

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: CS/SB 1352

INTRODUCER: Committee on Health Policy and Senator Grimsley

SUBJECT: Health Care Practitioners

DATE: March 26, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Stovall	HP	<b>Fav/CS</b>
2.			JU	
3.			RC	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1352 amends laws governing advanced registered nurse practitioners (ARNP) to:

- Change “advanced registered nurse practitioner” to “advanced practice registered nurse” throughout the statutes, thereby adopting the title recommended in the Consensus Model for APRN Regulation.
- Authorize an APRN to prescribe controlled substances, subject to a negative formulary, if any, adopted by a committee appointed by the Board of Nursing (BON).
- Add grounds for discipline of an APRN related to prescribing that are the same as apply to other health care practitioners who have prescribing authority.
- Require an APRN to comply with statutes applicable to other health care practitioners who prescribe controlled substances for the treatment of chronic nonmalignant pain.
- Add “advanced practice registered nurse” to all sections of law that reference controlled substances prescribed by a physician.
- Prohibit the unauthorized use of the title “Certified Nurse Practitioner” or related abbreviations and provide penalties.

The bill amends part I of ch. 394, F.S., the Florida Mental Health Act, to:

- Revise the credentials for registered nurses who are authorized to perform specified acts under the act. Specifically, the bill requires national advanced practice certification as a psychiatric-mental health advanced practice registered nurse (PMH-APRN), requiring advanced practice certification in lieu of 2 years clinical experience as is currently required.

- Change “psychiatric nurse” to “psychiatric-mental health advanced practice registered nurse” throughout the act.
- Authorize PMH-APRNs to examine and approve releases of patients admitted to a receiving facility for involuntary examination.
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Finally, the bill:

- Revises the Patient Self-Referral Act of 1992 to allow referrals for designated health services at an entity in which the health care provider owns stock that is publicly traded.
- Clarifies that fees charged for written or typed medical records must be the same regardless of format or medium.
- Repeals language relating to certification entities for medical assistants.
- Conforms a reference to recognized pain management certifying agencies.

## II. Present Situation:

### Advanced Practice Registered Nurses

The term “advanced practice registered nurse” (APRN) refers in general terms to a group of licensed registered nurses who have advanced education and clinical training and who serve as primary care providers in a broad range of acute care and outpatient settings.<sup>1</sup> Licensure or certification as an APRN is contingent upon completion of an accredited graduate-level education program and passage of a national certification examination.<sup>2</sup> The titles given to APRNs vary from state-to-state. In Florida, the generic licensure title is “advanced registered nurse practitioner.”<sup>3</sup> The National Council of State Boards of Nursing encourages states to use the title APRN.<sup>4</sup> Within the titles of APRN, there are four general categories: nurse practitioner, nurse midwife, registered nurse anesthetist, and clinical nurse specialist. Within these categories there may be subspecialties based on the APRN’s training, the patients to be served, or the conditions to be treated by the APRN. Florida recognizes three types of APRN: the certified nurse practitioner (CNP), certified registered nurse anesthetist (CRNA), and the certified nurse midwife (CNM).<sup>5</sup>

### Regulation of Advanced Registered Nurse Practitioners in Florida

Chapter 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (DOH) and are regulated by the BON.<sup>6</sup>

<sup>1</sup> See, e.g. Institute of Medicine, *The Future of Nursing, Leading Change, Advancing Health*, 23 (2011), available at [http://www.nap.edu/download.php?record\\_id=12956](http://www.nap.edu/download.php?record_id=12956) (last visited March 26, 2014).

<sup>2</sup> National Council of State Boards of Nursing *Model for Uniform National Advanced Practice Registered Nurse (APRN) Regulation: A Handbook for Legislators*, 2, available at <https://www.ncsbn.org/2276.htm> (last visited March 20, 2014).

<sup>3</sup> See, e.g. s.464.003(3), F.S.

<sup>4</sup> *The Consensus Model for APRN Regulation, Licensure, Accreditation, Certification and Education*, 9 (July 7, 2008), available at <https://www.ncsbn.org/2276.htm> (last visited March 20, 2014).

<sup>5</sup> Section 464.003(3), F.S. Florida certifies clinical nurse specialists as a category distinct from advanced registered nurse practitioners. (See ss. 464.003(7) and 464.0115, F.S.)

<sup>6</sup> The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve 4-year terms. Seven of the 13 members must be nurses who reside in Florida and have been engaged in the practice of professional nursing for at least 4 years. Of those seven members, one must be an advanced registered nurse practitioner, one a nurse educator at an approved nursing program, and one a nurse executive. Three members of the BON must be licensed practical nurses who

Applicants for an RN<sup>7</sup> or LPN<sup>8</sup> license must submit an application form to the DOH, pay a fee, submit information for a criminal background check, and pass a licensure exam.<sup>9</sup> The exam used by the DOH is the National Council Licensure Examination (NCLEX), developed by the National Council of State Boards of Nursing.

In order to practice advanced or specialized nursing,<sup>10</sup> a person must be certified as an ARNP.<sup>11</sup> To be certified as an ARNP, a nurse must hold a current RN license and submit proof to the BON that he or she meets one of the following requirements:<sup>12</sup>

- Satisfactory completion of a formal post basic educational program of specialized or advanced nursing practice;
- Certification by an appropriate specialty board;<sup>13</sup>
- Completion of a master's degree program in the appropriate clinical.

Advanced or specialized nursing acts, as authorized by statute, may only be performed under protocol of a supervising physician. Within the established framework of the protocol, an ARNP may:<sup>14</sup>

- Monitor and alter drug therapies.
- Initiate appropriate therapies for certain conditions.
- Order diagnostic tests and physical and occupational therapy.

The statute further describes additional acts that may be performed within an ARNP's specialty certification (CRNA, CNM, and CNP).<sup>15</sup> According to the BON:

The scope of practice for all categories of ARNPs shall include those functions which the ARNP has been educated to perform including the monitoring and altering of drug therapies, and initiation of appropriate therapies according to the established protocol and consistent with the practice setting.<sup>16</sup>

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reside in the state and have engaged in the practice of practical nursing for at least 4 years. The remaining three members must be Florida residents who have never been licensed as nurses and are in no way connected to the practice of nursing, any health care facility, agency, or insurer. Additionally, one member must be 60 years of age or older. (*See* s. 464.004(2), F.S.)

<sup>7</sup> Practice of professional nursing.

<sup>8</sup> Practice of practical nursing.

<sup>9</sup> Section 464.008, F.S.

<sup>10</sup> "Advanced specialized nursing practice" is defined as the performance of advanced-level nursing acts approved by the BON which, by virtue of postbasic specialized education, training and experience, are appropriately performed by an advanced registered nurse practitioner. (s. 464.003(2), F.S.)

<sup>11</sup> Section 464.003(3), F.S.

<sup>12</sup> Section 464.012(1), F.S.

<sup>13</sup> Specialty boards expressly recognized by the BON include: Council on Certification of Nurse Anesthetists, or Council on Recertification of Nurse Anesthetists; American College of Nurse Midwives; American Nurses Association (American Nurses Credentialing Center); National Certification Corporation for OB/GYN, Neonatal Nursing Specialties; National Board of Pediatric Nurse Practitioners and Associates; National Board for Certification of Hospice and Palliative Nurses; American Academy of Nurse Practitioners; Oncology Nursing Certification Corporation; American Association of Critical-Care Nurses Adult Acute Care Nurse Practitioner Certification. (Rule 64B9-4.002(2), F.A.C.)

<sup>14</sup> Section 464.012(3), F.S.

<sup>15</sup> Section 464.012(4), F.S.

<sup>16</sup> Rule 64B9-4.010, F.A.C.

In addition and also under physician protocol, an ARNP may perform those *medical acts* authorized by a joint committee of representatives of the Board of Medicine and the BON appointed by the State Surgeon General. Acts approved by the joint committee must be authorized by rule adopted by the BON to become part of an ARNP's scope of practice.<sup>17</sup>

The joint committee was also given responsibility for determining minimum standards for the content of established protocols pursuant to which an ARNP performs the approved medical acts.<sup>18</sup> Rules of the BON and the Board of Medicine require the protocol to contain information related to the duties of both the physician and the ARNP, treatments that may be initiated and for what conditions, drug therapies that may be initiated by the ARNP as determined by patient condition and ARNP judgment, and specific conditions requiring direct evaluation or consultation.<sup>19</sup>

Florida does not allow ARNPs to prescribe controlled substances.<sup>20</sup> Florida is currently the only state in the nation that does not allow ARNPs to prescribe controlled substances.<sup>21</sup>

ARNPs must meet financial responsibility requirements, as determined by rule of the BON, and the practitioner profiling requirements.<sup>22</sup> The BON requires professional liability coverage of at least \$100,000 per claim with a minimum annual aggregate of at least \$300,000 or an unexpired irrevocable letter of credit in the same amounts payable to the ARNP.<sup>23</sup>

### **Nurse Workforce Data**

In 2012, there were approximately 110,200 certified nurse practitioners (CNP), 35,200 certified registered nurse anesthetists (CRNAs), 6,000 certified nurse midwives (CNMs), and 2,711,000 registered nurses (RNs) employed in the U.S.<sup>24</sup> During the 2012–2013 fiscal year, Florida had 17,958 advanced registered nurse practitioners with an active certificate authorizing practice in the state.<sup>25</sup> The Florida Center for Nursing reports that over 30 percent of Florida's ARNPs are 51 to 60 years old, meaning there will be a large sector of Florida's advanced practice nursing workforce retiring in the near future.<sup>26</sup>

<sup>17</sup> The committee has not met since 1999 and no medical acts have been approved pursuant to this statute. (E-mail from Paul Runk, Florida Department of Health (Feb.20, 2014) (on file with the Senate Health Policy Committee).

<sup>18</sup> Section 458.348(2), F.S.

<sup>19</sup> Rules 64B9-4.010 and 64B8-35.002, F.A.C.

<sup>20</sup> Sections 893.02(21) and 893.05(1), F.S.

<sup>21</sup> Drug Enforcement Agency, *Mid-Level Practitioners Authorization by State* (March 2014), available at [http://www.deadiversion.usdoj.gov/drugreg/practioners/mlp\\_by\\_state.pdf](http://www.deadiversion.usdoj.gov/drugreg/practioners/mlp_by_state.pdf) (last visited March 19, 2014).

<sup>22</sup> Sections 456.0391 and 456.041, F.S.

<sup>23</sup> Rule 64B9-4.002(5), F.A.C.

<sup>24</sup> U.S. Department of Labor, Bureau of Labor Statistics, *Employment Projections*, <http://data.bls.gov/projections/occupationProj> (last visited on March 18, 2014).

<sup>25</sup> Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan FY 2012-2013*, 9, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-12-13.pdf> (last visited March 18, 2014). The total reflects In-State Active and Out-of-State Active licensees. "In-State Active" means the licensed practitioner has a Florida mailing address and is authorized to practice. "Out-of-State Active" means the licensed practitioner has an out-of-state mailing address and is authorized to practice.

<sup>26</sup> Florida Center for Nursing, *Presentation on Florida's Nurse Workforce*, 13 (Nov. 6, 2013), available at: [http://myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2786&Session=2014&DocumentType=Meeting Packets&FileName=schw11-6-13.pdf](http://myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2786&Session=2014&DocumentType=Meeting%20Packets&FileName=schw11-6-13.pdf) (last visited March 18, 2014).

## Florida Mental Health Act

In 1971, the Legislature created part I of ch. 394, F.S., the “Florida Mental Health Act,” also known as the Baker Act, to address mental health needs in the state. The Baker Act is a civil commitment law which provides a process for the involuntary examination and subsequent involuntary placement (commitment) of a person for either inpatient or outpatient treatment of a mental, emotional, or behavioral disorder.

The Department of Children and Families (DCF) administers this law through receiving facilities, which are public or private facilities that are designated by the DCF to receive and hold involuntary patients under emergency conditions for psychiatric evaluation and to provide short-term treatment.<sup>27</sup> A patient who requires further treatment may be transported to a treatment facility. Treatment facilities designated by the DCF are state-owned, state-operated, or state-supported hospitals which provide extended treatment and hospitalization beyond what is provided in a receiving facility.<sup>28</sup>

An involuntary examination may be initiated by court order; law enforcement; or certificate executed by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker stating that he or she examined the person within the preceding 48 hours and the person appears to meet the criteria for involuntary examination.<sup>29</sup> A psychiatric nurse is defined as an RN who has a master’s degree or a doctorate in psychiatric nursing and 2 years of post-master’s clinical experience under the supervision of a physician.<sup>30</sup> A patient must be examined within 72 hours of arrival and may be released only with the approval of a psychiatrist, clinical psychologist, or emergency room physician with experience in the diagnosis and treatment of mental and nervous disorders.<sup>31</sup>

## The Patient Self-Referral Act of 1992

Section 455.053, F.S., is “The Patient Self-Referral Act of 1992.” The act addresses the issue of the referral of patients by a health care provider for services or treatments when the referring health care provider has a financial interest in the service or treatment to be provided. The act addresses the risk of a conflict of interest or the potential for inappropriate referrals for financial gain.<sup>32</sup> Federal<sup>33</sup> and state laws both generally prohibit self-referrals while providing certain exceptions. The exception in Florida law currently distinguishes between referrals for the provision of designated health services and the referral for any other health care item or service in which the health care provider has an interest.<sup>34</sup> Designated health services include clinical

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<sup>27</sup> Section 394.455(26), F.S.

<sup>28</sup> Section 394.455(32), F.S.

<sup>29</sup> Section 394.463(2)(a), F.S.

<sup>30</sup> Section 394.455(23), F.S.

<sup>31</sup> Section 394.463(2)(f), F.S.

<sup>32</sup> Comm. On Health Regulation, The Florida Senate, *Referrals Between Health Care Providers in the Delivery of Radiation Therapy Services*, 1, 4 (Issue Brief 2012-218) (Sept. 2011).

<sup>33</sup> 42 U.S.C. 1395nn.

<sup>34</sup> Section 456.053(5), F.S.

laboratory services, physical therapy services, comprehensive rehabilitative services, diagnostic–imaging services, and radiation therapy services.<sup>35</sup>

### Medical Assistants

Current law creates a definition of “medical assistant” and describes the duties a medical assistant may undertake under the direct supervision and responsibility of a licensed physician. These limited duties include certain basic office and laboratory procedures, assisting with first aid, taking vital signs, and performing aseptic procedures, among others. The law says that a medical assistant may be certified by the American Association of Medical Assistants or as a Registered Medical Assistant by the American Medical Technologist, but the law does not require certification as a condition of performing the specified duties. Other agencies that certify medical assistants are not recognized in law.<sup>36</sup>

## III. Effect of Proposed Changes:

### ARNP/APRN Regulation

CS/SB 1352 amends laws governing ARNPs to:

- Change “advanced registered nurse practitioner” to “advanced practice registered nurse” throughout the statutes, thereby adopting the title recommended in the APRN Regulation Consensus Model. **(Sections 20 – 30, 34, 36 – 64, 66 – 82, 84, 85, and 87 - 98 contain only APRN title conforming changes and no substantive changes.)**
- Authorize APRNs to prescribe controlled substances under physician protocol, unless the drug is on a negative formulary prohibiting or otherwise limiting its use. The BON will appoint a committee consisting of at least three APRNs, two physicians, and a pharmacist recommended by the Surgeon General to adopt a formulary, if determined necessary to protect the public. The formulary may include drugs that may not be prescribed, or prescribed only for specific uses or subject to specific limitations. The committee may recommend a formulary applicable to all APRNs, limited by specialty certification, limited to approved uses of controlled substances, or other similar limitations the committee deems appropriate to protect the public health, safety, and welfare. The BON must adopt a recommended formulary by rule, with rulemaking initiated no later than October 1, 2014. A person requesting subsequent changes to the formulary bears the burden to show why the change should be made. The BON must post notice of any proposed, pending, or adopted changes to the formulary. The procedural requirements of this section track the requirements in current law applicable to the physician assistant formulary.<sup>37</sup> **(Section 15)**
- Revise the term “practitioner” under the Florida Comprehensive Drug Abuse Prevention and Control Act (ch. 893, F.S.) to include APRNs, as is necessary to authorize controlled substance prescribing. **(Section 18)**
- Add grounds for discipline of an APRN related to prescribing that are the same as apply to other health care practitioners who have prescribing authority, including enhanced penalties for prescribing, dispensing, mixing, or otherwise preparing a legend drug, including a

<sup>35</sup> Section 456.053(3)(c), F.S.

<sup>36</sup> See, e.g. The American Registry of Medical Assistants, <http://arma-cert.org/> (last visited March 17, 2014).

<sup>37</sup> See s. 458.347(4)(f), F.S.

- controlled substance, other than in the course of the APRN's professional practice, or doing so inappropriately or in excessive or inappropriate amounts. **(Sections 10 and 17)**
- Require an APRN to comply with all statutes applicable to other health care practitioners who prescribe controlled substances to treat chronic nonmalignant pain. This includes:
    - Registration as a prescribing practitioner.
    - Complying with the specified standards of practice related to physical examination and medical history, treatment plans, communication of risks and benefits of treatment, follow up visits, referrals, records, and suspected addiction referrals. **(Section 11)**
  - Add "advanced practice registered nurse" to all sections of law that reference controlled substances prescribed by a physician.
    - Prescribing brand drugs under the state prescription drug program. **(Section 1)**
    - Excepting controlled substances prescribed by an APRN from the disqualifications for continued certification or licensure as a deputy or state pilot. **(Sections 2, 3, and 4)**
    - Prohibiting substance abuse service providers from denying access to services to a person who takes medications prescribed by an APRN. **(Section 7)**
    - Including drugs or narcotics prescribed by an APRN in an exception relating to possession of drugs or narcotics during probation. **Section 19)**
  - Corrects the title "Certified Nurse Practitioner" throughout the statutes and adds it and related abbreviations to the list of titles and abbreviations that cannot be used without valid certification. A violation is a first degree misdemeanor, which is punishable by up to one year in jail or a fine of \$1,000. **(Sections 16, 35, 65, 83, 86)**

### **Florida Mental Health Act**

The bill amends part I of ch. 394, F.S., the Florida Mental Health Act, to:

- Revise the credentials for registered nurses who are authorized to perform specified acts under the Florida Mental Health Act. Specifically, the bill requires national advanced practice certification as a Psychiatric-Mental Health Advanced Practice Registered Nurse in lieu of the 2 years clinical experience, required in the act today of psychiatric nurses. **(Section 5)**
- Change "psychiatric nurse" to "psychiatric-mental health advanced practice registered nurse" (PMH-APRN) throughout the act. **(Sections 6 and 31 - 33)**
- Authorize PMH-APRNs to examine and approve releases of patients admitted to a receiving facility for involuntary examination. **(Section 6)**

### **Miscellaneous Provisions**

Finally, the bill:

- Revises the Patient Self-Referral Act of 1992 to allow referrals for designated health services at an entity in which the health care provider owns registered securities that are purchased on a national exchange or in the over-the-counter market and issued by a publicly held corporation whose shares are traded on the exchange or market and whose corporate assets exceed \$50 million. The public corporation does not loan funds or guarantee a loan for an investor who is in a position to make referrals if the loan is used to obtain the investment interest. The effect of the bill is to extend to health care providers who refer patients to designated health services the exemption for an ownership interest of publicly-traded stock

that currently applies to health care providers who refer patients to all other health care services. This is consistent with federal law. **(Section 8)**

- Clarifies that fees charged for written or typed medical records must be the same regardless of format or medium. This language is consistent with a rule proposed by the Board of Medicine amending Rule 64B8-10.003, F.A.C., relating to costs of reproducing medical records.<sup>38</sup> **(Section 9)**
- Adds two additional pain management certifying entities that are recognized for purposes of the exemption from the standards of practice related to treatment of chronic nonmalignant pain, thereby conforming to the definition of “board-certified pain management physician.” **(Section 11)**
- Removes language that contains a partial listing of entities that certify medical assistants. Because the state does not require medical assistants to be certified, the language is unnecessary. **(Section 13)**
- Removes obsolete language related to physician office supervision. **(Sections 12 and 14)**

The bill has an effective date of July 1, 2014.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

#### V. Fiscal Impact Statement:

##### A. Tax/Fee Issues:

None.

##### B. Private Sector Impact:

Health care providers may experience efficiencies in operations if APRNs are no longer required to locate their supervisory physician in order to obtain the physician’s signature to prescribe a controlled substance the APRN has determined necessary for the treatment of a patient.

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<sup>38</sup> The Board of Medicine’s rulemaking has been ongoing since October 2012 and involved multiple public hearings. On March 7, 2014, the board provided notice of another public hearing on April 4, 2014.

**C. Government Sector Impact:**

The DOH will incur an indeterminate non-recurring cost to staff activities of the drug formulary committee.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 110.12315, 310.071, 310.073, 310.081, 381.0035, 394.455, 394.463, 397.501, 456.053, 456.057, 456.072, 456.44, 458.348, 458.3485, 459.025, 464.012, 464.015, 464.018, 464.203, 893.02, 948.03, 39.303, 39.304, 90.503, 112.0455, 121.0515, 252.515, 381.00315, 381.00593, 383.141, 390.0111, 390.012, 394.4574, 394.4655, 394.467, 395.0191, 395.602, 395.605, 397.311, 397.405, 397.427, 400.021, 400.0255, 400.172, 400.211, 400.462, 400.487, 400.506, 401.445, 409.905, 409.908, 409.9081, 409.9122, 409.973, 429.26, 429.918, 440.102, 456.0392, 456.041, 456.048, 458.3265, 458.331, 459.0137, 459.015, 464.003, 464.004, 464.016, 464.0205, 467.003, 480.0475, 483.041, 483.801, 486.021, 490.012, 491.0057, 491.012, 493.6108, 626.9707, 627.357, 627.6471, 627.6472, 627.736, 633.412, 641.3923, 641.495, 744.331, 744.703, 766.102, 766.103, 766.1115, 766.1116, 794.08, 943.13, 945.603, 1002.20, 1002.42, 1006.062, 1009.65, 1009.66, and 1009.67.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Health Policy on March 25, 2014:**

The CS for SB 1352:

- Restores current law pertaining to required continuing education related to HIV, domestic violence, and medical errors.
- Restores current law related to certified nursing assistant in-service training requirements.
- Adds two additional pain management certifying entities that are recognized for purposes of the exemption from the standards of practice related to treatment of chronic nonmalignant pain, thereby conforming to the definition of “board-certified pain management physician.”
- Deletes an obsolete date related to registration for treatment of chronic nonmalignant pain.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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