a secondary cataract.[55]

The doctrine of informed consent requires a physician to advise his or her patient of the material risks of undergoing a medical procedure.[56] Physicians and osteopathic physicians are required to obtain informed consent of patients before performing procedures and are subject to discipline for failing to do

---

[51] Earnest Means, "Statutory Cross References - The "Loose Cannon" of Statutory Construction," Florida State University Law Review, Vol. 9, p. 3 (1981).
[52] Earnest Means, "Statutory Cross References - The "Loose Cannon" of Statutory Construction," Florida State University Law Review, Vol. 9, p. 3 (1981).
[53] *See* ss. 775.082, 775.083, and 775.084, F.S.
[54] http://www.mayoclinic.com/health/cataract-surgery/MY00164 (accessed February 19, 2011).
[55] http://www.mayoclinic.com/health/cataract-surgery/MY00164/DSECTION=risks (accessed February 19, 2011).
[56] *See State v. Presidential Women's Center*, 937 So. 2d 114, 116 (Fla. 2006)("The doctrine of informed consent is well recognized, has a long history, and is grounded in the common law and based in the concepts of bodily integrity and patient autonomy").

so.[57] Florida has codified informed consent in the "Florida Medical Consent Law," s. 766.103, F.S. Section 766.103(3), F.S., provides:

> (3) No recovery shall be allowed in any court in this state against [specified health care providers including physicians and osteopathic physicians] in an action brought for treating, examining, or operating on a patient without his or her informed consent when:
>
> (a)1. The action of the [health care provider] in obtaining the consent of the patient or another person authorized to give consent for the patient was in accordance with an accepted standard of medical practice among members of the medical profession with similar training and experience in the same or similar medical community as that of the person treating, examining, or operating on the patient for whom the consent is obtained; and
>
> 2. A reasonable individual, from the information provided by the [health care provider], under the circumstances, would have a general understanding of the procedure, the medically acceptable alternative procedures or treatments, and the substantial risks and hazards inherent in the proposed treatment or procedures, which are recognized among other [health care providers] in the same or similar community who perform similar treatments or procedures; or
>
> (b) The patient would reasonably, under all the surrounding circumstances, have undergone such treatment or procedure had he or she been advised by the [health care provider] in accordance with the provisions of paragraph (a).

Section 766.103(4), F.S., provides:

> (4)(a) **A consent which** is evidenced in writing and **meets the requirements of subsection (3) shall**, if validly signed by the patient or another authorized person, **raise a rebuttable presumption of a valid consent.**
>
> (b) A valid signature is one which is given by a person who under all the surrounding circumstances is mentally and physically competent to give consent. (emphasis added).

The Florida Supreme Court discussed the effect of the rebuttable presumption in the Medical Consent Law in *Pub. Health Trust of Dade County v. Valcin*, 507 So. 2d 596 (Fla. 1987). In that case, the patient signed two consent forms, one acknowledging that no guarantees had been made concerning the results of the operation and one stating that the surgery had been explained to her.[58] The patient argued that the doctor made oral representations that contradicted the consent forms and made other statements that were not addressed by the consent forms. The court found that such claims could overcome the presumption:

> [W]e note that no conclusive presumption of valid consent, rebuttable only upon a showing of fraud, will apply to the case. The alleged oral warranties, of course, if accepted by the jury may properly rebut a finding of valid informed consent.[59]

A second issue in Valcin was not related to informed consent but was which type of presumption should apply when surgical records related to the surgery at issue were lost. The *Valcin* court discussed the two types of presumptions created under the Evidence Code:

> At this point, we should clarify the type of rebuttable presumption necessitated under this decision. The instant problem should be resolved either by applying a shift in the burden of producing evidence, section 90.302(1), Florida Statutes

---

[57] *See* s. 458.331, F.S., and 459.015, F.S.
[58] *See Pub. Health Trust of Dade County v. Valcin*, 507 So. 2d 596, 598 (Fla. 1987).
[59] *Pub. Health Trust of Dade County v. Valcin*, 507 So. 2d 596, 599 (Fla. 1987).

(1985), or a shift in the burden of proof. § 90.302(2), Fla.Stat. (1985). While the distinction sounds merely technical, it is not. In the former, as applied to this case, the hospital would bear the initial burden of going forward with the evidence establishing its nonnegligence. If it met this burden by the greater weight of the evidence, the presumption would vanish, requiring resolution of the issues as in a typical case. *See Gulle v. Boggs,* 174 So.2d 26 (Fla.1965); C. Ehrhardt, *Florida Evidence* § 302.1 (2d ed. 1984). The jury is never told of the presumption.

In contrast, once the burden of proof is shifted under section 90.302(2), the presumption remains in effect even after the party to whom it has been shifted introduces evidence tending to disprove the presumed fact, and "the jury must decide whether the evidence introduced is sufficient to meet the burden of proving that the presumed fact did not exist." Ehrhardt at § 302.2, citing *Caldwell v. Division of Retirement,* 372 So. 2d 438 (Fla. 1979).[60]

The *Valcin* court discussed the second kind of rebuttable presumption:

> The second type of rebuttable presumption, as recognized in s. 90.302(2), F.S., affects the burden of proof, shifting the burden to the party against whom the presumption operates to prove the nonexistence of the fact presumed. "When evidence rebutting such a presumption is introduced, the presumption does not automatically disappear. It is not overcome until the trier of fact believes that the presumed fact has been overcome by whatever degree of persuasion is required by the substantive law of the case." Rebuttable presumptions which shift the burden of proof are "expressions of social policy," rather than mere procedural devices employed "to facilitate the determination of the particular action."
>
> A section 90.302(2) presumption shifts the burden of proof, ensuring that the issue of negligence goes to the jury.[61] (internal citations omitted).

Effect of the Bill

The bill requires that the Boards of Medicine and Osteopathic Medicine to adopt rules establishing a standard informed consent form setting forth recognized specific risks relating to cataract surgery. The boards must consider information from physicians and osteopathic physicians regarding specific recognized risks of cataract surgery and must consider informed consent forms used in other states.

The rule must be proposed within 90 days of the effective date of the bill and the provisions of s. 120.541, F.S., relating to adverse impacts, estimated regulatory costs, and legislative ratification of rules do not apply.

The bill provides that in a civil action or administrative proceeding against a physician or osteopathic physician based on the failure to properly disclose the risks of cataract surgery, a properly executed informed consent form is admissible and creates a rebuttable presumption that the physician or osteopathic physician properly disclosed the risks. The bill requires that the rebuttable presumption be included in the jury instruction in a civil action.

Reports of Adverse Incidents

Current Law

Sections 458.351 and 459.026, F.S., require health care providers practicing in an office setting to report "adverse incidents" to the Department of Health and requires the Department of Health to review

[60] *Pub. Health Trust of Dade County v. Valcin*, 507 So. 2d 596, 600 (Fla. 1987).
[61] *Pub. Health Trust of Dade County v. Valcin*, 507 So. 2d 596, 600-601 (Fla. 1987).

such incidents to determine whether disciplinary action is appropriate. Hospitals and other facilities licensed under s. 395.0197, F.S., also have adverse incident reporting requirements. In general, adverse incidents are incidents resulting in death, brain or spinal damage, wrong site surgical procedures, or cases of performing the wrong surgical procedure.[62]

Effect of the Bill

The bill provides that incidents resulting from recognized specific risks described in the signed consent forms (discussed elsewhere in this analysis) related to cataract surgery are not considered adverse incidents for purposes of ss. 458.351, 459.026, and 395.0197, F.S.

"Consent to Settle" Clauses in Medical Malpractice Insurance Contracts

Background

Section 627.4147, F.S., contains provisions relating to medical malpractice insurance contracts. Among other things, medical malpractice insurance contracts must include a clause requiring the insured to cooperate fully in the presuit review process if a notice of intent to file a claim for medical malpractice is made against the insured.

In addition, the insurance contract must include a clause authorizing the insurer or self-insurer to "determine, to make, and to conclude, without the permission of the insured, any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment, if the offer is within the policy limits."[63] The statute further provides that it is against public policy for any insurance policy to contain a clause giving the insured the exclusive right to veto any offer for admission of liability and for arbitration, settlement offer, or offer of judgment, when such offer is within the policy limits. However, the statute provides that the insurer must act in good faith and in the best interests of the insured.[64]

The provision giving insurers the exclusive right to settle claims within policy limits was enacted in 1985.[65] Subsequent to that legislation, there have been causes where physicians argued that insurance companies improperly settled claims.[66] In *Rogers v. Chicago Insurance Company*, 964 So. 2d 280 (Fla. 4th DCA 2007), a physician sued his malpractice carrier for failing to exercise good faith in settling a claim. He argued that the claim was completely defensible and he was damaged by the settlement because of, among other things, his inability to obtain medical malpractice insurance.[67] The court held that the statute did not create a cause of action for the physician and explained:

> Roger's interpretation of the statute would make its primary purpose, which is not to allow insured's to veto malpractice settlements, meaningless. We say that because, if an insurer did settle with the claimant over the objection of the insured, the insurer would then be exposed to unlimited damages for increased insurance premiums, inability to get insurance, or other far removed and unknown collateral damages. No insurer would take that risk and the objecting insured would thus have the veto which the statute purports to eliminate.
>
> We conclude that the statutory language, requiring that any settlement be in the best interests of the insured, means the interests of the insured's rights under the policy, not some collateral effect unconnected with the claim. For example, the insured may have a counterclaim in the malpractice lawsuit for services rendered, which should not be

---

[62] *See generally* s. 458.351, F.S., for examples of incidents required to be reported. Sections 459.026 and 395.0197, F.S., contain reporting requirements for osteopathic physicians and hospitals.
[63] Section 627.4147(1)(b)1., F.S.
[64] Section 627.4147(1)(b)1., F.S.
[65] *See Shuster v. South Broward Hosp. Dist. Physicians' Professional Liability Ins. Trust*, 591 So. 2d 174, 176 n. 1 (Fla. 1992).
[66] In addition to the case discussed in this analysis, see *Freeman v. Cohen*, 969 So. 2d 1150 (Fla. 4th DCA 2008).
[67] *See Rogers v. Chicago Ins. Co.*, 964 So. 2d 280, 281 (Fla. 4th DCA 2007).

> ignored. Nor should the insurer be able to settle with the claimant and leave the doctor exposed to a personal judgment for contribution by another defendant in the same case. By including the language that any settlement must be in the best interest of the insured, the legislature was merely making it clear that, although it was providing that an insured cannot veto a settlement, the power to settle is not absolute and must still be in the best interests of the insured[.][68]

In dissent, Judge Warner argued that the majority effectively writes the "good faith" provision out of the statute:

> The majority suggests that Rogers's interpretation would render meaningless part of the statute in that an insured could veto malpractice settlements by objecting. I do not agree. If the insurer has fulfilled its obligation of good faith in investigating and evaluating the case, and it has considered the best interests of the insured, then it can settle the case. The insured cannot veto the settlement...
>
> The statutory obligation of good faith and best interest provides the only protection to a doctor against insurance companies who may settle unfounded cases simply because it is cheaper to settle than to defend. That is a decision in the insurer's own interests, which it could do under *Shuster* but is not consistent, in my view, with its duties under section 627.4147. The majority opinion takes this statutory protection away from the physician. I would read the statute as written and allow Dr. Rogers's cause of action to proceed[.][69]

Effect of the Bill

This bill allows medical malpractice insurance policies to contain provisions allowing physicians to "veto" settlement offers made to the insurance company that are within policy limits. Instead of not allowing such provisions, the bill would require that policies "clearly" state whether the physician has the exclusive right to veto settlements.

Standard of Proof in Cases Relating to Supplemental Diagnostic Tests

Background

Section 766.102(4), F.S., provides that the "failure of a health care provider to order, perform, or administer supplemental diagnostic tests shall not be actionable if the health care provider acted in good faith and with due regard for the prevailing professional standard of care."

Section 766.102, F.S., provides that a claimant in a medical negligence action must prove by "the greater weight of the evidence" that actions of the health care provider represented a breach of the prevailing professional standard of care. Greater weight of the evidence means the "more persuasive and convincing force and effect of the entire evidence in the case."[70]

Other statutes, such as license disciplinary statutes, require a heightened standard of proof called "clear and convincing evidence." Clear and convincing evidence has been described as follows:

> [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the

[68] *Rogers v. Chicago Ins. Co.*, 964 So. 2d 280, 284 (Fla. 4th DCA 2007).
[69] *Rogers v. Chicago Ins. Co.*, 964 So. 2d 280, 285-286 (Fla. 4th DCA 2007)(Warner, J., dissenting).
[70] *Castillo v. E.I. Du Pont De Nemours & Co., Inc.*, 854 So. 2d 1264, 1277 (Fla. 2003)

> trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.[71]

Section 766.111, F.S., prohibits a health care provider from ordering, procuring, providing, or administering unnecessary diagnostic tests.

Effect of the Bill

The bill provides that the claimant in a medical negligence case where the death or injury resulted from a failure of a health care provider to order, perform, or administer supplemental diagnostic tests must prove that the health care provider breached the standard of care by clear and convincing evidence. This bill would have the effect of making such claims more difficult to prove. Standards of proof in other medical negligence cases would remain unchanged.

Exclusion of Evidence

Background

Section 90.402, F.S., provides that all relevant evidence is admissible, except as a provided by law. Section 90.401, F.S, defines "relevant evidence" as evidence tending to prove or disprove a material fact. The trial court judge determines whether evidence is admissible at trial and a decision on the admissibility is reviewable for an abuse of discretion.

Currently, information about whether an insurer reimbursed a physician for performing a particular procedure or test is subject to admission as evidence during a trial based on whether it is relevant. The trial judge makes an individual determination as to whether such evidence is admissible.

Effect of the Bill

The bill amends s. 766.102, F.S., to provide that records, policies, or testimony of an insurer's[72] reimbursement policies[73] or reimbursement determination regarding the care provided to the plaintiff are not admissible as evidence in medical negligence actions.

The bill amends s. 766.102, F.S., to provide that a health care provider's failure to comply with, or breach of, any federal requirement is not admissible as evidence in any medical negligence case. Evidence of a health care provider's compliance with federal requirements could be admissible if the trial judge found it to be relevant.

Hospital Liability for Independent Contractors

Background

The Florida Supreme Court has described the doctrine of vicarious liability:

> The concept of vicarious liability can be described as follows: "A person whose liability is imputed based on the tortuous acts of another is liable for the entire share of comparative responsibility assigned to the other." Vicarious liability is often justified on the policy grounds that it ensures that a financially responsible party will cover damages. Thus, the vicariously liable party is liable for the entire share of the fault assigned to the active tortfeasor. The vicariously liable party has not breached any duty to the plaintiff; its liability is based solely on the legal imputation of responsibility for another party's tortuous acts. The vicariously liable party is liable only for the amount of liability

[71] *Inquiry Concerning Davey*, 645 So. 2d 398, 404 (Fla. 1994)(quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).
[72] The bill defines "insurer" as "any public or private insurer, including the Centers for Medicare and Medicaid Services."
[73] The bill defines "reimbursement policies" as "an insurer's policies and procedures

> apportioned to the tortfeasor. In sum, the doctrine of vicarious liability takes a party that is free of legal fault and visits upon that party the negligence of another.[74]

Generally, a hospital may not be held liable for the negligence of independent contractor physicians to whom it grants staff privileges.[75] "Vicarious liability does not therefore necessarily attach to the hospital for the doctors' acts or omissions."[76] One court has explained:

> While some hospitals employ their own staff of physicians, others enter into contractual arrangements with legal entities made up of an association of physicians to provide medical services as independent contractors with the expectation that vicarious liability will not attach to the hospital for the negligent acts of those physicians.[77]

However, a hospital may be held vicariously liable for the acts of independent contractor physicians if the physicians act with the apparent authority of the hospital.[78] Apparent authority exists only if all three of the following elements are present: (a) a representation by the purported principal; (b) a reliance on that representation by a third party; and (c) a change in position by the third party in reliance on the representation.[79]

There are numerous cases in Florida appellate courts where courts have struggled over the issue of whether the hospital should be liable for the negligence of an independent contractor physician. Some cases involve the apparent authority issue. Others involve the issue of whether the hospital has a nondelegable duty to provide certain medical services. One court found:

> Even where a physician is an independent contractor, however, a hospital that "undertakes by [express or implied] contract to do for another a given thing" is not allowed to "escape [its] contractual liability [to the patient] by delegating performance under a contract to an independent contractor."[80]

One argument in favor of imposing such a duty on hospitals is:

> This trend suggests that hospitals should be vicariously liable as a general rule for activities within the hospital where the patient cannot and does not realistically have the ability to shop on the open market for another provider. Given modern marketing approaches in which hospitals aggressively advertise the quality and safety of the services provided within their hospitals, it is quite arguable that hospitals should have a nondelegable duty to provide adequate radiology departments, pathology laboratories, emergency rooms, and other professional services necessary to the ordinary and usual functioning of the hospital. The patient does not usually have the option to pick among several independent contractors at the hospital and has little ability to negotiate and bargain in this market to select a preferred radiology department. The hospital, on the other hand, has great ability to assure that competent radiologists work within an independent radiology department and to bargain with those radiologists to provide adequate malpractice protections for their mutual customers. I suspect that medical economics would work better if the general rule placed general vicarious liability upon the hospital for these activities.[81]

In March 2003, the Florida Supreme Court issued its opinion in *Villazon v. Prudential Health Care Plan*,

---

[74] *American Home Assur. Co. v. National Railroad Passenger Corp.*, 908 So. 2d 459, 467-468 (Fla. 2005)(internal citations omitted).
[75] *See Insinga v. LaBella*, 543 So. 2d 209 (Fla. 1989).
[76] *Pub. Health Trust of Dade County v. Valcin*, 507 So. 2d 596, 601 (Fla. 1987).
[77] *Roessler v. Novak*, 858 So. 2d 1158, 1162 (Fla. 2d DCA 2003).
[78] *See Stone v. Palms West Hosp.*, 941 So. 2d 514 (Fla. 4th DCA 2006).
[79] *See Roessler v. Novak*, 858 So. 2d 1158, 1161 (Fla. 2d DCA 2003).
[80] *Shands Teaching Hosp. and Clinic, Inc. v. Juliana*, 863 So. 2d 343, 349 n. 9 (Fla. 1st DCA 2003). *But see Jones v. Tallahassee Memorial Regional Healthcare, Inc.* 923 So. 2d 1245 (Fla. 1st DCA 2006)(refusing to extend the nondelegable duty doctrine to physicians).
[81] *Roessler v. Novak*, 858 So. 2d 1158, 1164-1165 (Fla. 2d DCA 2003)(Altenbernd, C.J., concurring).

843 So. 2d 842 (Fla. 2003). In *Villazon*, the court considered whether vicarious liability theories could make an HMO liable for the negligence of a physician who had a contract with the HMO. The court held that the HMO Act did not provide a cause of action against the HMO for negligence of the physician but that a suit could proceed under common law theories of negligence under certain circumstances.[82] It noted that the "existence of an agency relationship is normally one for the trier of fact to decide."[83] The court explained that the physician's contractual independent contractor status does not alone preclude a finding of agency and remanded the case for consideration of whether the insurer exercised sufficient control over the physician's actions such that an agency relationship existed or whether agency could be established under an apparent agency theory.[84]

Subsequent to *Villazon*, the Legislature passed ch. 2003-416, L.O.F., which created s. 768.0981, F.S. Section 768.0981, F.S., provides:

> An entity licensed or certified under chapter 624, chapter 636, or chapter 641[85] shall not be liable for the medical negligence of a health care provider with whom the licensed or certified entity has entered into a contract, other than an employee of such licensed or certified entity, unless the licensed or certified entity expressly directs or exercises actual control over the specific conduct that caused injury.

The statute provides that insurers, HMOs, prepaid limited health service organizations, and prepaid health clinics are not liable for the negligence of health care providers with whom the entity has a contract unless the entity expressly directed or exercised actual control over the specific conduct that caused the injury.

Appellate courts in Florida have more recently examined the nondelegable duty issue, with differing opinions. As a result, the law is unsettled across the state regarding the liability of hospitals for the negligent acts or omissions of medical providers with whom they contract to provide medical services within the hospital, but over whom they do not have direct control of the manner in which the services are provided.

In *Wax v. Tenet Health System Hospitals, Inc.*, 955 So.2d 1 (Fla. 4th DCA 2006)[86], the wife of a deceased patient brought a medical malpractice action against the surgeon who operated on her husband, the hospital where the surgery was completed and others. The husband underwent elective hernia surgery, during which he suffered respiratory failure and died. The wife's wrongful death claim alleged negligence in the pre-surgical assessment, in the administration and management of anesthesia during surgery, and in the failed attempts to resuscitate the husband after he stopped breathing.[87] Specifically, for purposes of this analysis, the wife alleged that the hospital had a nondelegable duty to provide anesthesiology services and was directly liable for the negligence of the anesthesiologist with whom the hospital had contracted to provide services.[88]

The *Wax* court agreed with the plaintiff that the statutory definition of "hospital"[89] and a specific regulation of hospitals established under statutory authority by the Agency for Health Care

---

[82] *See Villazon v. Prudential Health Care Plan, Inc.*, 843 So. 2d 842, 852 (Fla. 2003).
[83] *Villazon v. Prudential Health Care Plan, Inc.*, 843 So. 2d 842, 853 (Fla. 2003).
[84] *See Villazon v. Prudential Health Care Plan, Inc.*, 843 So. 2d 842, 855-856 (Fla. 2003).
[85] Chapter 624, F.S., provides for licensing of health insurers under the Florida Insurance Code. Chapter 636, F.S., provides for licensing of prepaid limited health service organizations and discount medical plan organizations. Chapter 641, F.S., provides for licensing of health maintenance organizations and prepaid health clinics.
[86] The case was originally heard in 2006. Following the filing of a Motion for Rehearing and a Motion for Rehearing En Banc by appellees, both of which were denied, the Court realized that it failed to resolve all issues and delivered an opinion regarding the hospital's liability for the alleged negligence of the anesthesiologist. The opinion was issued on May 7, 2007. *See* Wax, 955 So.2d at 6.
[87] *See* Wax v. Tenet Health System Hospitals, Inc., 955 So.2d 1, 3 (Fla. 4th DCA 2006).
[88] *See id.* at 6.
[89] S. 395.002(13)(b), F.S. (2005) defines "hospital" as an establishment that, among other things, regularly makes available "treatment facilities for surgery."

Administration (AHCA)[90] established that the hospital had an express legal duty to furnish anesthesia services to patients that were "consistent with established standards."[91] The court found that the imposition of this duty on all surgical hospitals to provide non-negligent anesthesia services was important enough to be nondelegable without the express consent to the contrary of the patient.[92] The hospital was found liable for the negligence of the anesthesiologist that caused the death of Wax under the theory of nondelegable duty.

In *Tarpon Springs Hospital Foundation, Inc. v. Reth,* 40 So.3d 823 (Fla. 2nd DCA 2010), the personal representative of a deceased patient filed a medical negligence claim against the anesthesiologist, nurse anesthetists, the anesthesia practice, and the hospital, alleging that negligent anesthesia services were provided to the patient, causing his death.[93] The hospital and other defendants appealed the trial court's order granting the plaintiff's amended motion for new trial and the denial of the hospital's motion for directed verdict.[94] The 2nd District Court of Appeal considered the same argument of the plaintiff related to the identical statutes and rules as were presented to the 4th District Court of Appeal in *Wax.* However, the court in *Reth* concluded that, while the hospital had a statutory obligation to maintain an anesthesia department within the hospital that is directed by a physician member of the hospital's professional staff, the statutes and rules do not impose a nondelegable duty to provide non-negligent anesthesia services to surgical patients of the hospital.[95] The court reversed the denial of the hospital's motion for directed verdict and remanded this case to the trial court with instructions that it enter a judgment in favor of the hospital.[96]

Noting the conflict among the District Courts of Appeal regarding the applicability of the theory of nondelegable duty to the contractual relationship between hospital and medical provider in medical negligence claims, the Second District certified the conflict to the Florida Supreme Court for further review.[97] However, as of the date of this analysis, the Florida Supreme Court has not resolved the conflict.

Effect of the Bill

The bill amends s. 768.0981, F.S. to provide that a hospital is not liable for the medical negligence of a health care provider with whom the hospital has entered into a contract, other than an employee of the hospital, unless the hospital expressly directs or exercises actual control over the specific conduct that caused injury. This bill would limit the inquiry as to whether the hospital "expressly" directed or exercised actual control over the conduct that caused the injury.

B. SECTION DIRECTORY:

Section 1: Creates s. 458.3175, F.S., relating to expert witness certificates.

Section 2: Amends s. 458.331, F.S., relating to grounds for disciplinary action and action by the board and department.

Section 3: Amends s. 458.351, F.S., relating to reports of adverse incidents in office practice settings.

Section 4: Creates s. 459.0066, F.S., relating to expert witness certificates.

---

[90] Rule 59A-3.2085(4), F.A.C. states "[e]ach Class I and Class II hospital, and each Class III hospital providing surgical or obstetrical services, shall have an anesthesia department, service or similarly titled unit directed by a physician member of the organized professional staff."
[91] *See* Wax, 955 So.2d at 8.
[92] *See id.* at 9.
[93] *See* Reth, 40 So.3d at 823.
[94] *See id.* at 824.
[95] *See id.*
[96] *See id.*
[97] *See* Tarpon Springs Hospital Foundation, Inc. v. Reth, 40 So.3d 823, 824 (Fla. 2nd DCA 2010).

Section 5: Amends s. 459.015, F.S., relating to grounds for disciplinary action and action by the board and department.

Section 6: Amends s. 459.026, F.S., relating to reports of adverse incidents in office practice settings.

Section 7: Amends s. 627.4147, F.S., relating to medical malpractice insurance contracts.

Section 8: Amends s. 766.102, F.S., relating to medical negligence, standards of recovery, and expert witnesses.

Section 9: Amends s. 766.106, F.S., relating to notice before filing action for medical negligence, presuit screening period, offers for admission of liability and for arbitration, and informal discovery.

Section 10: Creates s. 766.1065, F.S., relating to authorization for release of protected health information.

Section 11: Amends s. 766.206, F.S., relating to presuit investigation of medical negligence claims and defenses by a court.

Section 12: Amends s. 768.0981, F.S., relating to limitations on actions against insurers, prepaid limited health service organizations, health maintenance organizations, hospitals, or prepaid health clinics.

Section 13: Provides the bill takes effect on July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Department of Health noted that the bill will require additional staff to administer the two new programs created by the bill but has not yet completed the fiscal analysis.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires physicians licensed in another state or Canada to pay a fee of not more than $50 to obtain an expert witness certificate in order to provide an expert witness opinion or provide expert testimony relating to the standard of care in a medical malpractice case involving a physician.

D. FISCAL COMMENTS:

The fiscal impact on private parties is speculative.

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:

Access to Courts

Section 8 of the bill contains a provision that increases the standard of proof in certain medical negligence actions from preponderance of the evidence to clear and convincing evidence. Section 12 of the bill provides that a hospital is not liable, with some exceptions, for the medical negligence of a health care provider with whom the hospital has entered into a contract. Article 1, s. 21, Fla. Const., provides that the "courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." In *Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1983), the Florida Supreme Court explained the constitutional limitation on the ability of the Legislature to abolish a civil cause of action:

> We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. s. 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.

In *Eller v. Shova*, 630 So. 2d 537, 540 (Fla. 1993), the court applied *Kluger* to a case that changed the standard of proof from simple negligence to gross negligence in some workers compensation actions:

> In analyzing [the standard quoted above] in *Kluger*, we stated that a statute that merely changed the degree of negligence necessary to maintain a tort action did not abolish a right to redress for an injury.

Justice Kogan warned that the ability to change the standard of proof is not unlimited:

> [F]ew would question that access to the courts is being denied if the legislature purports to preserve a cause of action but then insulates defendants with conclusive, irrebuttable presumptions. Such a "cause of action" would be little more than a legal sham used to circumvent article 1, section 21.[98]

Rules of Practice and Procedure in the Courts

Sections 1, 3, 4, 6, and 8 of the bill change provisions relating to expert witnesses and the admissibility of evidence during a civil trial. Article V, s. 2(a), Fla. Const., provides that the Florida Supreme Court "shall adopt rules for the practice and procedure" in all courts. The Florida Supreme Court has interpreted this provision to mean that the court has the exclusive power to create rules of practice and procedure. Sections 1 and 4 provide requirements for expert witnesses who do not possess a Florida license. Section 3 and 6 provide for admissibility of informed consent forms. Section 8 provides for exclusion of certain evidence even if the evidence is otherwise relevant. If a

[98] *Eller v. Shova*, 630 So. 2d 537, 543 (Fla. 1993)(Kogan, J., concurring in result only).

court were to find that any of these requirements encroached on the court's rulemaking power, it could hold the provisions invalid.

Sections 3, 6, and 8 specifically provide that certain documents are admissible in evidence. The Florida Supreme Court has held that some portions of the Evidence Code are substantive and can be set by the Legislature and some portions are procedural and can only be set by the rules of court. If a court were to find that the provisions in this bill related to admission of evidence are procedural, it could hold the provisions invalid pursuant to art. V, s. 2, Fla. Const.

B. RULE-MAKING AUTHORITY:

This bill requires that the Boards of Medicine and Osteopathic Medicine adopt rules establishing a standard informed consent form setting forth recognized specific risks relating to cataract surgery. The boards must consider information from physicians and osteopathic physicians regarding specific recognized risks of cataract surgery and must consider informed consent forms used in other states.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

The Civil Justice Subcommittee considered the bill on March 8, 2011, and adopted six amendments. The amendments:

- List the specific information that must be provided to the Department of Health in order for an out-of-state physician to receive an expert witness certificate and remove the requirement that boards make rules to implement the expert witness certificate program;
- Provide that the Department of Health will have the duty of issuing the expert witness certificates and give the Department 7 business days rather than 5 business days to issue the certificates;
- Provide that the Board of Medicine and the Board of Osteopathic Medicine will have the authority to discipline holders of expert witness certificates;
- Provide that the provision of the bill relating that limits the admission of evidence relating to insurer reimbursement policies and practices only applies in medical negligence actions;
- Provide that a prospective defendant may interview a claimant's health care providers if the health care providers agree to be interviewed;
- Remove the provisions of the bill that exempt the rule requiring the creation of a new informed consent form for cataract surgery from possible legislative review; and
- Remove the requirement that the trial judge include a rebuttable presumption in the jury instructions.

This bill, as amended, was reported favorably as a committee substitute.

A bill to be entitled

An act relating to medical malpractice; creating ss. 458.3175 and 459.0066, F.S.; requiring the Department of Health to issue expert witness certificates to certain physicians licensed outside of the state; providing application and certification requirements; establishing application fees; providing for the validity and use of certifications; exempting physicians issued certifications from certain licensure and fee requirements; amending ss. 458.331 and 459.015, F.S.; providing additional acts that constitute grounds for denial of a license or disciplinary action to which penalties apply; providing construction with respect to the doctrine of incorporation by reference; amending ss. 458.351 and 459.026, F.S.; requiring the boards to adopt within a specified period certain patient forms specifying cataract surgery risks; specifying that an incident resulting from risks disclosed in the patient form is not an adverse incident; providing for the execution and admissibility of the patient forms in civil and administrative proceedings; creating a rebuttable presumption that a physician disclosed cataract surgery risks if the patient form is executed; amending s. 627.4147, F.S.; deleting a requirement that medical malpractice insurance contracts contain a clause authorizing the insurer to make and conclude certain offers within policy limits over the insured's veto; amending s. 766.102, F.S.; defining terms; providing that certain insurance information is not admissible as

evidence in medical negligence actions; requiring that certain expert witnesses who provide certain expert testimony meet certain licensure or certification requirements; establishing the burden of proof that a claimant must meet in certain damage claims against health care providers based on death or personal injury; excluding a health care provider's failure to comply with or breach of federal requirements from evidence in medical negligence cases in the state; amending s. 766.106, F.S.; requiring claimants for medical malpractice to execute an authorization form; allowing prospective medical malpractice defendants to interview a claimant's treating health care provider without notice to or the presence of the claimant or the claimant's legal representative; authorizing prospective defendants to take unsworn statements of a claimant's health care provider; creating s. 766.1065, F.S.; requiring that presuit notice for medical negligence claims be accompanied by an authorization for release of protected health information; providing requirements for the form of such authorization; amending s. 766.206, F.S.; requiring dismissal of a medical malpractice claim if such authorization is not completed in good faith; amending s. 768.0981, F.S.; limiting the liability of hospitals related to certain medical negligence claims; providing an effective date.

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

Section 1. Section 458.3175, Florida Statutes, is created to read:

458.3175 Expert witness certificate.—

(1)(a) The department shall issue a certificate authorizing a physician who holds an active and valid license to practice medicine in another state or a province of Canada to provide expert testimony in this state, if the physician submits to the department:

1. A complete registration application containing the physician's legal name, mailing address, telephone number, business locations, the names of the jurisdictions where the physician holds an active and valid license to practice medicine, and the license number or other identifying number issued to the physician by the jurisdiction's licensing entity; and

2. An application fee of $50.

(b) The department shall approve an application for an expert witness certificate within 7 business days after receipt of the completed application and payment of the application fee if the applicant holds an active and valid license to practice medicine in another state or a province of Canada and has not had a previous expert witness certificate revoked by the board. An application is approved by default if the department does not act upon the application within the required period. A physician must notify the department in writing of his or her intent to rely on a certificate approved by default.

(c) An expert witness certificate is valid for 2 years after the date of issuance.

(2) An expert witness certificate authorizes the physician to whom the certificate is issued to do only the following:

(a) Provide a verified written medical expert opinion as provided in s. 766.203.

(b) Provide expert testimony about the prevailing professional standard of care in connection with medical negligence litigation pending in this state against a physician licensed under this chapter or chapter 459.

(3) An expert witness certificate does not authorize a physician to engage in the practice of medicine as defined in s. 458.305. A physician issued a certificate under this section who does not otherwise practice medicine in this state is not required to obtain a license under this chapter or pay any license fees, including, but not limited to, a neurological injury compensation assessment. An expert witness certificate shall be treated as a license in any disciplinary action, and the holder of an expert witness certificate shall be subject to discipline by the board.

Section 2. Subsection (11) is added to section 458.331, Florida Statutes, paragraphs (oo) through (qq) of subsection (1) of that section are redesignated as paragraphs (pp) through (rr), respectively, and a new paragraph (oo) is added to that subsection, to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(oo) Providing misleading, deceptive, or fraudulent expert witness testimony related to the practice of medicine.

(11) The purpose of this section is to facilitate uniform discipline for those acts made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

Section 3. Subsection (6) of section 458.351, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section, to read:

458.351 Reports of adverse incidents in office practice settings.—

(6)(a) The board shall adopt rules establishing a standard informed consent form that sets forth the recognized specific risks related to cataract surgery. The board must propose such rules within 90 days after the effective date of this subsection.

(b) Before formally proposing the rule, the board must consider information from physicians licensed under this chapter or chapter 459 regarding recognized specific risks related to cataract surgery and the standard informed consent forms adopted for use in the medical field by other states.

(c) A patient's informed consent is not executed until the patient, or a person authorized by the patient to give consent, and a competent witness sign the form adopted by the board.

(d) An incident resulting from recognized specific risks described in the signed consent form is not considered an adverse incident for purposes of s. 395.0197 and this section.

(e) In a civil action or administrative proceeding against a physician based on his or her alleged failure to properly disclose the risks of cataract surgery, a patient's informed consent executed as provided in paragraph (c) on the form adopted by the board is admissible as evidence and creates a rebuttable presumption that the physician properly disclosed the risks.

Section 4. Section 459.0066, Florida Statutes, is created to read:

459.0066 Expert witness certificate.—

(1)(a) The department shall issue a certificate authorizing a physician who holds an active and valid license to practice osteopathic medicine in another state or a province of Canada to provide expert testimony in this state, if the physician submits to the department:

1. A complete registration application containing the physician's legal name, mailing address, telephone number, business locations, the names of the jurisdictions where the physician holds an active and valid license to practice osteopathic medicine, and the license number or other identifying number issued to the physician by the jurisdiction's licensing entity; and

2. An application fee of $50.

(b) The department shall approve an application for an expert witness certificate within 7 business days after receipt of the completed application and payment of the application fee if the applicant holds an active and valid license to practice osteopathic medicine in another state or a province of Canada

and has not had a previous expert witness certificate revoked by the board. An application is approved by default if the department does not act upon the application within the required period. A physician must notify the department in writing of his or her intent to rely on a certificate approved by default.

(c) An expert witness certificate is valid for 2 years after the date of issuance.

(2) An expert witness certificate authorizes the physician to whom the certificate is issued to do only the following:

(a) Provide a verified written medical expert opinion as provided in s. 766.203.

(b) Provide expert testimony about the prevailing professional standard of care in connection with medical negligence litigation pending in this state against a physician licensed under chapter 458 or this chapter.

(3) An expert witness certificate does not authorize a physician to engage in the practice of osteopathic medicine as defined in s. 459.003. A physician issued a certificate under this section who does not otherwise practice osteopathic medicine in this state is not required to obtain a license under this chapter or pay any license fees, including, but not limited to, a neurological injury compensation assessment. An expert witness certificate shall be treated as a license in any disciplinary action, and the holder of an expert witness certificate shall be subject to discipline by the board.

Section 5. Subsection (11) is added to section 459.015, Florida Statutes, paragraphs (qq) through (ss) of subsection (1) of that section are redesignated as paragraphs (rr) through

(tt), respectively, and a new paragraph (qq) is added to that subsection, to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(qq) Providing misleading, deceptive, or fraudulent expert witness testimony related to the practice of osteopathic medicine.

(11) The purpose of this section is to facilitate uniform discipline for those acts made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

Section 6. Subsection (6) of section 459.026, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section, to read:

459.026 Reports of adverse incidents in office practice settings.—

(6)(a) The board shall adopt rules establishing a standard informed consent form that sets forth the recognized specific risks related to cataract surgery. The board must propose such rules within 90 days after the effective date of this subsection.

(b) Before formally proposing the rule, the board must consider information from physicians licensed under chapter 458 or this chapter regarding recognized specific risks related to cataract surgery and the standard informed consent forms adopted

for use in the medical field by other states.

(c) A patient's informed consent is not executed until the patient, or a person authorized by the patient to give consent, and a competent witness sign the form adopted by the board.

(d) An incident resulting from recognized specific risks described in the signed consent form is not considered an adverse incident for purposes of s. 395.0197 and this section.

(e) In a civil action or administrative proceeding against a physician based on his or her alleged failure to properly disclose the risks of cataract surgery, a patient's informed consent executed as provided in paragraph (c) on the form adopted by the board is admissible as evidence and creates a rebuttable presumption that the physician properly disclosed the risks.

Section 7. Paragraph (b) of subsection (1) of section 627.4147, Florida Statutes, is amended to read:

627.4147 Medical malpractice insurance contracts.—

(1) In addition to any other requirements imposed by law, each self-insurance policy as authorized under s. 627.357 or s. 624.462 or insurance policy providing coverage for claims arising out of the rendering of, or the failure to render, medical care or services, including those of the Florida Medical Malpractice Joint Underwriting Association, shall include:

(b)1. ~~Except as provided in subparagraph 2., a clause authorizing the insurer or self-insurer to determine, to make, and to conclude, without the permission of the insured, any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment, if the offer~~

~~is within the policy limits. It is against public policy for any insurance or self-insurance policy to contain a clause giving the insured the exclusive right to veto any offer for admission of liability and for arbitration made pursuant to s. 766.106, settlement offer, or offer of judgment, when such offer is within the policy limits. However, any offer of admission of liability, settlement offer, or offer of judgment made by an insurer or self-insurer shall be made in good faith and in the best interests of the insured~~.

~~2.a. With respect to dentists licensed under chapter 466,~~ A clause clearly stating whether or not the insured has the exclusive right to veto any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment if the offer is within policy limits. An insurer or self-insurer shall not make or conclude, without the permission of the insured, any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment, if such offer is outside the policy limits. However, any offer for admission of liability and for arbitration made under s. 766.106, settlement offer, or offer of judgment made by an insurer or self-insurer shall be made in good faith and in the best interest of the insured.

2.~~b.~~ If the policy contains a clause stating the insured does not have the exclusive right to veto any offer or admission of liability and for arbitration made pursuant to s. 766.106, settlement offer or offer of judgment, the insurer or self-insurer shall provide to the insured or the insured's legal representative by certified mail, return receipt requested, a

copy of the final offer of admission of liability and for arbitration made pursuant to s. 766.106, settlement offer or offer of judgment and at the same time such offer is provided to the claimant. A copy of any final agreement reached between the insurer and claimant shall also be provided to the insurer or his or her legal representative by certified mail, return receipt requested not more than 10 days after affecting such agreement.

Section 8. Subsections (3), (4), and (5) of section 766.102, Florida Statutes, are amended, subsection (12) of that section is renumbered as subsection (14), and new subsections (12) and (13) are added to that section, to read:

766.102 Medical negligence; standards of recovery; expert witness.—

(3)(a) As used in this subsection, the term:

1. "Insurer" means any public or private insurer, including the Centers for Medicare and Medicaid Services.

2. "Reimbursement determination" means an insurer's determination of the amount that the insurer will reimburse a health care provider for health care services.

3. "Reimbursement policies" means an insurer's policies and procedures governing its decisions regarding health insurance coverage and method of payment and the data upon which such policies and procedures are based, including, but not limited to, data from national research groups and other patient safety data as defined in s. 766.1016.

(b) The existence of a medical injury does ~~shall~~ not create any inference or presumption of negligence against a

health care provider, and the claimant must maintain the burden of proving that an injury was proximately caused by a breach of the prevailing professional standard of care by the health care provider. Any records, policies, or testimony of an insurer's reimbursement policies or reimbursement determination regarding the care provided to the plaintiff are not admissible as evidence in any medical negligence action. However, the discovery of the presence of a foreign body, such as a sponge, clamp, forceps, surgical needle, or other paraphernalia commonly used in surgical, examination, or diagnostic procedures, shall be prima facie evidence of negligence on the part of the health care provider.

(4)(a) The Legislature is cognizant of the changing trends and techniques for the delivery of health care in this state and the discretion that is inherent in the diagnosis, care, and treatment of patients by different health care providers. The failure of a health care provider to order, perform, or administer supplemental diagnostic tests is ~~shall~~ not ~~be~~ actionable if the health care provider acted in good faith and with due regard for the prevailing professional standard of care.

(b) In an action for damages based on death or personal injury which alleges that such death or injury resulted from the failure of a health care provider to order, perform, or administer supplemental diagnostic tests, the claimant has the burden of proving by clear and convincing evidence that the alleged actions of the health care provider represented a breach of the prevailing professional standard of care.

(5) A person may not give expert testimony concerning the prevailing professional standard of care unless the ~~that~~ person is a ~~licensed~~ health care provider who holds an active and valid license and conducts a complete review of the pertinent medical records and meets the following criteria:

(a) If the health care provider against whom or on whose behalf the testimony is offered is a specialist, the expert witness must:

1. Specialize in the same specialty as the health care provider against whom or on whose behalf the testimony is offered; or specialize in a similar specialty that includes the evaluation, diagnosis, or treatment of the medical condition that is the subject of the claim and have prior experience treating similar patients; and

2. Have devoted professional time during the 5 ~~3~~ years immediately preceding the date of the occurrence that is the basis for the action to:

a. The active clinical practice of, or consulting with respect to, the same or similar specialty that includes the evaluation, diagnosis, or treatment of the medical condition that is the subject of the claim and have prior experience treating similar patients;

b. Instruction of students in an accredited health professional school or accredited residency or clinical research program in the same or similar specialty; or

c. A clinical research program that is affiliated with an accredited health professional school or accredited residency or clinical research program in the same or similar specialty.

(b) If the health care provider against whom or on whose behalf the testimony is offered is a general practitioner, the expert witness must have devoted professional time during the 5 years immediately preceding the date of the occurrence that is the basis for the action to:

1. The active clinical practice or consultation as a general practitioner;

2. The instruction of students in an accredited health professional school or accredited residency program in the general practice of medicine; or

3. A clinical research program that is affiliated with an accredited medical school or teaching hospital and that is in the general practice of medicine.

(c) If the health care provider against whom or on whose behalf the testimony is offered is a health care provider other than a specialist or a general practitioner, the expert witness must have devoted professional time during the 5 ~~3~~ years immediately preceding the date of the occurrence that is the basis for the action to:

1. The active clinical practice of, or consulting with respect to, the same or similar health profession as the health care provider against whom or on whose behalf the testimony is offered;

2. The instruction of students in an accredited health professional school or accredited residency program in the same or similar health profession in which the health care provider against whom or on whose behalf the testimony is offered; or

3. A clinical research program that is affiliated with an

accredited medical school or teaching hospital and that is in the same or similar health profession as the health care provider against whom or on whose behalf the testimony is offered.

(12) If a physician licensed under chapter 458 or chapter 459 is the party against whom, or on whose behalf, expert testimony about the prevailing professional standard of care is offered, the expert witness must be licensed under chapter 458 or chapter 459 or possess a valid expert witness certificate issued under s. 458.3175 or s. 459.0066.

(13) A health care provider's failure to comply with or breach of any federal requirement is not admissible as evidence in any medical negligence case in this state.

Section 9. Paragraph (a) of subsection (2), subsection (5), and paragraph (b) of subsection (6) of section 766.106, Florida Statutes, are amended to read:

766.106 Notice before filing action for medical negligence; presuit screening period; offers for admission of liability and for arbitration; informal discovery; review.—

(2) PRESUIT NOTICE.—

(a) After completion of presuit investigation pursuant to s. 766.203(2) and prior to filing a complaint for medical negligence, a claimant shall notify each prospective defendant by certified mail, return receipt requested, of intent to initiate litigation for medical negligence. Notice to each prospective defendant must include, if available, a list of all known health care providers seen by the claimant for the injuries complained of subsequent to the alleged act of

negligence, all known health care providers during the 2-year period prior to the alleged act of negligence who treated or evaluated the claimant, ~~and~~ copies of all of the medical records relied upon by the expert in signing the affidavit, and the executed authorization form provided in s. 766.1065. ~~The requirement of providing the list of known health care providers may not serve as grounds for imposing sanctions for failure to provide presuit discovery.~~

(5) DISCOVERY AND ADMISSIBILITY.—A ~~No~~ statement, discussion, written document, report, or other work product generated by the presuit screening process is not discoverable or admissible in any civil action for any purpose by the opposing party. All participants, including, but not limited to, physicians, investigators, witnesses, and employees or associates of the defendant, are immune from civil liability arising from participation in the presuit screening process. This subsection does not prevent a physician licensed under chapter 458 or chapter 459 who submits a verified written expert medical opinion from being subject to denial of a license or disciplinary action under s. 458.331(1)(oo) or s. 459.015(1)(qq).

(6) INFORMAL DISCOVERY.—

(b) Informal discovery may be used by a party to obtain unsworn statements, the production of documents or things, and physical and mental examinations, as follows:

1. Unsworn statements.—Any party may require other parties to appear for the taking of an unsworn statement. Such statements may be used only for the purpose of presuit screening

and are not discoverable or admissible in any civil action for any purpose by any party. A party desiring to take the unsworn statement of any party must give reasonable notice in writing to all parties. The notice must state the time and place for taking the statement and the name and address of the party to be examined. Unless otherwise impractical, the examination of any party must be done at the same time by all other parties. Any party may be represented by counsel at the taking of an unsworn statement. An unsworn statement may be recorded electronically, stenographically, or on videotape. The taking of unsworn statements is subject to the provisions of the Florida Rules of Civil Procedure and may be terminated for abuses.

2. Documents or things.—Any party may request discovery of documents or things. The documents or things must be produced, at the expense of the requesting party, within 20 days after the date of receipt of the request. A party is required to produce discoverable documents or things within that party's possession or control. Medical records shall be produced as provided in s. 766.204.

3. Physical and mental examinations.—A prospective defendant may require an injured claimant to appear for examination by an appropriate health care provider. The prospective defendant shall give reasonable notice in writing to all parties as to the time and place for examination. Unless otherwise impractical, a claimant is required to submit to only one examination on behalf of all potential defendants. The practicality of a single examination must be determined by the nature of the claimant's condition, as it relates to the

liability of each prospective defendant. Such examination report is available to the parties and their attorneys upon payment of the reasonable cost of reproduction and may be used only for the purpose of presuit screening. Otherwise, such examination report is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

4. Written questions.—Any party may request answers to written questions, the number of which may not exceed 30, including subparts. A response must be made within 20 days after receipt of the questions.

5. Ex parte interviews of treating health care providers.—A prospective defendant or his or her legal representative may interview the claimant's treating health care providers without notice to or the presence of the claimant or the claimant's legal representative.

6.~~5.~~ Unsworn statements of treating health care providers ~~Medical information release. The claimant must execute a medical information release that allows~~ A prospective defendant or his or her legal representative may also ~~to~~ take unsworn statements of the claimant's treating health care providers ~~physicians~~. The statements must be limited to those areas that are potentially relevant to the claim of personal injury or wrongful death. Subject to the procedural requirements of subparagraph 1., a prospective defendant may take unsworn statements from a claimant's treating physicians. Reasonable notice and opportunity to be heard must be given to the claimant or the claimant's legal representative before taking unsworn statements. The claimant or claimant's legal representative has

the right to attend the taking of such unsworn statements.

Section 10. Section 766.1065, Florida Statutes, is created to read:

766.1065 Authorization for release of protected health information.—

(1) Presuit notice of intent to initiate litigation for medical negligence under s. 766.106(2) must be accompanied by an authorization for release of protected health information in the form specified by this section, authorizing the disclosure of protected health information that is potentially relevant to the claim of personal injury or wrongful death. The presuit notice is void if this authorization does not accompany the presuit notice and other materials required by s. 766.106(2).

(2) If the authorization required by this section is revoked, the presuit notice under s. 766.106(2) is deemed retroactively void from the date of issuance, and any tolling effect that the presuit notice may have had on any applicable statute-of-limitations period is retroactively rendered void.

(3) The authorization required by this section shall be in the following form and shall be construed in accordance with the "Standards for Privacy of Individually Identifiable Health Information" in 45 C.F.R. parts 160 and 164:

AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION

A. I, (...Name of patient or authorized representative...) [hereinafter "Patient"], authorize that (...Name of health care provider to whom the presuit

notice is directed...) and his/her/its insurer(s), self-insurer(s), and attorney(s) may obtain and disclose (within the parameters set out below) the protected health information described below for the following specific purposes:

1. Facilitating the investigation and evaluation of the medical negligence claim described in the accompanying presuit notice; or

2. Defending against any litigation arising out of the medical negligence claim made on the basis of the accompanying presuit notice.

B. The health information obtained, used, or disclosed extends to, and includes, the verbal as well as the written and is described as follows:

1. The health information in the custody of the following health care providers who have examined, evaluated, or treated the Patient in connection with injuries complained of after the alleged act of negligence: (List the name and current address of all health care providers). This authorization extends to any additional health care providers that may in the future evaluate, examine, or treat the Patient for the injuries complained of.

2. The health information in the custody of the following health care providers who have examined, evaluated, or treated the Patient during a period commencing 2 years before the incident which is the basis of the accompanying presuit notice.

(List the name and current address of such health care providers, if applicable.)

C. This authorization does not apply to the following list of health care providers possessing health care information about the Patient because the Patient certifies that such health care information is not potentially relevant to the claim of personal injury or wrongful death which is the basis of the accompanying presuit notice.

(List the name of each health care provider to whom this authorization does not apply and the inclusive dates of examination, evaluation, or treatment to be withheld from disclosure. If none, specify "none.")

D. The persons or class of persons to whom the Patient authorizes such health information to be disclosed or by whom such health information is to be used:

1. Any health care provider providing care or treatment for the Patient.

2. Any liability insurer or self-insurer providing liability insurance coverage, self-insurance, or defense to any health care provider to whom presuit notice is given regarding the care and treatment of the Patient.

3. Any consulting or testifying expert employed by or on behalf of (name of health care provider to whom

presuit notice was given) his/her/its insurer(s), self-insurer(s), or attorney(s) regarding to the matter of the presuit notice accompanying this authorization.

4. Any attorney (including secretarial, clerical, or paralegal staff) employed by or on behalf of (name of health care provider to whom presuit notice was given) regarding the matter of the presuit notice accompanying this authorization.

5. Any trier of the law or facts relating to any suit filed seeking damages arising out of the medical care or treatment of the Patient.

E. This authorization expires upon resolution of the claim or at the conclusion of any litigation instituted in connection with the matter of the presuit notice accompanying this authorization, whichever occurs first.

F. The Patient understands that, without exception, the Patient has the right to revoke this authorization in writing. The Patient further understands that the consequence of any such revocation is that the presuit notice under s. 766.106(2), Florida Statutes, is deemed retroactively void from the date of issuance, and any tolling effect that the presuit notice may have had on any applicable statute-of-limitations period is retroactively rendered void.

G. The Patient understands that signing this authorization is not a condition for continued treatment, payment, enrollment, or eligibility for health plan benefits.

H. The Patient understands that information used or disclosed under this authorization may be subject to additional disclosure by the recipient and may not be protected by federal HIPAA privacy regulations.

Signature of Patient/Representative: ....

Date: ....

Name of Patient/Representative: ....

Description of Representative's Authority: ....

Section 11. Subsection (2) of section 766.206, Florida Statutes, is amended to read:

766.206 Presuit investigation of medical negligence claims and defenses by court.—

(2) If the court finds that the notice of intent to initiate litigation mailed by the claimant does ~~is~~ not comply ~~in compliance~~ with the reasonable investigation requirements of ss. 766.201-766.212, including a review of the claim and a verified written medical expert opinion by an expert witness as defined in s. 766.202, or that the authorization accompanying the notice of intent required under s. 766.1065 is not completed in good faith by the claimant, the court shall dismiss the claim, and the person who mailed such notice of intent, whether the claimant or the claimant's attorney, shall be personally liable for all attorney's fees and costs incurred during the investigation and evaluation of the claim, including the reasonable attorney's fees and costs of the defendant or the defendant's insurer.

Section 12. Section 768.0981, Florida Statutes, is amended to read:

768.0981 Limitation on actions against insurers, prepaid limited health service organizations, health maintenance organizations, hospitals, or prepaid health clinics.—An entity licensed or certified under chapter 395, chapter 624, chapter 636, or chapter 641 is ~~shall~~ not ~~be~~ liable for the medical negligence of a health care provider with whom the licensed or certified entity has entered into a contract, other than an employee of such licensed or certified entity, unless the licensed or certified entity expressly directs or exercises actual control over the specific conduct that caused injury.

Section 13. This act shall take effect July 1, 2011.

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	_____

Committee/Subcommittee hearing bill: Health & Human Services Access Subcommittee

Representative Horner offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 458.3175, Florida Statutes, is created to read:

458.3175 Expert witness certificate.—

(1)(a) The department shall issue a certificate authorizing a physician who holds an active and valid license to practice medicine in another state or a province of Canada to provide expert testimony in this state, if the physician submits to the department:

1. A complete registration application containing the physician's legal name, mailing address, telephone number, business locations, the names of the jurisdictions where the physician holds an active and valid license to practice medicine, and the license number or other identifying number

issued to the physician by the jurisdiction's licensing entity; and

2. An application fee of $50.

(b) The department shall approve an application for an expert witness certificate within 7 business days after receipt of the completed application and payment of the application fee if the applicant holds an active and valid license to practice medicine in another state or a province of Canada and has not had a previous expert witness certificate revoked by the board. An application is approved by default if the department does not act upon the application within the required period. A physician must notify the department in writing of his or her intent to rely on a certificate approved by default.

(c) An expert witness certificate is valid for 2 years after the date of issuance.

(2) An expert witness certificate authorizes the physician to whom the certificate is issued to do only the following:

(a) Provide a verified written medical expert opinion as provided in s. 766.203.

(b) Provide expert testimony about the prevailing professional standard of care in connection with medical negligence litigation pending in this state against a physician licensed under this chapter or chapter 459.

(3) An expert witness certificate does not authorize a physician to engage in the practice of medicine as defined in s. 458.305. A physician issued a certificate under this section who does not otherwise practice medicine in this state is not required to obtain a license under this chapter or pay any

license fees, including, but not limited to, a neurological injury compensation assessment. An expert witness certificate shall be treated as a license in any disciplinary action, and the holder of an expert witness certificate shall be subject to discipline by the board.

Section 2. Subsection (11) is added to section 458.331, Florida Statutes, paragraphs (oo) through (qq) of subsection (1) of that section are redesignated as paragraphs (pp) through (rr), respectively, and a new paragraph (oo) is added to that subsection, to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(oo) Providing misleading, deceptive, or fraudulent expert witness testimony related to the practice of medicine.

(11) The purpose of this section is to facilitate uniform discipline for those acts made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

Section 3. Subsection (6) of section 458.351, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section, to read:

458.351 Reports of adverse incidents in office practice settings.—

(6)(a) The board shall adopt rules establishing a standard informed consent form that sets forth the recognized specific

risks related to cataract surgery. The board must propose such rules within 90 days after the effective date of this subsection.

(b) Before formally proposing the rule, the board must consider information from physicians licensed under this chapter or chapter 459 regarding recognized specific risks related to cataract surgery and the standard informed consent forms adopted for use in the medical field by other states.

(c) A patient's informed consent is not executed until the patient, or a person authorized by the patient to give consent, and a competent witness sign the form adopted by the board.

(d) An incident resulting from recognized specific risks described in the signed consent form is not considered an adverse incident for purposes of s. 395.0197 and this section.

(e) In a civil action or administrative proceeding against a physician based on his or her alleged failure to properly disclose the risks of cataract surgery, a patient's informed consent executed as provided in paragraph (c) on the form adopted by the board is admissible as evidence and creates a rebuttable presumption that the physician properly disclosed the risks.

Section 4. Section 459.0066, Florida Statutes, is created to read:

459.0066 Expert witness certificate.—

(1)(a) The department shall issue a certificate authorizing a physician who holds an active and valid license to practice osteopathic medicine in another state or a province of

Canada to provide expert testimony in this state, if the physician submits to the department:

1. A complete registration application containing the physician's legal name, mailing address, telephone number, business locations, the names of the jurisdictions where the physician holds an active and valid license to practice osteopathic medicine, and the license number or other identifying number issued to the physician by the jurisdiction's licensing entity; and

2. An application fee of $50.

(b) The department shall approve an application for an expert witness certificate within 7 business days after receipt of the completed application and payment of the application fee if the applicant holds an active and valid license to practice osteopathic medicine in another state or a province of Canada and has not had a previous expert witness certificate revoked by the board. An application is approved by default if the department does not act upon the application within the required period. A physician must notify the department in writing of his or her intent to rely on a certificate approved by default.

(c) An expert witness certificate is valid for 2 years after the date of issuance.

(2) An expert witness certificate authorizes the physician to whom the certificate is issued to do only the following:

(a) Provide a verified written medical expert opinion as provided in s. 766.203.

(b) Provide expert testimony about the prevailing professional standard of care in connection with medical

negligence litigation pending in this state against a physician licensed under chapter 458 or this chapter.

(3) An expert witness certificate does not authorize a physician to engage in the practice of osteopathic medicine as defined in s. 459.003. A physician issued a certificate under this section who does not otherwise practice osteopathic medicine in this state is not required to obtain a license under this chapter or pay any license fees, including, but not limited to, a neurological injury compensation assessment. An expert witness certificate shall be treated as a license in any disciplinary action, and the holder of an expert witness certificate shall be subject to discipline by the board.

Section 5. Subsection (11) is added to section 459.015, Florida Statutes, paragraphs (qq) through (ss) of subsection (1) of that section are redesignated as paragraphs (rr) through (tt), respectively, and a new paragraph (qq) is added to that subsection, to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(qq) Providing misleading, deceptive, or fraudulent expert witness testimony related to the practice of osteopathic medicine.

(11) The purpose of this section is to facilitate uniform discipline for those acts made punishable under this section and, to this end, a reference to this section constitutes a

general reference under the doctrine of incorporation by reference.

Section 6. Subsection (6) of section 459.026, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section, to read:

459.026 Reports of adverse incidents in office practice settings.—

(6)(a) The board shall adopt rules establishing a standard informed consent form that sets forth the recognized specific risks related to cataract surgery. The board must propose such rules within 90 days after the effective date of this subsection.

(b) Before formally proposing the rule, the board must consider information from physicians licensed under chapter 458 or this chapter regarding recognized specific risks related to cataract surgery and the standard informed consent forms adopted for use in the medical field by other states.

(c) A patient's informed consent is not executed until the patient, or a person authorized by the patient to give consent, and a competent witness sign the form adopted by the board.

(d) An incident resulting from recognized specific risks described in the signed consent form is not considered an adverse incident for purposes of s. 395.0197 and this section.

(e) In a civil action or administrative proceeding against a physician based on his or her alleged failure to properly disclose the risks of cataract surgery, a patient's informed consent executed as provided in paragraph (c) on the form adopted by the board is admissible as evidence and creates a

rebuttable presumption that the physician properly disclosed the risks.

Section 7. Paragraph (b) of subsection (1) of section 627.4147, Florida Statutes, is amended to read:

627.4147 Medical malpractice insurance contracts.—

(1) In addition to any other requirements imposed by law, each self-insurance policy as authorized under s. 627.357 or s. 624.462 or insurance policy providing coverage for claims arising out of the rendering of, or the failure to render, medical care or services, including those of the Florida Medical Malpractice Joint Underwriting Association, shall include:

~~(b)1. Except as provided in subparagraph 2., a clause authorizing the insurer or self-insurer to determine, to make, and to conclude, without the permission of the insured, any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment, if the offer is within the policy limits. It is against public policy for any insurance or self-insurance policy to contain a clause giving the insured the exclusive right to veto any offer for admission of liability and for arbitration made pursuant to s. 766.106, settlement offer, or offer of judgment, when such offer is within the policy limits. However, any offer of admission of liability, settlement offer, or offer of judgment made by an insurer or self-insurer shall be made in good faith and in the best interests of the insured.~~

~~2.a. With respect to dentists licensed under chapter 466,~~ A clause clearly stating whether or not the insured has the exclusive right to veto any offer of admission of liability and

for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment if the offer is within policy limits. An insurer or self-insurer shall not make or conclude, without the permission of the insured, any offer of admission of liability and for arbitration pursuant to s. 766.106, settlement offer, or offer of judgment, if such offer is outside the policy limits. However, any offer for admission of liability and for arbitration made under s. 766.106, settlement offer, or offer of judgment made by an insurer or self-insurer shall be made in good faith and in the best interest of the insured.

2.~~b.~~ If the policy contains a clause stating the insured does not have the exclusive right to veto any offer or admission of liability and for arbitration made pursuant to s. 766.106, settlement offer or offer of judgment, the insurer or self-insurer shall provide to the insured or the insured's legal representative by certified mail, return receipt requested, a copy of the final offer of admission of liability and for arbitration made pursuant to s. 766.106, settlement offer or offer of judgment and at the same time such offer is provided to the claimant. A copy of any final agreement reached between the insurer and claimant shall also be provided to the insurer or his or her legal representative by certified mail, return receipt requested not more than 10 days after affecting such agreement.

Section 8. Subsections (3), (4), and (5) of section 766.102, Florida Statutes, are amended, subsection (12) of that section is renumbered as subsection (14), and new subsections (12) and (13) are added to that section, to read:

766.102 Medical negligence; standards of recovery; expert witness.—

(3)(a) As used in this subsection, the term:

1. "Insurer" means any public or private insurer, including the Centers for Medicare and Medicaid Services.

2. "Reimbursement determination" means an insurer's determination of the amount that the insurer will reimburse a health care provider for health care services.

3. "Reimbursement policies" means an insurer's policies and procedures governing its decisions regarding health insurance coverage and method of payment and the data upon which such policies and procedures are based, including, but not limited to, data from national research groups and other patient safety data as defined in s. 766.1016.

(b) The existence of a medical injury does shall not create any inference or presumption of negligence against a health care provider, and the claimant must maintain the burden of proving that an injury was proximately caused by a breach of the prevailing professional standard of care by the health care provider. Any records, policies, or testimony of an insurer's reimbursement policies or reimbursement determination regarding the care provided to the plaintiff are not admissible as evidence in any medical negligence action. However, the discovery of the presence of a foreign body, such as a sponge, clamp, forceps, surgical needle, or other paraphernalia commonly used in surgical, examination, or diagnostic procedures, shall be prima facie evidence of negligence on the part of the health care provider.

(4)(a) The Legislature is cognizant of the changing trends and techniques for the delivery of health care in this state and the discretion that is inherent in the diagnosis, care, and treatment of patients by different health care providers. The failure of a health care provider to order, perform, or administer supplemental diagnostic tests is shall not be actionable if the health care provider acted in good faith and with due regard for the prevailing professional standard of care.

(b) In an action for damages based on death or personal injury which alleges that such death or injury resulted from the failure of a health care provider to order, perform, or administer supplemental diagnostic tests, the claimant has the burden of proving by clear and convincing evidence that the alleged actions of the health care provider represented a breach of the prevailing professional standard of care.

(5) A person may not give expert testimony concerning the prevailing professional standard of care unless the ~~that~~ person is a ~~licensed~~ health care provider who holds an active and valid license and conducts a complete review of the pertinent medical records and meets the following criteria:

(a) If the health care provider against whom or on whose behalf the testimony is offered is a specialist, the expert witness must:

1. Specialize in the same specialty as the health care provider against whom or on whose behalf the testimony is offered; or specialize in a similar specialty that includes the evaluation, diagnosis, or treatment of the medical condition

that is the subject of the claim and have prior experience treating similar patients; and

2. Have devoted professional time during the 5 3 years immediately preceding the date of the occurrence that is the basis for the action to:

a. The active clinical practice of, or consulting with respect to, the same or similar specialty that includes the evaluation, diagnosis, or treatment of the medical condition that is the subject of the claim and have prior experience treating similar patients;

b. Instruction of students in an accredited health professional school or accredited residency or clinical research program in the same or similar specialty; or

c. A clinical research program that is affiliated with an accredited health professional school or accredited residency or clinical research program in the same or similar specialty.

(b) If the health care provider against whom or on whose behalf the testimony is offered is a general practitioner, the expert witness must have devoted professional time during the 5 years immediately preceding the date of the occurrence that is the basis for the action to:

1. The active clinical practice or consultation as a general practitioner;

2. The instruction of students in an accredited health professional school or accredited residency program in the general practice of medicine; or

3. A clinical research program that is affiliated with an accredited medical school or teaching hospital and that is in the general practice of medicine.

(c) If the health care provider against whom or on whose behalf the testimony is offered is a health care provider other than a specialist or a general practitioner, the expert witness must have devoted professional time during the 5 3 years immediately preceding the date of the occurrence that is the basis for the action to:

1. The active clinical practice of, or consulting with respect to, the same or similar health profession as the health care provider against whom or on whose behalf the testimony is offered;

2. The instruction of students in an accredited health professional school or accredited residency program in the same or similar health profession in which the health care provider against whom or on whose behalf the testimony is offered; or

3. A clinical research program that is affiliated with an accredited medical school or teaching hospital and that is in the same or similar health profession as the health care provider against whom or on whose behalf the testimony is offered.

(12) If a physician licensed under chapter 458 or chapter 459 is the party against whom, or on whose behalf, expert testimony about the prevailing professional standard of care is offered, the expert witness must be licensed under chapter 458 or chapter 459 or possess a valid expert witness certificate issued under s. 458.3175 or s. 459.0066.

(13) If a dentist licensed under chapter 466 is the party against whom, or on whose behalf, expert testimony about the prevailing professional standard of care is offered, the expert witness must be licensed under chapter 466 or possess a valid expert witness certificate issued under s. 466.005.

(14) A health care provider's failure to comply with or breach of any federal requirement is not admissible as evidence in any medical negligence case in this state.

Section 9. Paragraph (a) of subsection (2), subsection (5), and paragraph (b) of subsection (6) of section 766.106, Florida Statutes, are amended to read:

766.106 Notice before filing action for medical negligence; presuit screening period; offers for admission of liability and for arbitration; informal discovery; review.—

(2) PRESUIT NOTICE.—

(a) After completion of presuit investigation pursuant to s. 766.203(2) and prior to filing a complaint for medical negligence, a claimant shall notify each prospective defendant by certified mail, return receipt requested, of intent to initiate litigation for medical negligence. Notice to each prospective defendant must include, if available, a list of all known health care providers seen by the claimant for the injuries complained of subsequent to the alleged act of negligence, all known health care providers during the 2-year period prior to the alleged act of negligence who treated or evaluated the claimant, and copies of all of the medical records relied upon by the expert in signing the affidavit, and the executed authorization form provided in s. 766.1065. ~~The~~

~~requirement of providing the list of known health care providers may not serve as grounds for imposing sanctions for failure to provide presuit discovery.~~

(5) DISCOVERY AND ADMISSIBILITY.—A No statement, discussion, written document, report, or other work product generated by the presuit screening process is not discoverable or admissible in any civil action for any purpose by the opposing party. All participants, including, but not limited to, physicians, investigators, witnesses, and employees or associates of the defendant, are immune from civil liability arising from participation in the presuit screening process. This subsection does not prevent a physician licensed under chapter 458 or chapter 459 or a dentist licensed under chapter 466 who submits a verified written expert medical opinion from being subject to denial of a license or disciplinary action under s. 458.331(1)(oo), s. 459.015(1)(qq) or s. 466.028(1)(ll).

(6) INFORMAL DISCOVERY.—

(b) Informal discovery may be used by a party to obtain unsworn statements, the production of documents or things, and physical and mental examinations, as follows:

1. Unsworn statements.—Any party may require other parties to appear for the taking of an unsworn statement. Such statements may be used only for the purpose of presuit screening and are not discoverable or admissible in any civil action for any purpose by any party. A party desiring to take the unsworn statement of any party must give reasonable notice in writing to all parties. The notice must state the time and place for taking the statement and the name and address of the party to be

examined. Unless otherwise impractical, the examination of any party must be done at the same time by all other parties. Any party may be represented by counsel at the taking of an unsworn statement. An unsworn statement may be recorded electronically, stenographically, or on videotape. The taking of unsworn statements is subject to the provisions of the Florida Rules of Civil Procedure and may be terminated for abuses.

2. Documents or things.—Any party may request discovery of documents or things. The documents or things must be produced, at the expense of the requesting party, within 20 days after the date of receipt of the request. A party is required to produce discoverable documents or things within that party's possession or control. Medical records shall be produced as provided in s. 766.204.

3. Physical and mental examinations.—A prospective defendant may require an injured claimant to appear for examination by an appropriate health care provider. The prospective defendant shall give reasonable notice in writing to all parties as to the time and place for examination. Unless otherwise impractical, a claimant is required to submit to only one examination on behalf of all potential defendants. The practicality of a single examination must be determined by the nature of the claimant's condition, as it relates to the liability of each prospective defendant. Such examination report is available to the parties and their attorneys upon payment of the reasonable cost of reproduction and may be used only for the purpose of presuit screening. Otherwise, such examination report

is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

4. Written questions.—Any party may request answers to written questions, the number of which may not exceed 30, including subparts. A response must be made within 20 days after receipt of the questions.

5. Ex parte interviews of treating health care providers.—A prospective defendant or his or her legal representative may interview the claimant's treating health care providers without notice to or the presence of the claimant or the claimant's legal representative.

6.~~5.~~ Unsworn statements of treating health care providers ~~Medical information release.—The claimant must execute a medical information release that allows~~ A prospective defendant or his or her legal representative may also ~~to~~ take unsworn statements of the claimant's treating health care providers ~~physicians~~. The statements must be limited to those areas that are potentially relevant to the claim of personal injury or wrongful death. Subject to the procedural requirements of subparagraph 1., a prospective defendant may take unsworn statements from a claimant's treating physicians. Reasonable notice and opportunity to be heard must be given to the claimant or the claimant's legal representative before taking unsworn statements. The claimant or claimant's legal representative has the right to attend the taking of such unsworn statements.

Section 10. Section 766.1065, Florida Statutes, is created to read:

766.1065 Authorization for release of protected health information.—

(1) Presuit notice of intent to initiate litigation for medical negligence under s. 766.106(2) must be accompanied by an authorization for release of protected health information in the form specified by this section, authorizing the disclosure of protected health information that is potentially relevant to the claim of personal injury or wrongful death. The presuit notice is void if this authorization does not accompany the presuit notice and other materials required by s. 766.106(2).

(2) If the authorization required by this section is revoked, the presuit notice under s. 766.106(2) is deemed retroactively void from the date of issuance, and any tolling effect that the presuit notice may have had on any applicable statute-of-limitations period is retroactively rendered void.

(3) The authorization required by this section shall be in the following form and shall be construed in accordance with the "Standards for Privacy of Individually Identifiable Health Information" in 45 C.F.R. parts 160 and 164:

AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION

A. I, (...Name of patient or authorized representative...) [hereinafter "Patient"], authorize that (...Name of health care provider to whom the presuit notice is directed...) and his/her/its insurer(s), self-insurer(s), and attorney(s) may obtain and disclose (within the parameters set out below) the

protected health information described below for the following specific purposes:

1. Facilitating the investigation and evaluation of the medical negligence claim described in the accompanying presuit notice; or

2. Defending against any litigation arising out of the medical negligence claim made on the basis of the accompanying presuit notice.

B. The health information obtained, used, or disclosed extends to, and includes, the verbal as well as the written and is described as follows:

1. The health information in the custody of the following health care providers who have examined, evaluated, or treated the Patient in connection with injuries complained of after the alleged act of negligence: (List the name and current address of all health care providers). This authorization extends to any additional health care providers that may in the future evaluate, examine, or treat the Patient for the injuries complained of.

2. The health information in the custody of the following health care providers who have examined, evaluated, or treated the Patient during a period commencing 2 years before the incident which is the basis of the accompanying presuit notice.

(List the name and current address of such health care providers, if applicable.)

C. This authorization does not apply to the following list of health care providers possessing health care information about the Patient because the Patient certifies that such health care information is not potentially relevant to the claim of personal injury or wrongful death which is the basis of the accompanying presuit notice.

(List the name of each health care provider to whom this authorization does not apply and the inclusive dates of examination, evaluation, or treatment to be withheld from disclosure. If none, specify "none.")

D. The persons or class of persons to whom the Patient authorizes such health information to be disclosed or by whom such health information is to be used:

1. Any health care provider providing care or treatment for the Patient.

2. Any liability insurer or self-insurer providing liability insurance coverage, self-insurance, or defense to any health care provider to whom presuit notice is given regarding the care and treatment of the Patient.

3. Any consulting or testifying expert employed by or on behalf of (name of health care provider to whom presuit notice was given) his/her/its insurer(s), self-insurer(s), or attorney(s) regarding to the matter of the presuit notice accompanying this authorization.

4. Any attorney (including secretarial, clerical, or paralegal staff) employed by or on behalf of (name of health

care provider to whom presuit notice was given) regarding the matter of the presuit notice accompanying this authorization.

5. Any trier of the law or facts relating to any suit filed seeking damages arising out of the medical care or treatment of the Patient.

E. This authorization expires upon resolution of the claim or at the conclusion of any litigation instituted in connection with the matter of the presuit notice accompanying this authorization, whichever occurs first.

F. The Patient understands that, without exception, the Patient has the right to revoke this authorization in writing. The Patient further understands that the consequence of any such revocation is that the presuit notice under s. 766.106(2), Florida Statutes, is deemed retroactively void from the date of issuance, and any tolling effect that the presuit notice may have had on any applicable statute-of-limitations period is retroactively rendered void.

G. The Patient understands that signing this authorization is not a condition for continued treatment, payment, enrollment, or eligibility for health plan benefits.

H. The Patient understands that information used or disclosed under this authorization may be subject to additional disclosure by the recipient and may not be protected by federal HIPAA privacy regulations.

Signature of Patient/Representative: ....
Date: ....
Name of Patient/Representative: ....

Description of Representative's Authority: ....

Section 11. Subsection (2) of section 766.206, Florida Statutes, is amended to read:

766.206 Presuit investigation of medical negligence claims and defenses by court.—

(2) If the court finds that the notice of intent to initiate litigation mailed by the claimant does ~~is~~ not comply ~~in compliance~~ with the reasonable investigation requirements of ss. 766.201-766.212, including a review of the claim and a verified written medical expert opinion by an expert witness as defined in s. 766.202, or that the authorization accompanying the notice of intent required under s. 766.1065 is not completed in good faith by the claimant, the court shall dismiss the claim, and the person who mailed such notice of intent, whether the claimant or the claimant's attorney, shall be personally liable for all attorney's fees and costs incurred during the investigation and evaluation of the claim, including the reasonable attorney's fees and costs of the defendant or the defendant's insurer.

Section 12. Section 768.0981, Florida Statutes, is amended to read:

768.0981 Limitation on actions against insurers, prepaid limited health service organizations, health maintenance organizations, hospitals, or prepaid health clinics.—An entity licensed or certified under chapter 395, chapter 624, chapter 636, or chapter 641 is ~~shall~~ not ~~be~~ liable for the medical negligence of a health care provider with whom the licensed or certified entity has entered into a contract, other than an

employee of such licensed or certified entity, unless the licensed or certified entity expressly directs or exercises actual control over the specific conduct that caused injury.

Section 13. Section 466.005, Florida Statutes, is created to read:

466.005 Expert witness certificate.—

(1)(a) The department shall issue a certificate authorizing a dentist who holds an active and valid license to practice dentistry in another state or a province of Canada to provide expert testimony in this state, if the dentist submits to the department:

1. A complete registration application containing the dentist's legal name, mailing address, telephone number, business locations, the names of the jurisdictions where the dentist holds an active and valid license to practice dentistry, and the license number or other identifying number issued to the dentist by the jurisdiction's licensing entity; and

2. An application fee of $50.

(b) The department shall approve an application for an expert witness certificate within 7 business days after receipt of the completed application and payment of the application fee if the applicant holds an active and valid license to practice dentistry in another state or a province of Canada and has not had a previous expert witness certificate revoked by the board. An application is approved by default if the department does not act upon the application within the required period. A dentist must notify the department in writing of his or her intent to rely on a certificate approved by default.

(c) An expert witness certificate is valid for 2 years after the date of issuance.

(2) An expert witness certificate authorizes the dentist to whom the certificate is issued to do only the following:

(a) Provide a verified written medical expert opinion as provided in s. 766.203.

(b) Provide expert testimony about the prevailing professional standard of care in connection with medical negligence litigation pending in this state against a dentist licensed under this chapter.

(3) An expert witness certificate does not authorize a dentist to engage in the practice of dentistry as defined in s. 466.003. A dentist issued a certificate under this section who does not otherwise practice dentistry in this state is not required to obtain a license under this chapter or pay any license fees. An expert witness certificate shall be treated as a license in any disciplinary action, and the holder of an expert witness certificate shall be subject to discipline by the board.

Section 14. Subsection (11) is added to section 466.028, Florida Statutes, paragraph (ll) of subsection (1) of that section is redesignated as paragraphs (mm), and a new paragraph (ll) is added to that subsection, to read:

466.028 Grounds for disciplinary action; action by the board—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(11) Providing misleading, deceptive, or fraudulent expert witness testimony related to the practice of dentistry.

(8) The purpose of this section is to facilitate uniform discipline for those acts made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

Section 15. This act shall take effect July 1, 2011.

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

Between lines 53 and 54, insert:

creating s. 466.005, F.S.; requiring the Department of Health to issue expert witness certificates to certain dentists licensed outside of the state; providing application and certification requirements; establishing application fees; providing for the validity and use of certifications; exempting dentists issued certifications from certain licensure and fee requirements; amending s. 466.028, F.S.; providing additional acts that constitute grounds for denial of a license or disciplinary action to which penalties apply; providing construction with respect to the doctrine of incorporation by reference;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 935 Health Care Price Transparency
SPONSOR(S): Corcoran and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Poche	Schoolfield
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

This bill amends s. 381.026, F.S., requiring primary care physicians to publish a schedule of charges for medical services that they offer and to post this schedule in the reception area of their office. A penalty is applicable to a primary care physician who does not comply with the publish and post requirements. This requirement applies to primary care providers licensed as physicians, osteopathic physicians, and podiatric physicians.

The bill appears to have an indeterminate fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation:

Florida Patient's Bill of Rights and Responsibilities

In 1991, s. 381.026, F.S., enacted the Florida Patient's Bill of Rights and Responsibilities.[1] The statute established the right of patients to expect medical providers to observe standards of care in providing medical treatment and communicating with their patients.[2] The standards of care include, but are not limited to, the following aspects of medical treatment and patient communication:

- Individual dignity
- Provision of information
- Financial information and the disclosure of financial information
- Access to health care
- Experimental research
- Patient's knowledge of rights and responsibilities

Pursuant to the section relating to financial information and disclosure of financial information, a patient has the right to request certain financial information from health care providers and facilities.[3] Specifically, upon request, a health care provider or health care facility must provide a person with a reasonable estimate of the cost of medical treatment prior to the provision of treatment.[4] Estimates are required to be written in language "comprehensible to an ordinary layperson."[5] The reasonable estimate does not preclude the health care provider or health care facility from exceeding the estimate or making additional charges as the patient's needs or medical condition warrant.[6] A patient has the right to receive a copy of an itemized bill upon request and to receive an explanation of charges upon request.[7]

Current Price Transparency for Health Care in Florida

While a health care provider or health care facility is required to provide a reasonable estimate of charges for non-emergency medical treatment to a patient, there is no requirement that the estimate comply with posted charges for medical treatment. In fact, there is no statutory requirement that a physician post a schedule of his or her fees for medical services. However, several health care providers currently post their fees for a wide variety of medical services, including urgent care treatment, immunizations, and physical examinations.[8]

In addition, the Agency for Health Care Administration (AHCA) has established, by statute, the Florida Center for Health Information and Policy Analysis (the Center).[9] The Center was required to create "a comprehensive health information system to provide for the collection, compilation, coordination, analysis, indexing, dissemination, and utilization of both purposefully collected and extant health-

---

[1] *See* s. 1, Ch.91-127, Laws of Fla. (1991).
[2] S. 381.026(3), F.S.
[3] S. 381.026(4)(c), F.S.
[4] S. 381.026(4)(c)3., F.S.
[5] *Id.*
[6] *Id.*
[7] S. 381.026(4)(c)5., F.S.
[8] *See* http://www.solantic.com, Solantic Walk-In Urgent Care Center with locations in Northeast Florida, Gainesville/Ocala, Orlando, Treasure Coast, and South Florida; http://lwruc.com/selfpaycosts.shtml, Lakewood Ranch Urgent Care Walk-In Clinic located in Bradenton, FL; http://walkinclinicoralsprings.com/feeschedule.html, Coral Medical Care Urgent Care/Walk-In Clinic located in Coral Springs, FL.
[9] S. 408.05, F.S.

related data and statistics."[10] Specifically, the Center has developed a plan to make available to consumers health care quality measures and financial data of physicians, health care facilities, and other entities to enable the comparison of health care services.[11] The plan includes certain health care quality measures such as average patient charges, the average of undiscounted charges on frequently performed procedures and preventive diagnostic procedures, and a range of charges for procedures from highest to lowest.[12][13][14] As a result, there is some level of price transparency required by statute requiring medical services provided in hospitals within the state.

Proposed Changes:

This bill requires a primary care provider to publish and post the schedule of medical services that he or she provides and the cost for each service. A primary care provider is defined as a health care provider who provides medical services to patients which are commonly provided without a referral from another health care provider. The schedule must be posted in a conspicuous location in the reception area of the provider's office.

The bill requires the posted charges to consist of those fees that would be charged to an uninsured patient paying for medical services by cash, check, credit card, or debit card. Upon request, a primary care provider must provide a reasonable estimate for non-emergency medical treatment to patient. The bill requires that the estimate be consistent with the posted schedule of charges.

The bill requires a penalty to be assessed against a primary care provider who fails to publish and post his or her schedule of charges. The penalty will be determined by the appropriate regulatory board- the Board of Medicine, the Board of Osteopathic Medicine, or the Board of Podiatric Medicine. DOH will amend the disciplinary guidelines of the appropriate board to allow for imposition of the new penalty.[15]

This bill contains a provision providing that the references to the disciplinary statutes constitute a general reference under the doctrine of incorporation by reference.[16] The inclusion of this language means that future amendments to the disciplinary statutes will apply to the statutes that reference them.

B. SECTION DIRECTORY:

Section 1: Amends s. 381.026, F.S., relating to Florida Patient's Bill of Rights and Responsibilities.
Section 2: Amends s. 458.331, F.S., relating to grounds for disciplinary action; action by the board and department.
Section 3: Amends s. 459.015, F.S., relating to grounds for disciplinary action; action by the board and department.
Section 4: Amends s. 461.013, F.S., relating to grounds for disciplinary action; action by the board; investigations by department.
Section 5: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

---

[10] S. 408.05(1), F.S.
[11] S. 408.05(3)(k), F.S.
[12] S. 408.05(3)(k)1., F.S.
[13] *See* 2009 Hospital Financial Data, AHCA, data compiled September 2, 2010- available at http://ahca.myflorida.com/MCHQ/CON_FA/Publications/index.shtml (includes the most recent financial data for hospitals, including costs of daily hospital services, ambulatory services, and other total patient charges)
[14] *See* http://www.floridahealthfinder.gov/CompareCare/CompareFacilities.aspx (provides the range of charges for specific procedures at various facilities throughout Florida, broken down by category, condition or procedure, and age group).
[15] *See* Bill Analysis, Economic Statement and Fiscal Note for HB 935, Department of Health, March 9, 2011; *see also* s. 456.079, F.S.
[16] A general reference presumes that the referenced section may be amended in the future and would include subsequent changes to the referenced law. *See* Earnest Means, "Statutory Cross References - The "Loose Cannon" of Statutory Construction," Florida State University Law Review, Vol. 9, p. 3 (1981).

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Health states that additional workload could result from additional complaints about, investigations of, and discipline cases against medical doctors, osteopathic physicians, and podiatric physicians who meet the definition of "primary care provider" and fail to comply with the publishing and posting requirement established by the bill. The fiscal impact of the potential increase in workload is unknown and indeterminate.[17]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Primary care providers impacted by this bill may incur costs for publishing and posting the required cost schedule. Additionally, primary care providers who do not comply with the publishing and posting requirement established by this bill will be assessed penalties by the applicable board for non-compliance.

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.

[17] Bill Analysis, Economic Statement and Fiscal Note for HB 935, Department of Health, March 9, 2011.

B. RULE-MAKING AUTHORITY:

The Department of Health has appropriate rulemaking authority to establish rules as necessary to implement the provisions of this bill.[18]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[18] *See* s. 458.309, F.S. (granting rulemaking authority to the Board of Medicine), s. 459.005, F.S. (granting rulemaking authority to the Board of Osteopathic Medicine), and s. 461.005, F.S. (granting rulemaking authority to the Board of Podiatric Medicine).

A bill to be entitled

An act relating to health care price transparency; amending s. 381.026, F.S.; providing a definition; requiring primary care providers to publish and post a schedule of certain charges for medical services offered to patients; requiring a primary care provider's estimates of charges for medical services to be consistent with the posted schedule; amending ss. 458.331, 459.015, and 461.013, F.S.; providing additional acts that constitute grounds for denial of a license or disciplinary action against certain physicians, osteopathic physicians, or podiatric physicians, to which penalties apply; providing construction with respect to the doctrine of incorporation by reference; providing an effective date.

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

Section 1. Subsection (2) and paragraph (c) of subsection (4) of section 381.026, Florida Statutes, are amended to read:

381.026 Florida Patient's Bill of Rights and Responsibilities.—

(2) DEFINITIONS.—As used in this section and s. 381.0261, the term:

(a) "Department" means the Department of Health.

(b) "Health care facility" means a facility licensed under chapter 395.

(c) "Health care provider" means a physician licensed under chapter 458, an osteopathic physician licensed under

chapter 459, or a podiatric physician licensed under chapter 461.

(d) "Primary care provider" means a health care provider who provides medical services to patients which are commonly provided without referral from another health care provider, including family and general practice, general pediatrics, obstetrics and gynecology, and general internal medicine.

(e) ~~(d)~~ "Responsible provider" means a health care provider who is primarily responsible for patient care in a health care facility or provider's office.

(4) RIGHTS OF PATIENTS.—Each health care facility or provider shall observe the following standards:

(c) Financial information and disclosure.—

1. A patient has the right to be given, upon request, by the responsible provider, his or her designee, or a representative of the health care facility full information and necessary counseling on the availability of known financial resources for the patient's health care.

2. A health care provider or a health care facility shall, upon request, disclose to each patient who is eligible for Medicare, before ~~in advance of~~ treatment, whether the health care provider or the health care facility in which the patient is receiving medical services accepts assignment under Medicare reimbursement as payment in full for medical services and treatment rendered in the health care provider's office or health care facility.

3. A primary care provider shall publish a schedule of charges for the medical services that the provider offers to

patients. The schedule must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be posted in a conspicuous place in the reception area of the provider's office.

4.~~3.~~ A health care provider or a health care facility shall, upon request, furnish a person, before the ~~prior to~~ provision of medical services, a reasonable estimate of charges for such services. The health care provider or the health care facility shall provide an uninsured person, before ~~prior to~~ the provision of a planned nonemergency medical service, a reasonable estimate of charges for such service and information regarding the provider's or facility's discount or charity policies for which the uninsured person may be eligible. Such estimates by a primary care provider must be consistent with the schedule posted under subparagraph 3. Estimates shall, to the extent possible, be written in a language comprehensible to an ordinary layperson. Such reasonable estimate does ~~shall~~ not preclude the health care provider or health care facility from exceeding the estimate or making additional charges based on changes in the patient's condition or treatment needs.

5.~~4.~~ Each licensed facility not operated by the state shall make available to the public on its Internet website or by other electronic means a description of and a link to the performance outcome and financial data that is published by the agency pursuant to s. 408.05(3)(k). The facility shall place a notice in the reception area that such information is available electronically and the website address. The licensed facility

may indicate that the pricing information is based on a compilation of charges for the average patient and that each patient's bill may vary from the average depending upon the severity of illness and individual resources consumed. The licensed facility may also indicate that the price of service is negotiable for eligible patients based upon the patient's ability to pay.

6.~~5.~~ A patient has the right to receive a copy of an itemized bill upon request. A patient has a right to be given an explanation of charges upon request.

Section 2. Paragraph (rr) is added to subsection (1) of section 458.331, Florida Statutes, and subsection (11) is added to that section, to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(rr) Failing to publish or post a schedule of charges for the medical services offered to patients as required in s. 381.026(4)(c)3. This paragraph applies only to a physician who is a "primary care provider" as defined in s. 381.026(2).

(11) The purpose of this section is to facilitate uniform discipline for those acts made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

Section 3. Paragraph (tt) is added to subsection (1) of section 459.015, Florida Statutes, and subsection (11) is added to that section, to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(tt) Failing to publish or post a schedule of charges for the medical services offered to patients as required in s. 381.026(4)(c)3. This paragraph applies only to an osteopathic physician who is a "primary care provider" as defined in s. 381.026(2).

(11) The purpose of this section is to facilitate uniform discipline for those acts made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

Section 4. Paragraph (dd) is added to subsection (1) of section 461.013, Florida Statutes, and subsection (7) is added to that section, to read:

461.013 Grounds for disciplinary action; action by the board; investigations by department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(dd) Failing to publish or post a schedule of charges for the medical services offered to patients as required in s. 381.026(4)(c)3. This paragraph applies only to a podiatric

physician who is a "primary care provider" as defined in s. 381.026(2).

(7) The purpose of this section is to facilitate uniform discipline for those acts made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

Section 5. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 49 Massage Therapy
SPONSOR(S): Fresen
TIED BILLS: **IDEN./SIM. BILLS:** SB 584

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Holt	Schoolfield
2) Business & Consumer Affairs Subcommittee			
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill allows an individual to hold a temporary massage therapy permit for up to 6 months without taking the licensure exam if he or she attended a massage school accredited by an organization that specializes in massage therapy education. A temporary permittee can practice massage therapy only under the supervision of a licensed massage therapist. If the temporary permittee takes the exam and fails prior to the end of the six months, then the temporary permit expires at that time.

According to the U.S. Department of Education, the only organization recognized as a "specialized accrediting agency" for massage therapy education is the Commission on Massage Therapy Accreditation (COMTA). Currently, there are five schools located in Florida that are COMTA-accredited.

According to the Department of Health, there currently is no avenue for a massage therapist to apply for a temporary permit. Additionally, a qualified applicant for licensure may take a board approved massage therapy exam anytime since the examination is computer-based and is available on a daily basis. The department estimates that 240 applicants may apply for a temporary permit.

The bill has an insignificant positive fiscal impact to the Medical Quality Assurance Trust fund within the Department of Health and no fiscal impact to local governments. (See Fiscal Comments.)

The bill takes effect July 1, 2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The American Massage Therapy Association estimates that there are 280,000 to 320,000 massage therapists and massage school students in the United States.[1] Massage is the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not the manipulation is aided by hydrotherapy, including colonic irrigation[2], or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.[3]

Massage therapist are licensed and regulated by the Department of Health (department), Board of Massage Therapy (board). Currently, there are 26,127 individuals who hold an active in-state license as a massage therapist in Florida. [4] As of June 30, 2010, there were 4,661 in state delinquent massage therapy licenses.[5] And the Florida Board of Massage therapy received 208 complaints of unlicensed activity[6] from July 1, 2009 to June 30, 2010.[7] All massage therapists are required to renew their licenses on or before August 31 of each biennial year.[8] The fee for licensure is $105, which also includes a fee for unlicensed activity.[9]

Effect of the Bill

Currently, an individual is qualified for an active license as a massage therapist in Florida if the individual:[10]

- Is at least 18 years of age;
- Submits a completed application on form DH-MQA 1115, "Application For Licensure," (Rev. 10/09);
- Pays the $50 non-refundable application fee[11];
- Completes the HIV/AIDS course requirement[12];
- Completes a course relating to the prevention of medical errors[13];
- Has completed a course of study at a board approved massage school or completed an apprenticeship program that meets the standards adopted by the board;
- Has received a passing grade on national examination approved by the board.

The board has approved the following national examinations:

- National Certification Board for Therapeutic Massage and Bodywork Examination;
- National Certification Examination for Therapeutic Massage;

---

[1] American Massage Therapy Association, 2011 Massage Therapy Industry Fact Sheet, *available* at: http://www.amtamassage.org/articles/2/PressRelease/detail/2320 (last viewed March 4, 2011).
[2] A method of hydrotherapy used to cleanse the colon with the aid of a mechanical device and water. *See* s. 480.033(6), F.S.
[3] s. 480.033(3), F.S.
[4] Department of Health, Division of Medical Quality Assurance, Annual Report for July 1, 2009 to June 30, 2010, *available* at: http://www.doh.state.fl.us/mqa/reports.htm (last viewed March 4, 2011).
[5] *Id.*
[6] An individual may only practice a profession if the individual holds an active license. *See* s. 456.036(1), F.S.
[7] *Id.*
[8] Rule 64B7-28.001, F.A.C.
[9] Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 49, dated January 10, 2011.
[10] s. 480.041(1), F.S. and Rule 64B7-25.001, F.A.C
[11] Rule 64B7-27.002, F.A.C.
[12] Rule 64B7-25.0012, F.A.C.;
[13] s. 456.013(7), F.S.

- National Exam for State Licensure option administered by the National Certification Board for Therapeutic Massage and Bodywork; and
- The Massage and Bodywork Licensing Examination administered by the Federation of State Massage Therapy Boards.

According to the department, an individual may take the massage licensure examination anytime since the examination is computer-based and is available on a daily basis.[14] After an individual completes all the application requirements for licensure, a license is issued by the department within 30 days of receiving the application and a passing score on the national examination.[15]

The bill allows an individual to hold a temporary massage therapy permit for up to 6 months without taking the licensure exam if he attended a massage school accredited by an organization that specializes in massage therapy education. A temporary permittee can practice massage therapy only under the supervision of a licensed massage therapist. If the temporary permittee takes the exam and fails prior to the end of the six months, then the temporary permit expires at that time.

According to the U.S. Department of Education, the only organization recognized as a "specialized accrediting agency" for massage therapy education is the Commission on Massage Therapy Accreditation (COMTA).[16]

According to COMTA, there are five schools located in Florida that are COMTA-accredited:[17]

1. Educating Hands School of Massage (Miami)
2. Florida Academy (Fort Meyers)
3. Florida College of Natural Health (Pompano Beach, Bradenton, Maitland, and Miami campuses)
4. Florida School of Massage (Gainesville)
5. Sarasota School of Massage Therapy (Sarasota)

The placement rates for COMTA accredited schools during 2009-2010 range from 42 percent to 90 percent, with an average placement rate of 69 percent. The total number of graduates from these schools during the same period was 668 students.[18]

According to the Florida Department of Education there are 76 licensed massage therapy schools in Florida.[19] According to the department, currently there is no avenue for a massage therapist to apply for a temporary permit.[20] The department estimates that 240 applicants may apply for a temporary permit.[21] But this number may increase if more schools or programs obtain accreditation.

The bill authorizes the department to set a fee for a temporary massage therapy permit not to exceed $50.

B. SECTION DIRECTORY:

Section 1. Amends s. 480.041, F.S., relating to massage therapist qualifications, licensure, and endorsement.
Section 2. Amends s. 480.044, F.S., relating to the disposition of fees.
Section 3. Provides an effective date of July 1, 2011.

---

[14] Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 49, dated January 10, 2011.
[15] *Id.*
[16] U.S. Department of Education, Office of Postsecondary Education, The Database of Accredited Postsecondary Institutions and Programs, *available* at: http://www.ope.ed.gov/accreditation/Search.aspx (last viewed March 4, 2011).
[17] Commission on Massage Therapy, Directory of Schools & Programs, *available* at: http://www.comta.org/directory.php (last viewed March 4, 2011).
[18] Email correspondence with DOE staff on file with the Health & Human Services Access Subcommittee staff (dated March 4, 2011).
[19] *Id.*
[20] Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 49, dated January 10, 2011.
[21] *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The department estimates that 240 individuals may apply for a temporary permit. The bill authorizes a fee not to exceed $50 to be charged for a temporary permit resulting in a potential positive impact to the Medical Quality Assurance Trust Fund of $12,000 annually.

There will be cost associated with updating the COMPASS licensure database to capture the temporary permit category; and issuing and monitoring the temporary permit for compliance with the six month time limitation. However, the authorized $50 temporary permit fee will cover the projected costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The department has sufficient authority to promulgate rules to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 23, the bill provides exemptions for licensure qualifications and references s. 480.041(4)(b) and (c), F.S. The provisions in (4), provides the board the authority to adopt rules and does not address qualifications for licensure. Therefore, (4)(b), provides the department the authority to adopt rules to set the educational standards, examination, and certification for the practice of colonic irrigation.

Furthermore, (4)(c) provides the department the authority to specify licensing procedures individuals desiring to be licensed in this state via licensure by endorsement.[22]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[22] Licensees from another state, territory, or jurisdiction of the United States or any foreign national jurisdiction may be eligible for licensure by endorsement providing that the individual possesses credentials and qualifications which are substantially similar to, equivalent to, or more stringent than the standards required in Florida.

A bill to be entitled

An act relating to massage therapy; amending s. 480.041, F.S.; authorizing the Board of Massage Therapy to issue temporary permits to applicants who meet certain qualifications to practice massage therapy; providing for the expiration of temporary permits; providing limitations; amending s. 480.044, F.S.; providing for a temporary permit fee; providing an effective date.

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

Section 1. Subsection (5) is added to section 480.041, Florida Statutes, to read:

480.041 Massage therapists; qualifications; temporary permits; licensure; endorsement.—

(5)(a) The board may issue a temporary permit to practice massage therapy to an applicant who:

1. Graduates from a school that is accredited by an accrediting agency recognized by the United States Department of Education for the agency's specialization in accrediting massage therapy education.

2. Meets all of the qualifications for licensure under this section, except for paragraphs (1)(c), (4)(b), and (4)(c).

(b) If an applicant desires to practice massage therapy before becoming licensed by examination and completes a course of study at a board-approved massage school, the applicant may apply for a temporary permit in accordance with rules adopted under this chapter.

(c) A temporary permit is valid for 6 months after issuance by the board or until the applicant fails the massage licensure examination or receives a massage therapist license, whichever occurs first.

(d) An applicant for licensure by examination who practices under a temporary permit may only practice massage therapy under the supervision of a licensed massage therapist who has a full, active, and unencumbered license.

Section 2. Paragraph (m) is added to subsection (1) of section 480.044, Florida Statutes, to read:

480.044 Fees; disposition.—

(1) The board shall set fees according to the following schedule:

(m) Temporary permit fee: not to exceed $50.

Section 3. This act shall take effect July 1, 2011.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED __ (Y/N)

ADOPTED AS AMENDED __ (Y/N)

ADOPTED W/O OBJECTION __ (Y/N)

FAILED TO ADOPT __ (Y/N)

WITHDRAWN __ (Y/N)

OTHER _____

Council/Committee hearing bill: Health & Human Services Access Subcommittee

Representative Fresen offered the following:

Amendment

Remove lines 18-21 and insert:

1. Graduates from a massage therapy school that is accredited by an accrediting agency recognized by the United States Department of Education.

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

Committee/Subcommittee hearing bill: Health & Human Services Access Subcommittee

Representative Fresen offered the following:

Amendment (with title amendment)

Remove lines 29-36 and insert:

(c) A temporary permit is valid for 3 months after issuance by the board or until the applicant fails the massage licensure examination or receives a massage therapist license, whichever occurs first.

(d) An applicant for licensure by examination who practices under a temporary permit may only practice massage therapy under the general supervision of a licensed massage therapist who has a full, active, and unencumbered license. As used in this paragraph, the term "general supervision" means supervision whereby the licensed massage therapist authorizes the massage services to be performed by the applicant, which supervision, except in cases of emergency, requires the easy

Amendment No. 2

availability or physical presence of the licensed massage therapist for consultation with and direction of the applicant.

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

Remove lines 6-7 and insert:

the expiration of temporary permits; defining the term "general supervision"; requiring general supervision by licensed massage therapists of the practice of massage therapy under temporary permits; amending s. 480.044, F.S.; providing for a

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 49 (2011)

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	_____

Committee/Subcommittee hearing bill: Health & Human Services Access Subcommittee

Representative Tobia offered the following:

Amendment

Remove line 21 and insert:

therapy education, if more than 75 percent of the school's graduates who take the examination administered by the department under paragraph (1)(c) during the previous 3 years receive a passing grade on the examination.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1117 Interstate Health Insurance Policies
SPONSOR(S): Wood and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1566

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Poche	Schoolfield
2) Insurance & Banking Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 1117 creates s. 624.122, F.S., to permit the solicitation and sale of an "interstate health insurance policy" (IHIP) in Florida. An IHIP is defined as a health insurance policy governed by the law of any state, district, or commonwealth in the U.S. Health insurance agents licensed under Chapter 626, F.S., are permitted to market, sell, and deliver IHIPs in Florida. IHIPs are exempt from form approval, rate approval, underwriting restrictions, guaranteed availability, or coverage mandates required by the Florida Insurance Code (Code). The bill does subject IHIPs to specific provisions of the Code regarding unfair trade practices, unfair competition, civil remedies, cease and desist orders, cancellation or non-renewal of policies, and other similar provisions.

The bill requires clear and conspicuous language to be included in any application for insurance or policy of insurance advising the consumer that the policy is not governed by the laws of Florida, that the consumer should carefully consider the purchase of an interstate health insurance policy, and contact a health insurance agent or the Department of Financial Services for more information.

The bill does not appear to have a fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Regulation of Health Insurance Policies in Florida

Health plans are regulated at both the state and federal level. At the federal level, the Employee Retirement Income and Security Act (ERISA) regulates the operation of voluntary employer-sponsored benefits including pension plans and health plans. Congress also has enacted several laws that regulate the operation of all health benefits regardless of the method of insurance, including the Health Insurance Portability and Accountability Act of 1996; the Newborns' and Mothers' Health Protection Act of 1996; the Mental Health Parity Act of 1996; and the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. ERISA provides an explicit exemption from state regulation for health plans that are self-funded. State regulations apply to health benefits purchased through private health insurance plans and health maintenance organizations (HMOs).

In Florida, the Office of Insurance Regulation (OIR) is responsible for regulating health insurance companies and the sale of insurance products within the state.[1]

Health Insurance Mandates in Florida

A health insurance mandate is a legal requirement that an insurance company or health plan cover services by particular health care providers, specific benefits, or specific patient groups. Mandated offerings, on the other hand, do not mandate that certain benefits be provided. Rather, a mandated offering law can require that insurers offer an option for coverage for a particular benefit or specific patient groups, which may require a higher premium and which the insured is free to accept or reject. A mandated offering law in the context of mental health can: require that insurers offer an option of coverage for mental illness, which may require a higher premium and which the insured is free to accept or reject; or, require that if insurers offer mental illness coverage, the benefits must be equivalent to other types of benefits.

Florida currently has at least 49 mandates.[2] The Council for Affordable Health Insurance estimates that mandated benefits currently increase the cost of basic health coverage from a little less than 20 percent to perhaps 50 percent, depending on the number of mandates, the benefit design and the cost of the initial premium.[3] Each mandate adds to the cost of a plan's premiums, in a range of less than 1 percent to 10 percent, depending on the mandate.[4] Higher costs resulting from mandates are most likely to be experienced in the small group market since these are the plans that are subject to state regulations. The national average cost of insurance for a family of four is $13,375, an increase of 3 percent over the cost for 2009.[5]

---

[1] OIR is responsible for enforcement of applicable provisions of the Florida Insurance Code under Chapter 624, F.S., and enforcement of statutes, and related administrative rules, governing insurance rates and contracts under Chapter 627, F.S.

[2] Office of Insurance Regulation list of state health insurance mandates on file with Health and Human Services Access Subcommittee staff; and "Health Insurance Mandates in the States 2010," Council for Affordable Health Insurance; available at: http://www.cahi.org/cahi_contents/resources/pdf/MandatesintheStates2010.pdf (last viewed March 20, 2011).

[3] "Health Insurance Mandates in the States 2010," Council for Affordable Health Insurance; available at: http://www.cahi.org/cahi_contents/resources/pdf/MandatesintheStates2010.pdf (last viewed March 20, 2011).

[4] *Id.*

[5] Kaiser Family Foundation, Employer Health Benefits 2010 Annual Survey, available at: http://ehbs.kff.org/pdf/2010/8085.pdf (last viewed March 20, 2011).

Existing Interstate Health Insurance Markets

In 2008, Rhode Island amended the state's Health Insurance Market Expansion Act[6] to direct the state health insurance commissioner to submit a report to the General Assembly addressing the steps necessary to allow health insurers licensed in other New England states to do business in Rhode Island without requiring those insurers to obtain a separate license in Rhode Island. The goal for the state was to create a regional health insurance market. As of the date of this analysis, it does not appear that the report was delivered to the General Assembly.

No other state permits the solicitation or sale of health insurance policies governed by laws of other states, districts or commonwealth within its borders.

Effect of Proposed Changes

The bill creates s. 624.122, F.S., which allows interstate health insurance policies (IHIPs), and applications for IHIPs, to be solicited and sold in Florida by a licensed health insurance agent[7] and underwritten by an admitted insurer, which is subject to the Code. The bill defines "interstate health insurance policies" as a health insurance policy providing credible coverage[8] that is offered to an individual in the state of Florida and is governed by the laws of any other state, district or commonwealth in the United States. The bill expands the market of health insurance to allow health insurance policies from any other jurisdiction in the United States to be offered for sale in Florida. The bill intends to create competition within the Florida health insurance market and provide affordable health insurance options for Floridians.

The bill requires specific language, in specific and conspicuous size and font, to be included in all IHIPs and applications for IHIPs that advises the consumer that the policy is governed by the laws of a jurisdiction not Florida, that the policy does not comply with the Code, and cautioning the consumer to read the policy carefully, choose to purchase the policy after careful consideration, and to contact an insurance agent or the Department of Financial Services for more information.

The bill exempts IHIPs from form and rate approval requirements, meaning the OIR will not have the authority to approve application and policy documents or the rates charged for IHIPs. IHIPs are also exempt from underwriting restrictions, guaranteed availability requirements and coverage mandates of the Code. In fact, IHIPs are exempted from most provisions of the Code, except for the following statutory sections:

- S. 624.155, F.S., relating to civil remedies;
- S. 624.316, F.S., relating to the examination of insurers by the OIR;
- S. 624.3161, F.S., relating to market conduct examinations by the OIR;
- S. 626.951, F.S., relating to declaration of purpose, unfair insurance trade practices;
- S. 626.9511, F.S., relating to the definition of trade practices and unfair competition;
- S. 626.9521, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices prohibited;
- S. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined;
- S. 626.9551, F.S., relating to favored agent or insurer, coercion of debtors;
- S. 626.9561, F.S., relating to examinations regarding unfair competition;

[6] *See* R.I.Gen.L. ch. 27, s. 67-2, -3, and -4.

[7] Health insurance agents are licensed under Part I of Chapter 626, F.S.

[8] S. 627.6561(5)(a)2., F.S., defines "credible coverage" as health insurance coverage consisting of medical care, provided directly, through insurance or reimbursement, or otherwise and including terms and services paid for as medical care, under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance contract offered by a health insurance issuer.

- S. 626.9571, F.S., relating to defined practices; hearings, witnesses, appearances, production of books and service of process;
- S. 626.9581, F.S., relating to cease and desist and penalty orders;
- S. 626.9591, F.S., relating to appeals from the department or the office;
- S. 626.9601, F.S., relating to penalty for cease and desist violations;
- S. 627.413, F.S., relating to content of policy, in general; identification;
- S. 627.4145, F.S., relating to readability of language in insurance policies;
- S. 627.428, F.S., relating to attorney fee; and
- S. 627.6043, F.S., relating to notice of cancellation, non-renewal or change in rates.

B. SECTION DIRECTORY:

Section 1: Creates s. 624.122, F.S., relating to interstate health insurance policies; notice; exemption.
Section 2: 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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will open the Florida health insurance market to any health insurance policy offered in any state, district or commonwealth in the United States. Health insurers will face increased competition for covered lives and accompanying premium dollars at a level not previously seen within the state. The increased competition will result in lower premium prices for Florida consumers.

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Office of Insurance Regulation (OIR) expressed concern that the bill will allow insurers to enter the Florida health insurance market with products that are minimally regulated by other states and which do not meet the actuarial soundness requirements established by Florida.[9]

OIR expresses a concern that it has no authority to regulate the actions of an out-of-state insurer offering health insurance products within the state.

OIR is also concerned that out-of-state insurers could offer policies within the state to only healthy individuals, leaving an uneven risk pool for Florida insurers.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[9] Florida Office of Insurance Regulation Bill Analysis for HB 1117/SB 1566, March 15, 2011, at page 3, on file with Health and Human Services Access Subcommittee.

A bill to be entitled

An act relating to interstate health insurance policies; creating s. 624.122, F.S.; authorizing solicitation and sale of interstate health insurance policies in this state by certain persons; providing a definition; requiring interstate health insurance policies and policy applications to contain a certain notice; providing for application of certain provisions to certain insurers; excluding interstate health insurance policies from certain requirements; exempting interstate health insurance policies and applications from certain Florida Insurance Code provisions; providing exceptions; providing an effective date.

WHEREAS, while many residents of this state have access to first-rate health care, affordable health care coverage is not available to all who wish to purchase it, and

WHEREAS, by removing barriers limiting access to affordable health care coverage and expanding opportunities for residents of this state to purchase more affordable coverage, this state can improve access to health care and curtail rising health care costs while preserving the first-rate care that so many Floridians already enjoy, and

WHEREAS, it is important to provide residents of this state with more choices when selecting a health insurance product to allow individuals and families the ability to purchase affordable health care coverage, thereby increasing their access to quality health care, NOW, THEREFORE,

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

Section 1. Section 624.122, Florida Statutes, is created to read:

624.122 Interstate health insurance policies; notice; exemption.—

(1) Interstate health insurance policies and applications may be solicited and sold in this state only by a licensed health insurance agent and underwritten only by an admitted insurer. For purposes of this subsection, the term "interstate health insurance policy" means a policy of health insurance providing creditable coverage as defined in s. 627.6561(5)(a)2. that is offered to an individual who is a resident of this state and the policy is governed by the laws of any state, district, or commonwealth of the United States other than this state.

(2) Any interstate health insurance policy sold, and any application for such insurance provided to a resident of this state pursuant to this section, must contain the following conspicuous, boldfaced disclosure in at least 12-point type:

THIS INDIVIDUAL HEALTH INSURANCE POLICY IS PRIMARILY GOVERNED BY THE LAWS OF ...(INSERT STATE, DISTRICT, OR COMMONWEALTH).... AS A RESULT, THIS POLICY DOES NOT COMPLY WITH COVERAGE, UNDERWRITING, AND OTHER PROVISIONS OF THE FLORIDA INSURANCE CODE. ALL OF THE RATING LAWS APPLICABLE TO POLICIES FILED IN FLORIDA DO NOT APPLY TO THIS COVERAGE, WHICH MAY RESULT IN INCREASES IN YOUR

PREMIUM AT RENEWAL THAT WOULD NOT BE PERMISSIBLE UNDER A FLORIDA-APPROVED POLICY. ANY PURCHASE OF INDIVIDUAL HEALTH INSURANCE SHOULD BE CONSIDERED CAREFULLY, AS FUTURE MEDICAL CONDITIONS MAY MAKE IT IMPOSSIBLE TO QUALIFY FOR ANOTHER INDIVIDUAL HEALTH POLICY. FOR INFORMATION CONCERNING INDIVIDUAL HEALTH COVERAGE UNDER A FLORIDA-APPROVED POLICY, CONSULT YOUR AGENT OR THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES.

(3) Any insurer underwriting interstate health insurance policies pursuant to this section is subject to all applicable provisions of the Florida Insurance Code, except as otherwise provided in this section. Interstate health insurance policies are not subject to any form approval, rate approval, underwriting restrictions, guaranteed availability, or coverage mandates provided in the Florida Insurance Code. Health insurance agents who are licensed and appointed pursuant to chapter 626 may solicit, sell, effect, collect premium on, and deliver interstate heath insurance policies in accordance with this section.

(4) Any interstate health insurance policy or application solicited, provided, entered into, issued, or delivered pursuant to this section is exempt from all provisions of the Florida Insurance Code, except that such policy, contract, or agreement is subject to the provisions of ss. 624.155, 624.316, 624.3161, 626.951, 626.9511, 626.9521, 626.9541, 626.9551, 626.9561, 626.9571, 626.9581, 626.9591, 626.9601, 627.413, 627.4145, 627.428, and 627.6043.

Section 2. This act shall take effect July 1, 2011.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1171 Long-Term Care Ombudsman Program
SPONSOR(S): Harrison and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1658

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Guzzo GG	Schoolfield
2) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 1171 removes language requiring local long-term care ombudsman councils to conduct administrative assessments of nursing homes, assisted living facilities (ALFs) and adult family care homes. Currently, the Ombudsman Council is required to conduct onsite administrative assessments of these facilities, at least annually, to review the conditions that impact the rights, health, safety, and welfare of facility residents.

Section 400.0069(2), F.S., contains the duties of local long-term care ombudsman councils. The bill creates the following new duties for the local councils:

- Ensure that residents have regular, timely access to the ombudsman through visitations and that residents receive timely responses to their complaints.
- Provide technical support for the development of resident and family councils to protect the well-being and rights of residents.

The bill amends s. 400.0071, F.S., relating to complaint procedures for the State Long-Term Care Ombudsman Program. Currently, this section of statute does not include language describing the source of complaints. The bill clarifies that the procedures for receiving complaints and conducting complaint investigations are to result from complaints made by or on behalf of long-term care facility residents.

The bill amends s. 400.0081, F.S., relating to access to facilities, residents, and records. The bill requires the Office of the State Long-Term Care Ombudsman to obtain and present written permission of the resident or legal representative before reviewing medical and social records at a long term care facility.

The bill repeals s. 400.0089, F.S., which requires the Office of State Long-Term Care Ombudsman to maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities in an effort to identify and resolve significant problems.

The bill removes language in s. 400.19, F.S., requiring the Agency for Health Care Administration (AHCA) to conduct onsite reviews of nursing homes following written verification of licensee non compliance by the Long-Term Care Ombudsman Council.

Section 400.235, F.S., requires facilities to meet certain additional criteria to be recognized as a Gold Seal Program Facility. The bill removes the requirement for a facility to demonstrate evidence of an outstanding record regarding the number and types of substantiated complaints reported to the state long-term care ombudsman council within 30 months preceding application.

The bill does not appear to have a fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Office of State Long-Term Care Ombudsman (Office) is created by s. 400.0063, F.S., and is headed by the State Long-Term Care Ombudsman, appointed by the Secretary of the Department of Elder Affairs (DOEA). The ombudsman designates local long-term care ombudsman councils to carry out the duties of the State Long-Term Care Ombudsman Program (Program) within local communities. There must be at least one local council operating in each of DOEA's planning and service areas.

Local Councils

Duties of the local councils include:[1]

- Serving as a third-party mechanism for protecting the health, safety, welfare, and civil and human rights of residents;
- Discovering, investigating, and determining the existence of abuse or neglect in any long-term care facility;
- Eliciting, receiving, investigating, responding to, and resolving complaints made by or on behalf of residents;
- Reviewing and commenting on all existing or proposed rules, regulations, and other governmental policies and actions relating to long-term care facilities that may potentially have an effect on the rights, health, safety, and welfare of residents;
- Reviewing personal property and money accounts of residents who are receiving assistance under the Medicaid program pursuant to an investigation to obtain information regarding a specific complaint or problem;
- Recommending that the ombudsman and the legal advocate seek administrative, legal, and other remedies to protect residents;
- Carrying out activities that the ombudsman determines to be appropriate.

State Long-Term Care Ombudsman Council

The State Long-Term Care Ombudsman Council is created within the office by s. 400.0067, F.S. The council serves an advisory body to assist the ombudsman in reaching a consensus among local councils on issues affecting and impacting the operation of the program. The council also serves as an appellate body in receiving complaints from local councils that are unresolved at the local level. In addition, the council helps the ombudsman discover, investigate, and determine the existence of abuse or neglect in any long-term care facility.[2]

Complaint Procedures

Section 400.0071, F.S., provides complaint procedures for the program, and rule making authority to DOEA. The rules must include procedures for receiving complaints against, and conducting investigations of a long-term care facility or an employee of a long-term care facility.

Administrative Assessments

Currently, s. 400.0074, F.S., requires the council to conduct onsite administrative assessments of nursing homes, assisted living facilities (ALFs), and adult family care homes at least annually. The council also identifies, investigates and resolves complaints made by, or on behalf of, residents of long-

[1] S. 400.0069(1), F.S. (2010)
[2] S. 400.0067(2), F.S. (2010)

term care facilities. Members of a local council are authorized to enter any long-term care facility without notice or first obtaining a warrant. The Agency for Health Care Administration (AHCA) conducts routine licensure and complaint surveys of nursing homes, ALFs, and adult day care homes. The Center's for Medicare and Medicaid Services (CMS) State Operations Manual for nursing homes' investigative protocol requires AHCA, as part of its survey process, to perform offsite survey preparation. This preparation includes review of information about the facility prior to the survey. One of the sources of this information is the ombudsman. The ombudsman can contribute information in the areas of resident rights, review of clinical records, transfer and discharge, access and visitation, and admission and involvement in care planning. This information is taken into consideration as the survey team identifies areas to focus its review to determine facility compliance.

Access to Facilities, Residents, and Records

Section 400.0081, F.S., requires long-term care facilities to provide the office, council, and the local councils to provide access to any portion of the facility, any resident, and medical and social records of a resident as necessary to investigate or resolve a complaint. Facilities must also provide access to administrative records, policies, and documents that are accessible to residents and the general public. Upon request, facilities must provide copies of all licensing and certification records maintained by the state with respect to a facility.

Complaint Data Reports

Complaint data reports are utilized to identify and resolve significant problems. Section 400.0089, F.S., requires the office to maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities. This section also requires the office to publish information quarterly, relating to the number and types of complaints received by the program. The information is required to be included in the annual report required under s. 400.0065, F.S.

Right of Entry and Inspection

Section 400.19, F.S., provides the authority to AHCA, and members of the council or local council to enter facilities in order to determine compliance with part II of chapter 400, F.S. AHCA is required to complete its investigation and provide its findings to the resident within 60 days after receipt of a complaint. Section 400.19(4), F.S., requires AHCA to conduct unannounced onsite facility reviews following written verification of licensee noncompliance when the council receives a complaint and has documented deficiencies in resident care or in the physical plant of the facility that threaten the health, safety, or security of residents.

Gold Seal Program

Section 400.235, F.S., contains provisions of the Gold Seal Program as it relates to nursing home quality and licensure status. The Governor's Panel on Excellence in Long-term Care (Panel) developed and implemented the Gold Seal Program. The Gold Seal Program was created in 2002 to award and recognize nursing home facilities that demonstrate excellence in long-term care over a sustained period of time. Section 400.235(3)(a), F.S., provides the composition of the panel is to consist of individuals appointed by the Governor's Office, AHCA, the Department of Health, DOEA, Florida Association of Homes for the Aging, Florida Health Care Association, Florida Life Care residents Association and the State Long Term-Care Ombudsman. As of January 1, 2011, there were 675 licensed nursing homes in Florida.[3] Of the 675 facilities, 19 facilities are currently designated as a Gold Seal Facility.[4] There have been a total of 35 facilities that have received the Gold Seal Award designation, since the program was created in 2002.[5]

[3] AHCA, *Staff Analysis and Economic Impact, House Bill Number 1171* (March 18, 2011).
[4] Id.
[5] Id.

Section 400.235(4), F.S., requires the panel to consider the quality of care provided to residents when evaluating a facility for the Gold Seal Program, and determine the procedures for measuring the quality of care. There are two annual review periods when nursing home facilities can apply for the Gold Seal award designation. The required criteria to be recognized as a Gold Seal Program facility is provided in s. 400.235, F.S., and Rule 59A-4.201-206, F.A.C. One of the requirements is that facilities must display evidence of an outstanding record regarding the number and types of substantiated complaints reported to the Ombudsman Council within the 30 months preceding submission of an application.

Effects of the Bill

The bill repeals s. 400.0074, F.S., which requires local long-term care ombudsman councils to conduct administrative assessments of nursing homes, ALFs and adult family care homes. Currently, the Ombudsman council is required to conduct onsite administrative assessments of these facilities, at least annually, to review the conditions that impact the rights, health, safety, and welfare of facility residents. AHCA reports that the repeal of s. 400.0074, F.S., will not affect the survey process conducted by AHCA for long-term care facilities.[6] AHCA's responsibility to use information from the ombudsman remains intact because of its duty to act as the State Agency having oversight of these long-term care facilities.

Section 400.0069(2), F.S., contains the duties of local long-term care ombudsman councils. The bill creates the following new duties for the local councils:

- Ensure that residents have regular, timely access to the ombudsman through visitations and that residents receive timely responses to their complaints.
- Provide technical support for the development of resident and family councils to protect the well-being and rights of residents.

The bill amends s. 400.0071, F.S., relating to complaint procedures for the long-term care ombudsman program. Currently, this section of statute does not include language describing the source of the complaint. The bill clarifies that the procedures for receiving complaints and conducting complaint investigations are to result from complaints made by or on behalf of long-term care facility residents.

The bill amends s. 400.0081, F.S., relating to access to facilities, residents, and records. The bill requires the Office of the State Long-Term Care Ombudsman to obtain and present written permission of the resident or legal representative before reviewing medical and social records at a long term care facility.

The bill repeals s. 400.0089, F.S., which requires the Office of State Long-Term Care Ombudsman to maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities and to publish quarterly the information related to complaints.

The bill removes language in s. 400.19, F.S., which pertains to one of the conditions requiring AHCA to conduct onsite reviews of nursing homes. The condition is a written verification of a complaint by the ombudsman council related to deficiencies in residents care or the physical plant of the facility that threatens the health safety or security of residents. AHCA reports that the removal of this language will not affect AHCA's survey process or reduce its ability to regulate facilities to ensure the health, safety or security of residents.[7] The ombudsman council will continue to be able to file complaints with AHCA's complaint administration unit if they have concerns while visiting a facility.

Finally, the bill amends s. 400.235, F.S., relating to the Gold Seal Facility Program, to remove the requirement for a facility to demonstrate evidence of an outstanding record regarding the number and types of substantiated complaints reported to the ombudsman council within 30 months preceding their application. All of the Gold Seal criteria requirements can be consistently measured by the panel,

[6] Id.
[7] Id.

except for determining if a facility has an "outstanding record" regarding the number and types of complaints reported to the ombudsman council. The removal of this requirement will help remove subjectivity from the determination of the Gold Seal Award recommendations

According to s. 400.235(3)(a), F.S., the Ombudsman is required to serve on the Governor's Panel on Excellence in Long-Term Care. This allows the Ombudsman to have a vote in the Panel's recommendation and input into any rules developed for the Gold Seal Program.

B. SECTION DIRECTORY:

Section 1: Amends s. 400.0060, F.S., relating to administrative assessments.
Section 2: Amends s. 400.0061, F.S., relating to Legislative findings and intent; long-term care facilities.
Section 3: Amends s. 400.0067, F.S., relating to duties and membership of the State Long-Term Care Ombudsman Council.
Section 4: Amends s. 400.0069, F.S., relating to duties and membership of local long-term care ombudsman councils.
Section 5: Amends s. 400.0071, F.S., relating to State Long-Term Care Ombudsman Program complaint procedures.
Section 6: Repeals s. 400.0074, F.S., relating to local ombudsman council onsite administrative assessments.
Section 7: Amends s. 400.0081, F.S., relating to access to facilities, residents, and records.
Section 8: Repeals s. 400.0089, F.S., relating complaint data reports.
Section 9: Amends s. 400.19, F.S., relating to right of entry and inspection.
Section 10: Amends s. 400.235, F.S., relating to nursing home quality and licensure status; Gold Seal Program.
Section 11: 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:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill does not appear to have a fiscal impact.

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:

Rule-making authority for DOEA and AHCA will not be affected as a result of the bill. However, AHCA rule 59A-4.205, F.A.C., will not be necessary anymore as it requires the State Long-Term Care Ombudsman Council to provide a profile of substantiated ombudsman program complaints against licensees applying for the Gold Seal Award.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Long-Term Care Ombudsman Program; amending ss. 400.0060 and 400.0067, F.S.; removing references to onsite administrative assessments and conforming cross-references to changes made by the act; amending s. 400.0061, F.S.; revising legislative intent; amending s. 400.0069, F.S.; providing additional duties of the local long-term care ombudsman councils; amending s. 400.0071, F.S.; revising rules relating to State Long-Term Care Ombudsman Program complaint procedures; repealing s. 400.0074, F.S., relating to a requirement that local ombudsman councils conduct onsite administrative assessments; amending s. 400.0081, F.S.; requiring written consent of a resident of a long-term care facility for release of medical records; repealing s. 400.0089, F.S., relating to data reports regarding complaints about and conditions in long-term care facilities; amending s. 400.19, F.S.; revising conditions under which the Agency for Health Care Administration is required to conduct unannounced onsite facility reviews; amending s. 400.235, F.S.; eliminating the role of the State Long-Term Care Ombudsman Council in evaluating a nursing facility for the Gold Seal Program; providing an effective date.

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

Section 1. Subsections (2) through (10) of section 400.0060, Florida Statutes, are renumbered as subsections (1)

through (9), respectively, and present subsection (1) of that section is amended to read:

400.0060 Definitions.—When used in this part, unless the context clearly dictates otherwise, the term:

~~(1) "Administrative assessment" means a review of conditions in a long-term care facility which impact the rights, health, safety, and welfare of residents with the purpose of noting needed improvement and making recommendations to enhance the quality of life for residents.~~

Section 2. Subsection (2) of section 400.0061, Florida Statutes, is amended to read:

400.0061 Legislative findings and intent; long-term care facilities.—

(2) It is the intent of the Legislature, therefore, to utilize voluntary citizen ombudsman councils under the leadership of the ombudsman, and through them to operate an ombudsman program which shall, without interference by any executive agency, undertake to discover, investigate, and determine the presence of conditions or individuals which constitute a threat to the rights, health, safety, or welfare of the residents of long-term care facilities. To ensure that the effectiveness and efficiency of such investigations are not impeded by advance notice or delay, the Legislature intends that the ombudsman and ombudsman councils and their designated representatives not be required to obtain warrants in order to enter into a long-term care facility to conduct the duties of the Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, or a local long-term care ombudsman

council ~~or conduct investigations or onsite administrative assessments of long-term care facilities~~. It is the further intent of the Legislature that the environment in long-term care facilities be conducive to the dignity and independence of residents and that investigations by ombudsman councils shall further the enforcement of laws, rules, and regulations that safeguard the health, safety, and welfare of residents.

Section 3. Paragraph (b) of subsection (2) of section 400.0067, Florida Statutes, is amended to read:

400.0067 State Long-Term Care Ombudsman Council; duties; membership.—

(2) The State Long-Term Care Ombudsman Council shall:

(b) Serve as an appellate body in receiving from the local councils complaints not resolved at the local level. Any individual member or members of the state council may enter any long-term care facility involved in an appeal~~, pursuant to the conditions specified in s. 400.0074(2)~~.

Section 4. Subsection (3) of section 400.0069, Florida Statutes, is amended, and paragraphs (h) and (i) are added to subsection (2) of that section, to read:

400.0069 Local long-term care ombudsman councils; duties; membership.—

(2) The duties of the local councils are to:

(h) Ensure that residents have regular, timely access to the ombudsman through visitations and that residents and complainants receive timely responses to their complaints.

(i) Provide technical support for the development of resident and family councils to protect the well-being and

rights of residents.

(3) In order to carry out the duties specified in subsection (2), a member of a local council is authorized to enter any long-term care facility without notice or first obtaining a warrant~~, subject to the provisions of s. 400.0074(2)~~.

Section 5. Section 400.0071, Florida Statutes, is amended to read:

400.0071 State Long-Term Care Ombudsman Program complaint procedures.—The department shall adopt rules implementing state and local complaint procedures. The rules must include procedures for:

(1) Receiving complaints made by or on behalf of long-term care facility residents ~~against a long-term care facility or an employee of a long-term care facility~~.

(2) Conducting complaint investigations on behalf of long-term care facility residents ~~of a long-term care facility or an employee of a long-term care facility subsequent to receiving a complaint~~.

~~(3) Conducting onsite administrative assessments of long-term care facilities.~~

Section 6. Section 400.0074, Florida Statutes, is repealed.

Section 7. Paragraph (b) of subsection (1) of section 400.0081, Florida Statutes, is amended to read:

400.0081 Access to facilities, residents, and records.—

(1) A long-term care facility shall provide the office, the state council and its members, and the local councils and

their members access to:

(b) Medical and social records of a resident for review as necessary to investigate or resolve a complaint, if:

1. The office has the written permission of the resident or the legal representative of the resident and presents that permission to the long-term care facility; or

2. The resident is unable to consent to the review and has no legal representative.

Section 8. Section 400.0089, Florida Statutes, is repealed.

Section 9. Subsection (4) of section 400.19, Florida Statutes, is amended to read:

400.19 Right of entry and inspection.—

(4) The agency shall conduct unannounced onsite facility reviews ~~following written verification of licensee noncompliance in instances in which a long-term care ombudsman council, pursuant to ss. 400.0071 and 400.0075, has received a complaint and has documented deficiencies in resident care or in the physical plant of the facility that threaten the health, safety, or security of residents, or~~ when the agency documents through inspection that conditions in a facility present a direct or indirect threat to the health, safety, or security of residents. However, the agency shall conduct unannounced onsite reviews every 3 months of each facility while the facility has a conditional license. Deficiencies related to physical plant do not require followup reviews after the agency has determined that correction of the deficiency has been accomplished and that the correction is of the nature that continued compliance can be

reasonably expected.

Section 10. Paragraphs (f) and (g) of subsection (5) of section 400.235, Florida Statutes, are amended to read:

400.235 Nursing home quality and licensure status; Gold Seal Program.—

(5) Facilities must meet the following additional criteria for recognition as a Gold Seal Program facility:

~~(f) Evidence an outstanding record regarding the number and types of substantiated complaints reported to the State Long-Term Care Ombudsman Council within the 30 months preceding application for the program.~~

(f) ~~(g)~~ Provide targeted inservice training provided to meet training needs identified by internal or external quality assurance efforts.

A facility assigned a conditional licensure status may not qualify for consideration for the Gold Seal Program until after it has operated for 30 months with no class I or class II deficiencies and has completed a regularly scheduled relicensure survey.

Section 11. This act shall take effect July 1, 2011.

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

Committee/Subcommittee hearing bill: Health & Human Services Access Subcommittee

Representative(s) Harrison offered the following:

Amendment (with title amendment)

Remove lines 108-120

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

Remove lines 13-15 and insert:

Assessments; repealing s. 400.0089, F.S.,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1271 Dentistry
SPONSOR(S): Campbell and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Holt	Schoolfield
2) Business & Consumer Affairs Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Currently, any dentist who did not attend a American Dental Association, Commission on Dental Accreditation (CODA) accredited dental program (e.g., foreign trained dentists) are required to complete a 2-year supplemental education program at a CODA accredited dental school before they can sit for the Florida dental licensure examinations.

The bill provides an exemption from July 1, 2011 to July 1, 2012, for dentists who have attended a non-accredited dental school or a school not approved by the Florida Board of Dentistry, enabling them to sit for the dental examination if the dentist possesses a license from another state if their license has been in good standing for at least 3 years.

The bill has no fiscal impact to the state or local governments.

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

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background
Accredited Dental Schools

The American Dental Association, Commission on Dental Accreditation (CODA), established in 1975, is nationally recognized by the United States Department of Education (USDE) to accredit dental and dental-related education programs conducted at the post-secondary level. The Commission functions independently and autonomously in matters of developing and approving accreditation standards, making accreditation decisions on educational programs and developing and approving procedures that are used in the accreditation process.[1]

Dental education, dental assisting, dental hygiene dental laboratory technology and advanced dental education programs including dental specialties, general practice residencies, and advanced education in general dentistry are evaluated in accordance with published accreditation standards by the CODA.[2]

Dental Schools in Florida

There are currently 56 accredited dental schools, approximately 240 dental hygiene programs, and 250 dental assisting programs in the U.S. Florida currently has 2 accredited dental schools—1 public and 1 private—that produced 182 graduates in 2003, 18 accredited dental hygiene programs and 25 accredited dental assisting programs.[3] The schools are the University of Florida and Nova Southeastern University College of Dental Medicine.[4] The Lake Erie College of Osteopathic Medicine plans on opening a School of Dental Medicine at the Bradenton campus in April of 2012. The program has received initial CODA accreditation.[5]

Additionally, there are 3 accredited pediatric dental residency programs in Florida that produce 14 graduates each year—Nova (6 graduates), UFCD (5 graduates), and Miami Children's Hospital (3 graduates).[6] Approximately 92 percent of Florida dental school graduates remain in the state after graduation.[7]

Foreign Trained Dentists

Section 466.08, F.S., provides guidelines for certifying foreign dental schools. The foreign schools must prove that their educational program is reasonably comparable to that of similar accredited institutions in the United States and that the program adequately prepares its students for the practice of dentistry.[8]

---

[1] America Dental Association, Dental Education: Schools & Programs, *available* at: http://www.ada.org/103.aspx (last viewed March 18, 2011).
[2] *Id.*
[3] Florida Department of Health, Health Practitioner Oral Healthcare Workforce Ad Hoc Committee Report (February 2009), available at: http://www.doh.state.fl.us/Family/dental/OralHealthcareWorkforce/index.html (last viewed March 16, 2011).
[4] America Dental Association, Dental Education Program Search, *available* at: http://www.ada.org/267.aspx (last viewed March 18, 2011).
[5] Lake Erie College of Osteopathic Medicine, School of Dental Medicine, *available* at: http://lecom.edu/school-dental-medicine.php (last viewed March 18, 2011)
[6] Florida Department of Health, Health Practitioner Oral Healthcare Workforce Ad Hoc Committee Report (February 2009), available at: http://www.doh.state.fl.us/Family/dental/OralHealthcareWorkforce/index.html (last viewed March 16, 2011).
[7] *Id.*
[8] s. 466.008(4), F.S.

In Florida, any dentist who did not attend a CODA accredited dental program (e.g., foreign trained dentists) are required to complete a 2-year supplemental education program at an CODA accredited dental school before they can sit for the Florida dental licensure examinations.[9]

Florida is one of only two states that do not provide some form of licensure by credentials or reciprocity.[10]

Other States Licensing Requirements

State boards of dentistry, licensure statutes, and rules can affect the population of eligible dental providers available in a state and some states have amended licensure regulations to attract dentists. Examples of some of these common practices are: allowing foreign dental school graduates who complete U.S. dental residencies to meet eligibility requirements for licensure; conveying reciprocity or licensure by credentials; granting special licenses, or providing incentives (e.g., limiting liability) for dentists who work in public health/safety net clinics.[11]

Other states such as Minnesota, Connecticut, Arkansas, Mississippi, and California have developed programs to utilize foreign-trained dentists as dentists and dental hygienists in facilities that care for special needs patients and public health settings.[12]

California enacted a law (Assembly Bill 1116) in 1997 that provided the California dental board the authority to determine whether unaccredited international dental programs are equivalent to similar accredited institutions in the U.S. Enacted in 1998, the law enabled the dental board to approve dental education programs outside the U.S.[13]

With a law on the books giving the California dental board the authority to approve educational programs outside the U.S., the Universidad De La Salle Bajio in the city of Leon, Mexico, applied for approval for its new two-year international program in 2006. The California board of dentistry granted provisional approval to Universidad De La Salle in August 2002 after the first site visit. Following its second site visit, De La Salle's five-year pre-doctoral dental education program received full certification in November 2004. The College of Dental Surgery in Manipal, India, was also evaluated for board approval. Students who are admitted to the De La Salle's California-approved track program are required to sign a disclaimer stating that they know this program is not CODA-approved. They are also informed that they will only qualify to get a license to practice in California once all licensure requirements for the state of California are met.[14] The cost of Universidad De La Salle's International Dental Studies Program that satisfies the educational requirement for California-approved dental licensure track is $21,000 per semester, which totals $84,000 in tuition for the two-year program.[15]

Florida Dental Exam

The Florida Board of Dentistry (Board) administers the Florida dental licensure exams. The Board sets the number, dates, and locations of exams. Licensure examinations are given at least twice a year depending on the projected candidate population.[16] Applicants for examination or re-examination must

---

[9] s. 466.06(3), F.S. and ch. 64B5-2.0146, F.A.C.

[10] Florida Department of Health, Health Practitioner Oral Healthcare Workforce Ad Hoc Committee Report (February 2009), available at: http://www.doh.state.fl.us/Family/dental/OralHealthcareWorkforce/index.html (last viewed March 16, 2011).

[11] *Id.*

[12] *Id.*

[13] American Dental Association, ADA News: International dental program in Mexico raises questions, *available* at: http://www.ada.org/1901.aspx (last viewed March 18, 2011).

[14] *Id.*

[15] American Dental Association, ADA News: Costs of De La Salle vs. other IDPs in California, *available* at: http://www.ada.org/1899.aspx (last viewed March 18, 2011).

[16] Florida Department of Health, Division of Medical Quality Assurance, Board of Dentistry, Applicant s & Forms, *available* at: http://www.doh.state.fl.us/mqa/dentistry/dn_applications.html (last viewed March 19, 2011).

have taken and successfully completed the National Board of Dental Examiner's dental examination and received a National Board Certificate within the past ten (10) years.[17]

Each applicant is required to complete the examinations as provided for in Section 466.006, F.S. The examinations for dentistry consist of:

1. A written examination;[18]
2. A practical or clinical examination;[19] and
3. A diagnostic skills examination.

The applicant for licensure must successfully complete all three exams within a thirteen month period in order to qualify for licensure.[20] If the candidate fails to successfully complete all three examinations within the allotted timeframe, then the candidate must retake all three of the examinations.[21] Additionally, all examinations are required to be conducted in English.[22]

The practical or clinical examination requires the applicant to provide a qualified patient[23], who will participate in the examination as the patient.[24] The practical or clinical examination consists of four parts and the applicant must receive a grade of at least 75% on each part:

- Part 1-requires a preparation procedure and a restoration procedure.
- Part 2-requires demonstration of periodontal skills on a patient to include definitive debridement (root planing, deep scaling/removal of subgingival calculus, and removal of plaque, stain and supragingival calculus)
- Part 3-requires demonstration of endodontic skills on specified teeth.
- Part 4-requires demonstration of prosthetics skills to include the preparation for a 3-unit fixed partial denture on a specified model and the preparation of an anterior crown

If an applicant fails to achieve a final grade of 75% or better on each of the four (4) parts of, the Practical or Clinical Examination, the applicant shall be required to retake only that part(s) that the applicant has failed.[25]

There are two fees associated with the licensure examination—$1700 to the Board of Dental Examiners for administration of the licensure examination and $760 to the Department of Health for application fee, exam development and licensure.[26] Additionally, the applicant must supply any live patients and assume all associated costs to ensure the patients are present at the exam. For applicants who have not taken the National Boards within the last 10 years (e.g. a licensed dentist from another state who may have been in practice for 10 years or more), he or she must also retake Part II of the National Boards.

Effects of the Bill

The bill provides an exemption from July 1, 2011 to July 1, 2012, for dentists who have attended a non-accredited dental school or a school not approved by the Florida Board of Dentistry, enabling them to sit for the dental examination if the dentist possesses a license from another state if their license has been in good standing for at least 3 years.

---

[17] ch. 64B5-2.013, F.A.C.

[18] A final grade of 75 or better is required to pass the Written Examination. *See* ch. 64B5-2.013, F.A.C.

[19] The practical or clinical exam requires the applicant to provide a patient who is at least 18 years of age and whose medical history is consistent with that prescribed by the board in order for patients to qualify as a patient for the examination. *See* ch. 64B5-2.013, F.A.C.

[20] s. 466.006(4)(b)3., F.S.

[21] *Id.*

[22] ch. 64B5-2.013, F.A.C.

[23] The patient must be at least 18 years of age and have a medical history consistent with the parameters prescribed by the board of dentistry.

[24] ch. 64B5-2.013, F.A.C.

[25] ch. 64B5-2.013, F.A.C.

[26] Florida Department of Health, Division of Medical Quality Assurance, Board of Dentistry, Applicant s & Forms, *available* at: http://www.doh.state.fl.us/mqa/dentistry/dn_applications.html (last viewed March 19, 2011).

B. SECTION DIRECTORY:

Section 1. Amends s. 466.066, F.S., relating to the examination of dentists.
Section 2. Amends s. 466.0067, F.S., relating to the application for health access dental license.
Section 3. 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:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Dentist would not have to take the two year program of study at an accredited American dental school. The University of Florida, College of Dentistry currently offers a 24 month program that costs $ 18,004 per semester.[27]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

[27] University of Florida, College of Dentistry, Admissions: Advanced Education in General Dentistry, available at: http://www.dental.ufl.edu/Offices/Admissions/Grad/programs_Advanced_Education_General_Dentistry_Hialeah.php (last viewed March 18, 2011).

B. RULE-MAKING AUTHORITY:

The Department of Health, Board of Dentistry has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to dentistry; amending s. 466.006, F.S.; authorizing certain applicants licensed to practice dentistry in other states to take the licensure examinations for licensure in this state; providing for expiration; amending s. 466.0067, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (4) of section 466.006, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section to read:

466.006 Examination of dentists.—

(4) Notwithstanding subsection (3), an applicant licensed to practice dentistry in another state who has maintained such license in good standing for at least 3 years may take the licensure examinations required in this section to practice dentistry in this state. This subsection expires July 1, 2012.

Section 2. Subsection (12) of section 466.0067, Florida Statutes, is amended to read:

466.0067 Application for health access dental license.—The Legislature finds that there is an important state interest in attracting dentists to practice in underserved health access settings in this state and further, that allowing out-of-state dentists who meet certain criteria to practice in health access settings without the supervision of a dentist licensed in this state is substantially related to achieving this important state

interest. Therefore, notwithstanding the requirements of s. 466.006, the board shall grant a health access dental license to practice dentistry in this state in health access settings as defined in s. 466.003(14) to an applicant that:

(12) Has passed an examination covering the laws and rules of the practice of dentistry in this state as described in s. 466.006(5)~~(4)~~(a).

Section 3. This act shall take effect July 1, 2011.