Health Care Regulation Policy Committee

Monday, March 22, 2010
1:45 PM – 5:00 PM
Morris Hall (17 HOB)

MEETING PACKET

Larry Cretul
Speaker

Nick Thompson
Chair

The Florida House of Representatives

Health Care Regulation Policy Committee

AGENDA

March 22, 2010
1:45 PM - 5:00 PM
Morris Hall (17 HOB)

I. **Opening Remarks by Chair Thompson**

II. **Consideration of the following bill(s):**

HJR 37 Health Care Services by Rep. Plakon, Workman, Ray

HB 107 Autism by Rep. Coley

HB 729 Practice of Tattooing by Rep. Brandenburg

HB 911 Electronic Health Information by Rep. Hudson

III. **Consideration of the following proposed committee bill(s):**

PCB HCR 10-03 Reorganization of the Department of Health

IV. **Closing Remarks by Chair**

V. **Adjournment**

1301 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 487-2242

HJR 37

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 37 Health Care Services
SPONSOR(S): Plakon and others
TIED BILLS: **IDEN./SIM. BILLS:** SJR 72

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Regulation Policy Committee		Guy	Calamas
2)	Criminal & Civil Justice Policy Council			
3)	Health & Family Services Policy Council			
4)	Rules & Calendar Council			
5)				

SUMMARY ANALYSIS

House Joint Resolution 37 proposes the creation of Section 28 of Article X of the Florida Constitution relating to health care. Specifically the constitutional amendment:

- prohibits persons and employers from compelled participation in a heath care system;
- allows direct payment of health care services and prohibits penalizing persons, employers and health care providers from utilizing a direct payment system;
- allows the purchase or sale of health insurance in the private market, subject to certain conditions; and
- exempts laws enacted prior to January 1, 2010, from requirements of the amendment.

The joint resolution provides definitions for certain terms and includes a ballot summary.

This joint resolution appears to have a negative, non-recurring fiscal impact on state government. The Department of State, Division of Elections, estimates a cost of approximately $65,045 for FY 10-11. The cost is a result of placing the joint resolution on the ballot and publishing two required notices.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters at the 2010 General Election, the resolution would take effect January 4, 2011.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Health Care Reform

Currently, the U.S. Congress is considering an extensive overhaul of the national health care system with particular focus on access to affordable coverage in the private market and a reorganization of public programs. The U.S. House of Representatives passed H.R. 3962 on November 7, 2009, while the U.S. Senate passed H.R. 3590 on December 24, 2009. President Barack Obama released a proposal for federal health care reform on February 22, 2010, which includes many of the policy considerations in each of the House and Senate bills.

The bills differ with respect to policy decisions on health care reform, but both bills contain provisions relating to the following areas: mandated individual coverage; mandated employer offers of coverage; expansion of Medicaid; individual cost-sharing subsidies and tax penalties for non-compliance; employer tax penalties for non-compliance; health insurance exchanges; public option coverage; expanded regulation of the private insurance market; and revision of the Medicare and Medicaid programs.

Both bills require individuals to have health insurance coverage and provide penalties for non-compliance. Certain employers are required to offer health insurance to their employees or pay a penalty for non-compliance. The bills make substantive changes to Medicaid by increasing the eligibility threshold. The bills require tax increases as a means to finance health care reform provisions.

Key differences between the two bills include: [1] [2]

Issue	Senate Bill: H.R. 3590 Patient Protections & Affordable Care Act	House Bill: H.R. 3962 Affordable Health Care for America Act
Mandated individual coverage	"minimum essential coverage" as defined in the bill	"acceptable coverage" as defined in the bill
Individual penalty	$95-$750 per person tax	2.5% of gross adj. income fine
Mandated employer offering	Required for companies with more than 50 employees	Required for companies with an annual payroll of greater than $750,000
Employer penalty for failure to offer	$750 per employee tax, if one full-time employee uses the federal subsidy	8% payroll tax fine
Other employer penalties	For employers who offer health insurance, if at least one full-time employee uses the federal subsidy, then $750 per employee tax	Sliding scale payroll tax for companies with an annual payroll less than $750,000
Health insurance exchanges	State-based American Health Benefits Exchanges	National Health Insurance Exchange
Individual subsidy: Exchange participation	Insurance premium credits	Insurance premium credits
Public option	N/A	Public insurance option offered through the National Exchange
Private insurance market regulation	Guarantee issue and renewability	Guarantee issue and renewability
Mandated state Medicaid expansion	Up to 133% of the Federal Poverty Level ($29,326 for a family of four)	Up to150% of the Federal Poverty Level ($33,075 for a family of four)
CHIP	CHIP block grants funded through 2015	Repeal CHIP; enrollees required to participate in National Exchange
Financing	• Excise tax on "Cadillac" plans • Tax increase on HSAs	• Tax on high-income individuals and families • Tax increase on HSAs

There is no existing requirement in federal law that individuals maintain health insurance coverage; nor does federal law require employers to provide health insurance to employees.

Florida Health Insurance

Florida law does not require state residents to have health insurance coverage. However, Florida law does require drivers to carry Personal Injury Protection (PIP), which includes certain health care coverage, as a condition of receiving a state driver's license.[3] Florida law also requires most employers to carry workers' compensation insurance which includes certain health care provisions for injured workers.[4]

Massachusetts Health Insurance Mandate

In 2006, to address rising costs, the State of Massachusetts passed a health care reform initiative which requires every Massachusetts citizen to have minimum health insurance coverage, whether from the private market or public assistance.[5] The law requires:

- Employers with ten or more employees to offer health insurance to their employees;
- Monetary penalties to be assessed on individuals and employers for non-compliance;
- An individual to report coverage compliance on his state income tax return; and
- Subsidies for individuals and families who do not meet a certain income threshold.

[1] Information for this table is based on versions of H.R. 3590 and H.R. 3962, dated February 24, 2010, and does not reflect reconciliation efforts or subsequent amendments to conform the two bills.
[2] For detailed side-by-side bill comparisons, see Kaiser Family Foundation, Focus on Health Reform, at http://www.kff.org/healthreform/sidebyside.cfm and *House-Senate Comparison of Key Provisions*, at www.politico.com/static/PPM136_100104_health_reform_conference.html (last visited March 17, 2010).
[3] s. 627.736, F.S.
[4] Workers' compensation insurance provisions are found in Chapter 440, F.S.
[5] Chapter 58 of the Acts of 2006, An Act Relating to Affordable, Quality, Accountable Health Care (April 12, 2006).

The legislation directed the state to set up a health insurance exchange, the "Commonwealth Connector" from which individuals may purchase insurance. The Commonwealth Connector also regulates the private health insurance market in the state.

Studies suggest that the Massachusetts health insurance mandate has not achieved projected state cost savings. State funding for the Commonwealth Connector and public assistance has increased government spending on health insurance programs by 42 percent.[6] Cost to the individual has also risen as insurance premiums increased 40 percent from 2003 to 2008.[7] In 2008, two years after passage of reform, Massachusetts health insurance premiums for family coverage exceeded the national average by $1,500.[8] When surveyed two years after implementation, Massachusetts residents still supported the mandate, but 51 percent believed their health care costs had risen as result.[9] The uninsured rate in Massachusetts is 4.1 percent.[10] The state's safety-net hospitals indicate that a large percentage of patients seeking care are uninsured; however reform measures reduced the level of payments to hospitals for charity care.[11] [12]

Congressional Authority and Constitutionality

Constitutional scholars and health care policy experts are debating the constitutionality of many of the federal health care reform provisions. The debate centers on four constitutional issues.

Commerce Clause (U.S. Const. Art. I, Sec. 8, Clause 3)

Congress has the power to regulate interstate commerce, including local matters and things that "substantially affect" interstate commerce. Proponents of reform assert that although health care delivery is local, the sale and purchase of medical supplies and health insurance occurs across state lines, thus regulation of health care is within Commerce Clause authority. Arguing in support of an individual mandate, proponents point to insurance market de-stabilization caused by the large uninsured population as reason enough to authorize Congressional action under the Commerce Clause.[13] Opponents suggest that the decision not to purchase health care coverage is not a commercial activity and cite to *United States v. Lopez* which held that Congress is prohibited from "...unfettered use of the Commerce Clause authority to police individual behavior that does not constitute interstate commerce."[14]

Tax and Spend for the General Welfare (U.S. Const. Art. I, Sec. 8, Clause 1)

The Tax and Spend Clause of the U.S. Constitution provides Congress with taxation authority and also authorizes Congress to spend funds with the limitation that spending must be in pursuit of the general welfare of the population. To be held constitutional, Congressional action pursuant to this Clause must

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[6] Kevin Sack, "Massachusetts Faces Costs of Big Health Plan," New York Times, see http://www.nytimes.com/2009/03/16/health/policy/16mass.html March 15, 2009.

[7] Cathy Schoen, *Paying the Price: How Health Insurance Premiums are Eating Up Middle-class Incomes*, The Commonwealth Fund, see http://www.commonwealthfund.org/Content/Publications/Data-Briefs/2009/Aug/Paying-the-Price-How-Health-Insurance-Premiums-Are-Eating-Up-Middle-Class-Incomes.aspx (August 2009).

[8] *Id.*

[9] Robert J. Blendon, et al., *Massachusetts Health Reform: A Public Perspective from Debate Through Implementation*, Health Affairs, 27:6, at 559, 562 (2008).

[10] Joanna Turner, et al., *A Preliminary Evaluation of Health Insurance Coverage in the 2008 American Community Survey*, U.S. Bureau of the Census, see www.census.gov/hhes/www/hlthins/2008ACS_healthins.pdf (September 22, 2009).

[11] See "Some Massachusetts Safety New Hospitals face Budget Problems because of Health Insurance Law," Kaiser Daily Health Report (March 19, 2008).

[12] For detailed discussion of the Massachusetts Health Insurance Mandate, see Michael Tanner, *Massachusetts Miracle or Massachusetts Miserable: What the Failure of the 'Massachusetts Model' Tells Us about Health Care Reform*, Briefing Paper No. 112, Cato Institute, see http://www.cato.org/pub_display.php?pub_id=10268 (June 9, 2009). See Aaron Yelowitz and Michael F. Cannon, *The Massachusetts Health Plan: Much Pain, Little Gain*, Policy Analysis No. 657, Cato Institute, see http://www.cato.org/pub_display.php?pub_id=11115 (January 20, 2010).

[13] Jack Balkin, *The Constitutionality of the Individual Mandate for Health Insurance*, N. Eng. J. Med. 362:6, at 482 (February 11, 2010).

[14] Peter Urbanowicz and Dennis G. Smith, *Constitutional Implications of an 'Individual Mandate' in Health Care Reform*, The Federalist Society for Law and Public Policy, at 4 (July 10, 2009).

be reasonable.[15] With respect to the penalty or fine on individuals who do not have health insurance, proponents suggest that Congress' power to tax and spend for the general welfare authorizes the crafting of tax policy which in effect encourages and discourages behavior.[16] Opponents cite U.S. Supreme Court case law that prohibits "a tax to regulate conduct that is otherwise indisputably beyond [Congress'] regulatory power."[17]

The Tenth Amendment and the Anti-Commandeering Doctrine (U.S. Const. Amend. 10)

The Tenth Amendment reserves to the states all power that is not expressly reserved for the federal government in the U.S. Constitution. Opponents of federal reform assert that the individual mandate violates federalism principles because the U.S. Constitution does not authorize the federal government to regulate health care. They argue, "...state governments – unlike the federal government – have greater, plenary authority and police powers under their state constitutions to mandate the purchase of health insurance."[18] Further, opponents argue that the state health insurance exchange mandate may violate the anti-commandeering doctrine which prohibits the federal government from requiring state officials to carry out onerous federal regulations.[19] Proponents for reform suggest that Tenth Amendment jurisprudence only places wide and weak boundaries around Congressional regulatory authority to act under the Commerce Clause.[20]

Supremacy Clause (U.S. Const. Art. 6, Clause 2)

Supremacy Clause jurisprudence firmly establishes that the U.S. Constitution and federal law possess ultimate authority when in conflict with state law. The Supreme Court held "...the Supremacy Clause gives the Federal Government 'a decided advantage in the delicate balance' the Constitution strikes between state and federal power."[21] Proponents cite to the Supremacy Clause as a self-evident justification for passage of federal health reform. Opponents assert that the Supremacy Clause only protects congressional actions that are based on express authority in the Constitution and "where [the action] does not impermissibly tread upon state sovereignty."[22]

State Reaction to Federal Health Care Reform

State constitutional amendments addressing the state-federal relationship and federal health care reform are currently under consideration before 24 state legislatures.[23] Arizona passed the Freedom of Choice in Health Care Act last year and it will appear on the ballot for voter approval November 2010.

Thirteen states are considering statutory amendments to prohibit mandated health insurance coverage.[24] In March 2010, Virginia and Idaho enacted such a statutory change. Utah passed state law changes; enactment is pending gubernatorial approval.[25] In addition to asserting the right of citizens to choose health care services without the threat of penalty from the federal government, the Idaho law directs the state's Attorney General to sue the federal government if it enacts laws that compel the purchase health insurance,.[26]

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[15] *Helvering v. Davis*, 301 U.S. 619 (1937).
[16] Mark A. Hall, *The Constitutionality of Mandates to Purchase Health Insurance*, Legal Solutions in Health Reform project, O'Neill Institute, at 7.
[17] David B. Rivkin and Lee A. Casey, "Illegal Health Reform" Washington Post, August 22, 2009, at A15. Rivkin and Lee cite to *Bailey v. Drexel Furniture*, 259 U.S. 20 (1922), a Commerce Clause case which held that Congress has the authority to tax as a means of controlling conduct.
[18] *Id.*
[19] Matthew D. Adler, *State Sovereignty and the Anti-Commandeering Cases*, The Annals of the American Academy of Policy and Social Science, 574, at 158 (March 2001).
[20] Hall, *supra* note 16, at 8-9.
[21] *New York v. United States*, 505 US. 144, 160 (1992).
[22] Clint Bolick, *The Health Care Freedom Act: Questions and Answers*, Goldwater Institute, at 3 (February 2, 2010).
[23] National Conference of State Legislatures, *State Legislation Opposing Certain Health Reforms, 2009-2010*, see http://www.ncsl.org/IssuesResearch/Health/StateLegislationOpposingCertainHealthReforms/tabid/18906/Default.aspx?TabId=18906#AZ08 (last visited March 13, 2010). Florida and Arizona are not included in this count.
[24] *Id.*
[25] *Id.*
[26] Chapter Law 46, Idaho Health Freedom Act, effective date June 1, 2010.

In Florida, Attorney General Bill McCollum has asserted the constitutionality argument to Congress. On January 19, 2010, Attorney General McCollum sent a letter to U.S. House and Senate leadership in which he said that he would pursue legal action if the individual mandate becomes law. Attorney General McCollum then sent a letter to the president of the National Association of Attorneys General on March 16, 2010, asking other attorney generals to participate in litigation challenging the individual mandate. The basis for Attorney General McCollum's proposed challenge is that Congress lacks Commerce Clause authority to compel individuals to purchase health insurance. According to the Attorney General, "A citizen's choice not to buy health insurance cannot rationally be construed as economic activity, or even 'activity,' to subject that inactivity to regulation under the Commerce Clause."[27]

Effect of Proposed Changes

House Joint Resolution 37 proposes the creation of Section 28 of Article X of the Florida Constitution relating to health care. The resolution prohibits any person, employer or health care provider from being compelled to participate in any health care system. With respect to an individual or employer mandate, this provision would allow any person or employer to opt-out of mandated insurance coverage and would allow for flexibility in any health care provider's participation in a particular health care system.

The resolution authorizes any person or employer to pay directly for health care services and provides that persons or employers shall not incur a penalty or fine for direct payment. The resolution authorizes a health care provider to accept direct payment and provides that such health care provider will not incur a penalty or fine for accepting direct payment. This provision would allow a person or employer to purchase health care services without participation in a health care system or plan.

The resolution prohibits any law or rule which prohibits private health insurance sales or purchases. The bill subjects this prohibition to reasonable and necessary rules that do not substantially limit purchase or sale options. This provision would allow the purchase or sale of private insurance to individuals regardless of a mandate requiring individuals to have health insurance coverage.

The resolution directs that its provisions do not affect:

- Required performance of services by a health care provider or hospital;
- Health care services permitted by law;
- Worker's compensation care as provided by general law;
- Laws or rules in effect as of January 1, 2010; and
- Any health care system terms and conditions that do not provide punitive measures against persons, employers or health care providers for direct payment.

The resolution provides definitions or usage for the following terms:

- "Compel" includes the imposition of penalties or fines.
- "Direct payment" or "pay directly" means payment for health care services without the use of a public or third party, excluding any employers.
- "Health care system" means any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for, or payment, in full or in part, for health care services, health care data, or health care information for its participants.
- "Lawful health care services" means any health care service offered by legally authorized persons or businesses, provided that such services are permitted or not prohibited by law or regulation.
- "Penalties or fines" mean any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge, or any named fee with a similar effect established by law or rule by an agency established, created, or controlled by the government which is used to punish or discourage the exercise of rights protected under this section.

[27] Florida Attorney General Bill McCollum, Letter to Congressional Leaders, dated January 19, 2010.

The resolution provides for a ballot summary which describes the provisions of the constitutional amendment in plain language.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters at the 2010 General Election, the resolution would take effect January 4, 2011.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Non-recurring FY 2010-2011

The Department of State, Division of Elections estimates the bill will cost approximately $$65,045.16 in non-recurring General Revenue for publication costs. 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:

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election.[28] Costs for advertising vary depending upon the length of the amendment. According to the Department of State, Division of Elections, the average cost of publishing a constitutional amendment is $94.68 per word. The word court for HJR 37 is 687 words X $94.68 = $65,045.16.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

[28] Fla. Const., art. XI, s. 5(d).

2. Other:

Article XI, Section 1 of the Florida Constitution authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths of the elected membership of each house. If agreed to by the Legislature, the amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or at a special election held for that purpose. The resolution would be submitted to the voters at the 2010 General Election and must be approved by at least 60 percent of the voters voting on the measure.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The joint resolution does not contain an express exemption for required Personal Injury Protection coverage. If statutory changes are made to PIP in the future they may conflict with the voter-approved joint resolution.

It is unclear how the courts will apply or construe provisions of the joint resolution if approved; it may affect other programs in a manner that is unforeseen at this time.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

House Joint Resolution

A joint resolution proposing the creation of Section 28 of Article X of the State Constitution, relating to health care services.

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

That the following creation of Section 28 of Article X of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE X

MISCELLANEOUS

SECTION 28. Health care services.--

(a) To preserve the freedom of all residents of the state to provide for their own health care:

(1) A law or rule shall not compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system.

(2) A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and shall not be required to pay penalties or fines for accepting direct payment from a person or employer for lawful health care services.

(b) Subject to reasonable and necessary rules that do not substantially limit a person's options, the purchase or sale of health insurance in private health care systems shall not be prohibited by law or rule.

(c) This section does not:

(1) Affect which health care services a health care provider or hospital is required to perform or provide.

(2) Affect which health care services are permitted by law.

(3) Prohibit care provided pursuant to general law relating to workers' compensation.

(4) Affect laws or rules in effect as of January 1, 2010.

(5) Affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or employer for paying directly for lawful health care services or a health care provider or hospital for accepting direct payment from a person or employer for lawful health care services.

(d) For purposes of this section:

(1) "Compel" includes the imposition of penalties or fines.

(2) "Direct payment" or "pay directly" means payment for lawful health care services without a public or private third party, not including an employer, paying for any portion of the service.

(3) "Health care system" means any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for, or payment, in

full or in part, for health care services, health care data, or health care information for its participants.

(4) "Lawful health care services" means any health-related service or treatment, to the extent that the service or treatment is permitted or not prohibited by law or regulation, that may be provided by persons or businesses otherwise permitted to offer such services.

(5) "Penalties or fines" means any civil or criminal penalty or fine, tax, salary, or wage withholding or surcharge or any named fee with a similar effect established by law or rule by an agency established, created, or controlled by the government which is used to punish or discourage the exercise of rights protected under this section.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE X, SECTION 28

HEALTH CARE SERVICES.--Proposing an amendment to the State Constitution to prohibit laws or rules from compelling any person, employer, or health care provider to participate in any health care system; permit a person or employer to purchase lawful health care services directly from a health care provider; permit a health care provider to accept direct payment from a person or employer for lawful health care services; exempt persons, employers, and health care providers from penalties and fines for paying or accepting direct payment for lawful health care services; and permit the purchase or sale of health insurance in private health care systems. Specifies that

the amendment does not affect which health care services a health care provider or hospital is required to perform or provide; affect which health care services are permitted by law; prohibit care provided pursuant to general law relating to workers' compensation; affect laws or rules in effect as of January 1, 2010; or affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or employer for paying directly for lawful health care services or a health care provider or hospital for accepting direct payment from a person or employer for lawful health care services.

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 Care Regulation Policy Committee

Representative Plakon offered the following:

Amendment (with title amendment)

Remove everything after the resolving clause and insert:

That the creation of Section 28 of Article I of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 28. Health care services.—

(a) To preserve the freedom of all residents of the state to provide for their own health care:

(1) A law or rule may not compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system.

(2) A person or employer may pay directly for lawful health care services and may not be required to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and may not be required to pay penalties or fines for accepting direct payment from a person or employer for lawful health care services.

(b) Subject to reasonable and necessary rules that do not substantially limit a person's options, the purchase or sale of health insurance in private health care systems shall not be prohibited by law or rule.

(c) This section does not:

(1) Affect which health care services a health care provider is required to perform or provide.

(2) Affect which health care services are permitted by law.

(3) Prohibit care provided pursuant to general law relating to workers' compensation.

(4) Affect laws or rules in effect as of March 1, 2010.

(5) Affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or employer for paying directly for lawful health care services or a health care provider for accepting direct payment from a person or employer for lawful health care services.

(d) For purposes of this section:

(1) "Compel" includes the imposition of penalties or fines.

(2) "Direct payment" or "pay directly" means payment for lawful health care services without a public or private third party, not including an employer, paying for any portion of the service.

(3) "Health care system" means any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for, or payment, in full or in part, for health care services, health care data, or health care information for its participants.

(4) "Lawful health care services" means any health-related service or treatment, to the extent that the service or treatment is permitted or not prohibited by law or regulation, which may be provided by persons or businesses otherwise permitted to offer such services.

(5) "Penalties or fines" means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge, or any named fee with a similar effect established by law or rule by an agency established, created, or controlled by the government which is used to punish or discourage the exercise of rights protected under this section.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE I, SECTION 28

HEALTH CARE SERVICES.—Proposing an amendment to the State Constitution to prohibit laws or rules from compelling any person, employer, or health care provider to participate in any health care system; permit a person or employer to purchase

lawful health care services directly from a health care provider; permit a health care provider to accept direct payment from a person or employer for lawful health care services; exempt persons, employers, and health care providers from penalties and fines for paying or accepting direct payment for lawful health care services; and permit the purchase or sale of health insurance in private health care systems. Specifies that the amendment does not affect which health care services a health care provider is required to perform or provide; affect which health care services are permitted by law; prohibit care provided pursuant to general law relating to workers' compensation; affect laws or rules in effect as of March 1, 2010; or affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or employer for paying directly for lawful health care services or a health care provider for accepting direct payment from a person or employer for lawful health care services.

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

Remove the entire title and insert:

House Joint Resolution

A joint resolution proposing the creation of Section 28 of Article I of the State Constitution, relating to health care services.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 107 Autism
SPONSOR(S): Coley
TIED BILLS: **IDEN./SIM. BILLS:** SB 214

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Regulation Policy Committee		Guy	Calamas EC
2)	Insurance, Business & Financial Affairs Policy Committee			
3)	Government Operations Appropriations Committee			
4)	General Government Policy Council			
5)				

SUMMARY ANALYSIS

House Bill 107 requires a physician to refer a minor patient to an appropriate specialist for screening for autism spectrum disorder (ASD), if the parent or legal guardian believes the minor exhibits symptoms of ASD, and reports the observation to the physician. The bill defines "appropriate specialist" and provides a list of professionals who meet the definition. The bill provides an exemption for physicians providing emergency services and care under s. 395.1041, F.S.

The bill creates an insurance coverage mandate for insurers and health plans. The bill amends s. 627.6686, F.S., and s. 641.31098, F.S., to require insurers and plans to cover "direct patient access" to an appropriate specialist for a minimum of three visits per policy year for screening, evaluation or diagnosis of ASD. The bill defines "direct patient access" as the ability of a subscriber or the insured to obtain services from an in-network provider without getting a referral or other authorization prior to receiving services.

The bill is anticipated to have an indeterminate fiscal impact to state government and the private sector. (See Fiscal Comments.)

House Bill 107 provides an effective date of July 1, 2010.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background on Autism Spectrum Disorder

Autism spectrum disorder (ASD) is the term for a number of pervasive developmental disorders including autistic disorder, Asperger's Syndrome, and Rhett's syndrome.[1] Autism spectrum disorders range from a severe form, called autistic disorder, to a milder form, Asperger syndrome. If a child has symptoms of either of these disorders, but does not meet the specific criteria for either, the diagnosis is called pervasive developmental disorder not otherwise specified (PDD-NOS).[2] ASD is generally detected by age three, and the United States Centers for Disease Control and Prevention (CDC) estimates that ASD affects between two and six of every 1,000 children.[3]

Common characteristics shared by children with ASD are varying degrees of deficits in social interaction, verbal and nonverbal communication, and repetitive behaviors or interest. In addition, many children with ASD have some degree of mental impairment. According to the National Institute of Mental Health, the rate of autism diagnosis is increasing - possibly due a change in the criteria to diagnose and "increased recognition of the disorder by professionals and the public."[4] Currently, there is no determinative cause of autism.

Screening and Referrals

The earlier a child is diagnosed with ASD, the more likely early intervention and treatment can assist the child with developmental gains and improved outcomes.[5] In evaluating a child, clinicians rely on behavioral characteristics to make a diagnosis. The diagnosis usually requires a two-stage process. The first phase is a screening which is used to determine if further evaluation is needed.[6] The second phase is a diagnostic evaluation which may be done by a multidisciplinary team that may include a

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[1] National Institute of Mental Health, U.S. Department of Health and Human Services, *Autism Spectrum Disorders: Pervasive Developmental Disorders*, see http://www.nimh.nih.gov/health/publications/autism/index.shtml (last visited March 20, 2010).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] There are several screening instruments for ASD which may be used including but not limited to the Checklist of Autism in Toddlers (CHAT), the modified Checklist for Autism in Toddlers (M-CHAT), the Screening Tool for Autism in Two-Year-Olds (STAT), and the Social Communication Questionnaire (SCQ) for children 4 years of age and older.

psychologist, neurologist, psychiatrist, speech therapist, or other professionals who diagnose children with ASD.[7]

The American Academy of Pediatrics (Academy) has issued guidelines for the identification and evaluation of children with ASD. These guidelines also include resource materials and screening algorithms for pediatricians to use. In summary, the Academy encourages pediatricians to:[8]

- Conduct surveillance at every well-child visit. Be a good listener and recognize the early subtle red flags that indicate the possibility of an ASD. Be especially vigilant for younger siblings of a child who has already been diagnosed with an ASD.

- Screen at 18, and 24 months and any other time when parents raise a concern about a possible ASD. Although no screening tool is perfect, choose and become comfortable with at least 1 tool for each age group and use it consistently. Before 18 months of age, screening tools that target social and communication skills may be helpful in systematically looking for early signs of ASDs.

- If an ASD-specific screening result is negative but either the parents or the pediatrician remain somewhat concerned, then the pediatrician should schedule the child for an early, targeted clinic visit to address these persistent concerns.

- Act on a positive screening result or when a child demonstrates 2 or more risk factors. Do not take a "wait-and-see" approach. Depending on the age of the child, simultaneously refer for all 3: comprehensive ASD evaluation; early intervention/early childhood education services; and an audiologic evaluation. Do not wait for a definitive diagnosis of an ASD to refer for developmental services; early intervention can be beneficial even if it targets the child's unique deficits. The intervention strategy can be modified if needed when the child is determined to have an ASD.

The American Academy of Pediatrics recommends that initial screening be done by the pediatrician in the child's medical home.[9] The National Institute of Mental Health suggests the diagnostic valuation may be done by a multidisciplinary team that includes a psychologist, a neurologist, a psychiatrist, a speech therapist, or other professionals who diagnose children with ASD.[10]

Currently, physicians in Florida are not statutorily required to refer a minor patient to a specialist for ASD screening.

Treatment

Treatment for autism uses applied behavior analysis to reduce inappropriate behavior and increase communication, learning, and appropriate social behavior.[11] Treatment for young children focuses on early communication and building social interaction skills. Some children may take medication in addition to social training.

Physician Licensure and Discipline

Physicians are licensed by the Department of Health (DOH) and are regulated by either the Florida Board of Medicine (Board), for allopathic physicians licensed under Chapter 458, F.S., or the Florida Board of Osteopathic Medicine (Board), for osteopathic physicians licensed under Chapter 459, F.S.

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[7] National Institute of Mental Health, *supra* note 1.
[8] Chris Plauche Johnson, *Identification and Evaluation of Children with Autism Spectrum Disorders*, Pediatrics 120:5 1183-1215 (November 2007).
[9] American Academy of Pediatricians, The Medical Home and Early Intervention Programs, see http://www.medicalhomeinfo.org/health/Downloads/EIBrochureF.pdf (last visited March 20, 2010).
[10] National Institute of Mental Health, "The Diagnosis of Autism Spectrum Disorders," see http://www.nimh.nih.gov/health/publications/autism/the-diagnosis-of-autism-spectrum-disorders.shtml (last visited March 20, 2010).
[11] National Institute of Mental Health, "Treatment Options," see http://www.nimh.nih.gov/health/publications/autism/treatment-options.shtml (last visited March 20, 2010).

There are currently 41,951 active, allopathic physicians and 3,886 active, osteopathic physicians licensed in Florida.[12]

Section 456.072, F.S., authorizes health care practitioner boards organized within the Florida Department of Health to regulate and discipline practitioners who do not comply with prevailing standards of care, state and federal law. Disciplinary measures for allopathic and osteopathic physicians include, but are not limited to: application denial; fines; compelled community service; practice restriction; temporary and emergency suspension; and licensure revocation.[13]

Health Insurance Mandates and Mandated Offerings

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 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.

Florida currently has at least 52 mandates.[14] 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.[15] 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.[16] 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 is $13,375.[17]

Health Insurance Mandate Report

Section 624.215, F.S., requires that a report assessing the social and financial impact of any proposal for legislation that mandates health benefit coverage or mandates offering requirements must be submitted to AHCA and the legislative committee having jurisdictions. The report shall include:[18]

- Extent to which the treatment or service generally used by a significant portion of the population.
- Extent to which the insurance coverage generally available.
- If the insurance coverage is not generally available, extent to which the lack of coverage result in persons avoiding necessary health care treatment.
- If the coverage is not generally available, extent to which the lack of coverage result in unreasonable financial hardship.
- Level of public demand for the treatment or service.
- Level of public demand for insurance coverage of the treatment or service.
- Level of interest of collective bargaining agents in negotiating for the inclusion of this coverage in group contracts.
- Extent to which the coverage increase or decrease the cost of the treatment or service.
- Extent to which the coverage increase the appropriate uses of the treatment or service.
- Extent to which the mandated treatment or service be a substitute for a more expensive treatment or service.

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[12] Florida Department of Health, *Division of Medical Quality Assurance Annual Report July 1, 2008 – June 30, 2009.*
[13] Rule 64B8-8.001, F.A.C., and 64B15-19.002, F.A.C.
[14] Office of Insurance Regulation list of state health insurance mandates (on file with Health Care Regulation Policy Committee); and Council for Affordable Health Insurance, *Health Insurance Mandates in the States 2009*, see http://www.cahi.org/cahi_contents/resources/pdf/HealthInsuranceMandates2009.pdf. (last viewed March 20, 2010).
[15] Council for Affordable Health Insurance, *Health Insurance Mandates in the States 2009*, see http://www.cahi.org/cahi_contents/resources/pdf/HealthInsuranceMandates2009.pdf. (last viewed March 20, 2010).
[16] *Id.*
[17] Kaiser Family Foundation, *Employer Health Benefits 2009 Annual Survey*, see http://ehbs.kff.org/?CFID=20695941&CFTOKEN=84763322&jsessionid=6030bac21268c605c7863526585a397e6175 (last viewed March 20, 2010).
[18] s. 624.215(2), F.S.

- Extent to which the coverage increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders.
- Impact of this coverage on the total cost of health care.

Health Insurance Coverage for ASD

Currently, Florida law mandates certain health insurance coverage for ASD.

Chapter 627, F.S., relates to insurers and Chapter 641, F.S., relates to health maintenance organizations. Sections 627.6686 and 641.31098, F.S., define "autism spectrum disorder" to mean autistic disorder, Asperger's Syndrome, and a PDD-NOS, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association. These sections mandate health insurance coverage for autism spectrum disorder treatment for plans issued or renewed as of April 1, 2009.[19] An "eligible individual" is a person under 18 years old or an individual at least 18 years who is in high school and was diagnosed as having a developmental disability before reaching 9 years of age.[20] Section 627.6686(4)(b), F.S., and s. 641.31098(4)(b), F.S., provide a coverage cap of $36,000 annually and $200,000 in total lifetime benefits.

Together the aforementioned sections of Florida law are known as the "Steven A. Geller Autism Coverage Act." Passed during the 2008 Legislative Session, the bill also included the Window of Opportunity Act which required the Florida Office of Insurance Regulation to convene a workgroup of stakeholders by August 31, 2008, to negotiate a compact for a binding agreement among the participants relating to insurance coverage and access to services for persons with developmental disabilities.[21] The law required the compact to include: coverage for specific therapies; policy-holder notification standards; and penalties for claims denial under specified circumstances.[22]

A compact was developed by the workgroup and adopted on December 17, 2008. The compact requires insurers and HMOs that sign onto the compact agreement must provide coverage for developmental disabilities as specified in the compact for all plans issued or renewed after January 1, 2010. As of February 15, 2010, the only compact signatory is Total Health Choices, Inc.[23]

All insurers and HMOs that did not sign the compact by April 1, 2009, are subject to the requirements of the Steven A. Gellar Autism Act.[24]

Effect of Proposed Changes

House Bill 107 creates s. 381.986, F.S., requiring physicians to immediately refer a minor patient who is an "eligible individual" as defined in s. 627.6686, F.S., or s. 641.31098, F.S., to an "appropriate specialist" for screening for ASD. The requirement is triggered if the minor patient's parent or legal guardian believes the minor exhibits symptoms of ASD, and they report their observations to the physician. In effect, the bill requires referral even if, in the physician's professional judgment, the referral is not medically necessary.

The bill defines "appropriate specialist" as a qualified professional who is experienced in the evaluation of ASD and who has training in validated diagnostic tools, including a Florida-licensed:

- Psychologist;
- Psychiatrist;
- Neurologist;
- Developmental or behavioral pediatrician who specializes in child neurology; or

[19] s. 627.6686(3), F.S., and s. 641.31098(3), F.S.
[20] s. 627.6686(2)(c), F.S., and s. 641.31098(2)(c), F.S.
[21] s. 624.916, F.S.
[22] s. 624.916(4), F.S.
[23] Office of Insurance Regulation, *2010 Developmental Disabilities Compact Annual Report* (February 15, 2010).
[24] s. 627.6686(10), F.S., and s. 641.31098(9), F.S.

- Professional whose licensure is deemed appropriate by the Children's Medical Services Early Steps Program within the Department of Health.[25]

The bill provides an exemption from this requirement for physicians providing emergency services in care under s. 395.1041, F.S.[26]

The bill amends s. 627.6686, F.S., and s. 641.31098, F.S., to require "direct patient access" to an appropriate specialist for a minimum of three visits per policy year for screening, evaluation or diagnosis of ASD. The bill defines "direct patient access" to mean the ability of a subscriber or the insured to obtain services from an in-network provider without getting a referral or other authorization prior to receiving services.

Health Insurance Mandate Report

The health insurance mandate report required by s. 624.215, F.S., was submitted by Zepp Strategic Partners.[27]

Extent to which the treatment or service generally used by a significant portion of the population.[28]

Proponents cite to the screening guidelines of the American Academy of Pediatrics which recommends autism screening at 18 months and 24 months of age. However, proponents did not provide any documentation or statistics concerning the number of children in Florida who undergo screening or treatment.

Extent to which the insurance coverage is generally available.[29]

Proponents suggest that less than 50 percent of children in Florida have insurance coverage. Proponents assert that a "significant number" of children are Medicaid recipients or have Healthy Kids coverage. According to the proponents, neither system covers autism screening. Proponents did not provide documentation for these assertions.

However, according to data provided by the University of Florida, only about 12 percent of Florida's children are uninsured. In addition, about 75 percent of Florida's uninsured children are currently eligible for government program-based coverage.[30] Of the insured children, about 58 percent are covered by private individual or employer-based coverage, and about 37 percent are covered by government programs.[31]

According to the Agency for Health Care Administration, the Medicaid Child Health Check-up program does not currently reimburse for a specific procedure code for screening for Autism or ASD. However, Medicaid's Early Intervention Services program (EIS) provides for the early identification of developmental delays or conditions. EIS reimburses for screenings, evaluations, and early intervention sessions for eligible children identified with a delay or suspected delay.[32]

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[25] The Florida Department of Health administers the Early Steps program under Children's Medical Services. "Early Steps is an early intervention system that offers services to infants and toddlers (birth to thirty-six months) with significant delays or a condition likely to result in a developmental delay." See http://www.doh.state.fl.us/AlternateSites/CMS-Kids/families/early_steps/early_steps.html (last visited March 20, 2010).

[26] This section requires hospitals with emergency departments to provide emergency services and care for persons with emergency medical conditions, regardless of ability to pay, and prohibits hospitals from transferring emergency patients except under certain, limited, conditions.

[27] The health insurance mandate report is on file with the Health Care Regulation Policy Committee.

[28] s. 624.215(2)(a), F.S.

[29] s. 624.215(2)(b), F.S.

[30] "Health Insurance Coverage Among Children in Florida," Florida Health Insurance Study, Florida Center for Medicaid and the Uninsured, University of Florida (2005).

[31] *Id.*

[32] Agency for Health Care Administration 2010 Bill Analysis & Economic Impact Report, House Bill 107, on file with the House Health Regulation Policy Committee.

Extent to which the lack of insurance coverage results in persons avoiding necessary health care treatment, if insurance coverage is not generally available.[33]

The proponent provided no data to make a determination regarding children avoiding necessary health care treatment due to lack of insurance coverage.

Extent to which insurance coverage is generally not available and results in an unreasonable financial hardship.[34]

According to the proponents, the average cost over a lifetime to treat ASD is $3.2 million.[35] Proponents suggest that early diagnosis and intervention can reduce this cost, but provide no data to support that assertion.

The level of public demand for the treatment or service.[36]

Proponents cite to the Centers for Disease Control and Prevention for the statistic that 1 percent of children in Florida have ASD.[37] However, insufficient documentation was provided to determine the level of public demand.

The level of public demand for insurance coverage of the treatment or service.[38]

The proponents provided no data on the level of public demand for insurance coverage of ASD screening, evaluation and diagnosis.

The level of interest of collective bargaining agents in negotiating for the inclusion of this coverage in group contracts.[39]

Insufficient documentation was provided to determine the level of interest of collective bargaining agents in negotiating for the inclusion of this coverage in group contracts.

Extent to which the coverage would increase or decrease the cost of the treatment or service.[40]

The proponents assert that the cost of ASD screening would be $10-20 per visit, but provide no data to support this assertion. Proponents suggest that 227,000 children may use the screening service for a total cost of $3.3 million, but provide no documentation or data to support this projection. The proponents made no assertions as to the effect of increased coverage on the cost of the treatment or service.

Extent to which the coverage increase the appropriate uses of the treatment or service.[41]

The proponents provided no data from which to make a determination regarding the increase the appropriate uses of the treatment or service.

Extent to which the mandated treatment or service be a substitute for a more expensive treatment or service.[42]

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[33] s. 624.6686(2)(c), F.S.
[34] s. 624.215(2)(d), F.S.
[35] Michael Ganz, *Understanding Autism: From Basic Neuroscience to Treatment*, CRC Press (2006). House Health Care Regulation Policy Committee staff was not provided this source.
[36] s. 624.215(2)(e), F.S.
[37] House Health Care Regulation Policy Committee staff could not verify this statistic.
[38] S. 624.215(2)(f), F.S.
[39] s. 624.215(2)(g), F.S.
[40] s. 624.215(2)(h), F.S.
[41] s. 624.215(2)(i), F.S.
[42] s. 624.215(2)(j), F.S.

The proponents suggest that while ASD screening is not a substitute for a more expensive treatment or service, the use of ASD screening will reduce the use of more expensive treatments over the patient's lifetime.

Extent to which the coverage increases or decreases the administrative expenses of insurance companies and the premium and administrative expenses of policyholders.[43]

Insufficient documentation was provided to determine any increases or decreases in administrative expenses to insurance companies or premium and administrative expenses to policyholders. However, it is reasonable to expect that covering more services will result in higher premiums.

The impact of this coverage on the total cost of health care.[44]

Proponents assert that ASD screening, evaluation and diagnosis coverage would significantly decrease the costs of health care for persons with ASD, but made no statements as to the impact on the total cost of health care.

House Bill 107 provides an effective date of July 1, 2010.

B. SECTION DIRECTORY:

Section 1: Creates s. 381.986, F.S., relating to screening for autism spectrum disorder.
Section 2: Amends s. 627.6686, F.S., relating to coverage for individuals with autism spectrum disorder required; exception.
Section 3: Amends s. 641.31098, F.S., relating to coverage for individuals with developmental disabilities.
Section 4: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The coverage mandated by the bill will likely result in increased premiums for health care coverage, and lower costs for families with children to be covered under the mandate.

D. FISCAL COMMENTS:

[43] s. 624.215(2)(k), F.S.
[44] s. 624.215(2)(l), F.S.

According to the Department of Health, Children's Medical Services and Early Steps programs may see an increase in the number of referrals for screening, which could result in an inability for Early Steps program to meet federally-mandated timelines for evaluation and service provision.[45]

The bill may have a negative fiscal impact on the state employee group plan; however, a specific impact estimate is not available at this time.

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/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

[45] Florida Department of Health, Bill Analysis, Economic Statement and Fiscal Note (September 22, 2009).

MEMORANDUM

To: The Honorable Garrett Richter, Chair; Senate Banking & Insurance Committee
The Honorable Pat Patterson, Chair; House Insurance, Business & Financial Affairs Policy Committee
The Honorable Don Gaetz, Chair; Senate Health Regulation Committee
The Honorable Nicholas R. Thompson, Chair; House Health Care Regulation Committee
Secretary Thomas W. Arnold, Agency for Health Care Administration

From: Representative Marti Coley
Senator Jeremy Ring

Re: HB 107/SB 214 – Proposing Requirements that Physicians Refer Minors to Appropriate Specialists for Screening for Autism Spectrum Disorder; and Requirements for Certain Insurers & HMOs to Provide Direct Patient Access to Appropriate Specialist for Minimum Number of Visits Per Year for Screening, Evaluation, or Diagnosis of Autism Spectrum Disorder

HB 107/SB 214 seeks to provide Florida's families with needed insurance coverage to properly evaluate and diagnose autism spectrum disorder in an expedited manner so as to maximize the benefits of early intervention. The effect of the legislation is to provide appropriate and expedited evaluation and diagnosis of autism spectrum disorder to facilitate early intervention, which significantly improves quality of life and functionality for the individual while significantly reducing long-term costs of care. Specifically, the legislation proposes to require a physician to refer a minor to an appropriate specialist for the screening, evaluation, or diagnosis of autism spectrum disorder when a parent or legal guardian reports symptoms consistent with autism spectrum disorder. Further, it requires health insurance plans subject to section 627.6686, Florida Statutes, to cover a minimum of three visits per policy year for screening, evaluation, or diagnosis of autism spectrum disorder through direct patient access as previously described. Because the legislation may be deemed a health benefit mandate, we are submitting the following as required by section 624.215, Florida Statutes.

1. **To what extent is the treatment or service generally used by a significant portion of the population.**
   Developmental assessments are standard practice of care over the course of well-baby and well-child visits in the first few years of life. The American Academy of Pediatrics recommends autism-specific screening at 18 months and 24 months of age. However, some reports suggest that only a small percentage of primary care pediatric physicians perform this screening, potentially due to insufficient reimbursement. The Office of Insurance Regulation does not track this level of utilization detail in rate filings.

   "The AAP also recommends that all children be screened with a standardized developmental tool at specific intervals (i.e., at the 9-, 18-, and 24- or 30-month visits) regardless of whether a concern has been raised or a risk has been identified during the surveillance process (see the AAP developmental screening and surveillance algorithm)."

"Physician estimates of the developmental status of children are much less accurate when only clinical impressions, rather than formal screening tools, are used, yet a minority of PCPs [primary care practitioners/physicians] use formal developmental screening instruments, and few pediatricians specifically screen for ASDs. A standardized screening tool should be administered at any point when concerns about ASDs are raised spontaneously by a parent or as a result of clinician observations or surveillance questions about social, communicative, and play behaviors (Steps 5a and 5b). In the general developmental screening and surveillance policy statement discussed previously, the AAP also recommended administering a standardized autism-specific screening tool [emphasis added] on all children at the 18-month preventive care visit (Step 5c). The AAP Autism Expert Panel responded to the statement with a commentary that suggested a repeat screening be performed at 24 months of age (Step 5c) to identify those who may regress after 18 months of age."

Johnson CP, Myers SM. Identification and evaluation of children with autism spectrum disorders. Pediatrics. 2007; 120(5):1183-215, available at http://aappolicy.aappublications.org/cgi/content/full/pediatrics;120/5/1183.

2. **To what extent is the insurance coverage generally available.**
Insurance coverage is generally available to less than 50% of children in the State of Florida. A significant number of children are Medicaid recipients or using Healthy Kids which does not pay for autism specific screenings. Autism-specific screenings are not required in the bundled services provided as part of well-child care.

Section 627.6686 currently mandates coverage for certain health plans carried by large group carriers* for well-baby and well-child screening for diagnosing the presence of autism spectrum disorder. HB 107/SB 214 adjusts this coverage to recognize that a preliminary screening is not sufficient to diagnosis autism spectrum disorder and further evaluation by a specialist is needed for a proper diagnosis. In addition, families would be able to access the appropriate specialist who could render a complete diagnosis without additional delays, thereby increasing the potential for success in the use of early intervention.

* These large group carriers include:

Aetna Health, Inc.
Aetna Life Insurance Company
AvMed, Inc.
Blue Cross Blue Shield of Florida, Inc.
Health First Health Plans, Inc.
Health Options, Inc.
Capital Health Plan, Inc.
Connecticut General Life Insurance Company
Cigna Healthcare of Florida, Inc.

Humana Health Insurance Company
Humana Medical Plan, Inc.
The Public Health Trust of Dade County
United Healthcare Insurance Company
United Healthcare of Florida, Inc.
Neighborhood Health Partnership, Inc.
Vista Healthplan, Inc.
Vista Healthplan of S Florida, Inc.

3. **If the coverage is not generally available, to what extent does the lack of coverage result in persons avoiding necessary healthcare treatment.**
When children are not appropriately screened, assessed, evaluated, and diagnosed with autism spectrum disorder, they will not receive early intervention in a timely fashion. Studies show that early intervention, particularly in the first few years of life, can significantly decrease long-term costs of care and improve the quality of life and functionality of the child with autism spectrum disorder across his/her lifespan.

4. **If the coverage is not generally available, to what extent does the lack of coverage result in unreasonable financial hardship.**
Lack of coverage will result in significant financial hardships to both families and to the State of Florida. A study by a researcher at the Harvard School of Public Health estimated an average cost of $3.2 million per person with autism spectrum disorder across the lifespan. [Michael Ganz, Assistant Professor of Society, Human Development, and Health at Harvard School of Public Health, authored the study, which appears in a chapter titled, "The Costs of Autism," in the book *Understanding Autism: From Basic Neuroscience to Treatment* (CRC Press, 2006). Early diagnosis and intervention can help to significantly reduce these costs. The costs of care will fall to the families and, eventually, to the state. With a current prevalence rate around 1 in 110 children having autism spectrum disorder (CDC), coverage will ensure that significant financial hardships do not incur to the families or to the State.

5. **What is the level of public demand for the treatment or service?**
With approximately 1% of children in Florida potentially having autism spectrum disorder (CDC prevalence rate), there is a substantial public demand for early intervention, which may only occur following proper assessment and evaluation. The general public is very concerned about the rising number of children with autism spectrum disorder and want the condition identified as early as possible so as to provide the best possible outcome for the children. Public demand was notable for similar legislation enacted in 2008, SB 2654.

6. **What is the level of public demand for insurance coverage of the treatment or service?**
   As previously noted, public demand for insurance coverage of screening, evaluation, and diagnosis of autism spectrum disorder is extremely high. Further, the ability for concerned parents to access appropriately trained diagnosticians is significant in that many primary care physicians are not fully trained in evaluating autism spectrum disorder and, therefore, many opportunities for early intervention and cost savings are sadly missed.

7. **What is the level of interest of collective bargaining agents in negotiating for the inclusion of this coverage in group contracts.**
   No information is available to answer this question adequately. However, it is believed that companies wishing to decrease long-term costs of care and high expenditures on individuals with autism spectrum disorder will save significant treatment costs with early intervention.

8. **To what extent will the coverage increase or decrease the cost of the treatment or service.**

   Although exact figures are not available, it is estimated that the costs of this assessment could be approximately 10-20 dollars per visit. With approximately 4.3 million children in the State of Florida, an estimated 227,000 zero to two-year old children would cost approximately $3.3 million inclusive of all children. This cost, split among all health entities in the state, would be nominal.

8. **To what extent will the coverage increase the appropriate uses of the treatment or service.**

   Coverage would dramatically improve and increase the appropriate use of screening, evaluation/ assessment, and diagnosis of autism spectrum disorder as many providers are not providing this service despite the recommendation of the American Academy of Pediatrics.

9. **To what extent will the mandated treatment or service be a substitute for a more expensive treatment or service.**

   Upon first glance, it would not be a substitute for any current more expensive treatment or service. However, with appropriate evaluation and diagnosis, early intervention will significantly reduce the need for significantly more expensive treatments or services in the long-term. In other words, the minimal increased cost of covering appropriate screening, evaluation and diagnosis, will pay for itself in the long term exponentially.

10. To what extent will the coverage increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders.

An increase, if any, in administrative expenses of insurance companies should be nominal and long-term will actually result in cost-savings to the insurance companies. Further, given cost sharing across beneficiaries, any premium or administrative expense changes would also be nominal (perhaps even less than one dollar).

11. What is the impact of this coverage on the total cost of healthcare.

The impact of this coverage on the total cost of healthcare is negligible in the short term.

However, prospectively, this coverage would overall significantly decrease the cost of healthcare for individuals with autism spectrum disorder. If early diagnosis and intervention can save up to one-third or more of the total costs of care over a lifespan (an estimated $3.2 million per person), then the overall impact is significant savings to families, to healthcare, and to the State of Florida.

A bill to be entitled

An act relating to autism; creating s. 381.986, F.S.; requiring that a physician refer a minor to an appropriate specialist for screening for autism spectrum disorder under certain circumstances; defining the term "appropriate specialist"; amending ss. 627.6686 and 641.31098, F.S.; defining the term "direct patient access"; requiring certain insurers and health maintenance organizations to provide direct patient access to an appropriate specialist for a minimum number of visits per year for the screening, evaluation, or diagnosis of autism spectrum disorder; providing an effective date.

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

Section 1. Section 381.986, Florida Statutes, is created to read:

381.986 Screening for autism spectrum disorder.--

(1) If the parent or legal guardian of a minor who is an eligible individual, as defined in s. 627.6686 or s. 641.31098, believes that the minor exhibits symptoms of autism spectrum disorder, the parent or legal guardian may report his or her observation to a physician licensed in this state. The physician shall immediately refer the minor to an appropriate specialist for the screening for, evaluation of, or diagnosis of autism spectrum disorder. This section does not apply to a physician providing care under s. 395.1041.

(2) As used in this section, the term "appropriate

specialist" means a qualified professional who is experienced in the evaluation of autism spectrum disorder, who has training in validated diagnostic tools, and includes, but is not limited to, a person who is licensed in this state as:

(a) A psychologist;

(b) A psychiatrist;

(c) A neurologist;

(d) A developmental or behavioral pediatrician who specializes in child neurology; or

(e) A professional whose licensure is deemed appropriate by the Children's Medical Services Early Steps Program within the Department of Health.

Section 2. Present paragraphs (c), (d), and (e) of subsection (2) of section 627.6686, Florida Statutes, are redesignated as paragraphs (d), (e), and (f), respectively, a new paragraph (c) is added to that subsection, and paragraph (a) of subsection (3) of that section is amended, to read:

627.6686 Coverage for individuals with autism spectrum disorder required; exception.--

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

(c) "Direct patient access" means the ability of an insured to obtain services from an in-network provider without a referral or other authorization before receiving services.

(3) A health insurance plan issued or renewed on or after April 1, 2009, shall provide coverage to an eligible individual for:

(a) Direct patient access to an appropriate specialist, as defined in s. 381.986, for a minimum of three visits per policy

year for the screening for, evaluation of, or diagnosis ~~Well-baby and well-child screening for diagnosing the presence~~ of autism spectrum disorder.

Section 3. Present paragraphs (c) and (d) of subsection (2) of section 641.31098, Florida Statutes, are redesignated as paragraphs (d) and (e), respectively, a new paragraph (c) is added to that subsection, and paragraph (a) of subsection (3) of that section is amended, to read:

641.31098 Coverage for individuals with developmental disabilities.--

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

(c) "Direct patient access" means the ability of a subscriber to obtain services from an in-network provider without a referral or other authorization before receiving services.

(3) A health maintenance contract issued or renewed on or after April 1, 2009, shall provide coverage to an eligible individual for:

(a) Direct patient access to an appropriate specialist, as defined in s. 381.986, for a minimum of three visits per policy year for the screening for, evaluation of, or diagnosis ~~Well-baby and well-child screening for diagnosing the presence~~ of autism spectrum disorder.

Section 4. This act shall take effect July 1, 2010.

Amendment No.

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 Care Regulation Policy Committee

Representative(s) Coley offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 381.986, Florida Statutes, is created to read:

381.986 Screening for autism spectrum disorder.—

(1) If the parent or legal guardian of a minor believes that the minor exhibits symptoms of autism spectrum disorder, the parent or legal guardian may report his or her observation to a physician licensed in this state. The physician shall perform screening in accordance with American Academy of Pediatrics' guidelines. If the physician determines that referral to a specialist is medically necessary, he or she shall refer the minor to an appropriate specialist to determine whether the minor meets diagnostic criteria for autism spectrum disorder. If the physician determines that referral to a

specialist is not medically necessary, the physician shall inform the parent or legal guardian that they can self-refer to the Early Steps intervention program or other specialist in autism. This section does not apply to a physician providing care under s. 395.1041.

(2) As used in this section, the term "appropriate specialist" means a qualified professional who is experienced in the evaluation of autism spectrum disorder, is licensed in this state, and has training in validated diagnostic tools. The term includes, but is not limited to:

(a) A psychologist;

(b) A psychiatrist;

(c) A neurologist;

(d) A developmental or behavioral pediatrician; or

(e) A professional whose licensure is deemed appropriate by the Children's Medical Services Early Steps Program within the Department of Health.

Section 2. Section 627.6686, Florida Statutes, is amended to read:

627.6686 Coverage for individuals with developmental disabilities ~~autism spectrum disorder required; exception~~.—

(1) This section and s. 641.31098 may be cited as the "Steven A. Geller Autism Coverage Act."

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

(a) "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including, but not

limited to, the use of direct observation, measurement, and functional analysis of the relations between environment and behavior.

(b) "Autism spectrum disorder" means any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association:

1. Autistic disorder.

2. Asperger's syndrome.

3. Pervasive developmental disorder not otherwise specified.

(c) "Developmental disability" means a disorder or syndrome attributable to cerebral palsy or Down syndrome, which manifests before the age of 18 years and constitutes a substantial handicap that can reasonably be expected to continue indefinitely. As used in this section:

1. "Cerebral palsy" has the same meaning as in s. 393.063.

2. "Down syndrome" means a disorder caused by the presence of an extra chromosome 21.

(d) "Direct patient access" means the ability of an insured to obtain services from an in-network provider without a referral or other authorization before receiving services.

(e) ~~(c)~~ "Eligible individual" means an individual under 18 years of age or an individual 18 years of age or older who is in high school and who has been diagnosed as having a developmental disability at 8 years of age or younger.

(f) ~~(d)~~ "Health insurance plan" means a group health insurance policy or group health benefit plan offered by an

insurer which includes the state group insurance program provided under s. 110.123. The term does not include a ~~any~~ health insurance plan offered in the individual market, a ~~any~~ health insurance plan that is individually underwritten, or a ~~any~~ health insurance plan provided to a small employer.

(g) ~~(e)~~ "Insurer" means an insurer providing health insurance coverage, which is licensed to engage in the business of insurance in this state and is subject to insurance regulation.

(3) A health insurance plan issued or renewed on or after April 1, 2009, shall provide coverage to an eligible individual for:

(a) Direct patient access to an appropriate specialist, as defined in s. 381.986, for a minimum of three visits per policy year for the screening for, evaluation of, or diagnosis of autism spectrum disorder or other developmental disability.

(b) ~~(a)~~ Well-baby and well-child screening for diagnosing the presence of autism spectrum disorder.

(c) ~~(b)~~ Treatment of autism spectrum disorder or other developmental disability through speech therapy, occupational therapy, physical therapy, and applied behavior analysis. Applied behavior analysis services shall be provided by an individual certified pursuant to s. 393.17 or an individual licensed under chapter 490 or chapter 491.

(4) The coverage required pursuant to subsection (3) is subject to the following requirements:

Amendment No.

(a) Coverage shall be limited to treatment that is prescribed by the insured's treating physician in accordance with a treatment plan.

(b) Coverage for the services described in subsection (3) shall be limited to $36,000 annually and may not exceed $200,000 in total lifetime benefits.

(c) Coverage may not be denied on the basis that provided services are habilitative in nature.

(d) Coverage may be subject to other general exclusions and limitations of the insurer's policy or plan, including, but not limited to, coordination of benefits, participating provider requirements, restrictions on services provided by family or household members, and utilization review of health care services, including the review of medical necessity, case management, and other managed care provisions.

(5) The coverage required pursuant to subsection (3) may not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illnesses that are generally covered under the health insurance plan, except as otherwise provided in subsection (4).

(6) An insurer may not deny or refuse to issue coverage for medically necessary services, refuse to contract with, or refuse to renew or reissue or otherwise terminate or restrict coverage for an individual because the individual is diagnosed as having a developmental disability.

(7) The treatment plan required pursuant to subsection (4) shall include all elements necessary for the health insurance

plan to appropriately pay claims. These elements include, but are not limited to, a diagnosis, the proposed treatment by type, the frequency and duration of treatment, the anticipated outcomes stated as goals, the frequency with which the treatment plan will be updated, and the signature of the treating physician.

(8) Beginning January 1, 2011, the maximum benefit under paragraph (4)(b) shall be adjusted annually on January 1 of each calendar year to reflect any change from the previous year in the medical component of the then current Consumer Price Index for all urban consumers, published by the Bureau of Labor Statistics of the United States Department of Labor.

(9) This section may not be construed as limiting benefits and coverage otherwise available to an insured under a health insurance plan.

(10) The Office of Insurance Regulation may not enforce this section against an insurer that is a signatory no later than April 1, 2009, to the developmental disabilities compact established under s. 624.916. The Office of Insurance Regulation shall enforce this section against an insurer that is a signatory to the compact established under s. 624.916 if the insurer has not complied with the terms of the compact for all health insurance plans by April 1, 2010.

Section 3. Subsections (2) and (3) of section 641.31098, Florida Statutes, are amended to read:

641.31098 Coverage for individuals with developmental disabilities.—

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

(a) "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including, but not limited to, the use of direct observation, measurement, and functional analysis of the relations between environment and behavior.

(b) "Autism spectrum disorder" means any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association:

1. Autistic disorder.

2. Asperger's syndrome.

3. Pervasive developmental disorder not otherwise specified.

(c) "Developmental disability" means a disorder or syndrome attributable to cerebral palsy or Down syndrome, which manifests before the age of 18 years and constitutes a substantial handicap that can reasonably be expected to continue indefinitely. As used in this section:

1. "Cerebral palsy" has the same meaning as in s. 393.063.

2. "Down syndrome" means a disorder caused by the presence of an extra chromosome 21.

(d) "Direct patient access" means the ability of an insured to obtain services from an in-network provider without a referral or other authorization before receiving services.

(e)~~(c)~~ "Eligible individual" means an individual under 18 years of age or an individual 18 years of age or older who is in

high school and who has been diagnosed as having a developmental disability at 8 years of age or younger.

(f) ~~(d)~~ "Health maintenance contract" means a group health maintenance contract offered by a health maintenance organization. The ~~This~~ term does not include a health maintenance contract offered in the individual market, a health maintenance contract that is individually underwritten, or a health maintenance contract provided to a small employer.

(3) A health maintenance contract issued or renewed on or after April 1, 2009, shall provide coverage to an eligible individual for:

(a) Direct patient access to an appropriate specialist, as defined in s. 381.986, for a minimum of three visits per policy year for the screening for, evaluation of, or diagnosis of autism spectrum disorder or other developmental disability.

(b) ~~(a)~~ Well-baby and well-child screening for diagnosing the presence of autism spectrum disorder.

(c) ~~(b)~~ Treatment of autism spectrum disorder or other developmental disability through speech therapy, occupational therapy, physical therapy, and applied behavior analysis services. Applied behavior analysis services shall be provided by an individual certified pursuant to s. 393.17 or an individual licensed under chapter 490 or chapter 491.

Section 4. This act shall take effect July 1, 2010.

Amendment No.

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 autism; creating s. 381.986, F.S.; requiring that a physician refer a minor to an appropriate specialist for screening for autism spectrum disorder under certain circumstances; defining the term "appropriate specialist"; amending ss. 627.6686 and 641.31098, F.S.; defining the terms "developmental disability" and "direct patient access"; providing health insurance coverage for individuals with certain developmental disabilities; requiring certain insurers and health maintenance organizations to provide direct patient access to an appropriate specialist for screening, evaluation of, or diagnosis for autism spectrum disorder or other developmental disabilities; requiring the insurer's policy or the health maintenance organization's contract to provide a minimum number of visits per year for the screening, evaluation, or diagnosis for autism spectrum disorder or other developmental disabilities; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 729 Practice of Tattooing
SPONSOR(S): Brandenburg
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Regulation Policy Committee		Holt	Calamas
2)	Health Care Appropriations Committee			
3)	Health & Family Services Policy Council			
4)				
5)				

SUMMARY ANALYSIS

House Bill 729 creates a new regulatory scheme for licensure as a tattoo artist, registration as a guest tattoo artists, licensure for tattoo establishments and temporary establishments. Beginning July 1, 2011, a person may not tattoo the body of a human being in this state except in a tattoo establishment and the person performing the tattooing must be licensed as a tattoo artist or registered as a guest tattoo artist.

Because the bill establishes regulation of a new profession, the Sunrise Act criteria apply. Section 11.62, F.S., states that no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage; and no profession or occupation be regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation.

The bill provides that a person may not tattoo a child younger than 16 years of age unless it is performed for medical or dental purposes. A minor child over the age of 16 may receive a tattoo under certain circumstances.

The bill appears to have a negative fiscal impact on the Medical Quality Assurance Trust Fund in the first year and a positive fiscal impact on the Medical Quality Assurance Trust Fund thereafter, if sufficient individuals seek licensure as a tattoo artist or guest tattoo artist (See fiscal analysis).

The bill takes effect July 1, 2010.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Tattooing

A tattoo is a permanent mark or design made on the skin by a process of pricking and ingraining an indelible ink pigment. Tattoos are made by using needles to inject colored ink below the skin's surface. Typically, a tattoo artist uses a hand-held machine with one or more needles piercing the skin repeatedly. With every puncture, the needles insert ink into the skin.

National Trends and Regulations

At least 38 states have implemented laws regarding tattooing and 28 states have laws that prohibit tattooing on minors without parental permission.[1] Parental permission requirements vary among states ranging from signed notarized documentation to explicit in-person consent of the child's parent or guardian. The majority of states laws establish financial penalties, incarceration time, or both for violators.

The U.S. Food and Drug Administration (USFDA) and the Department of Health and Human Services, Centers for Disease Control and Prevention's (CDC) literature speak to a variety of potential risks in acquiring a tattoo on the body. Such risks include:

- Infection – Dirty needles can pass infections, such as hepatitis and HIV.

[1] Ala. Code § 420-3-23; Alaska Stat. § 08.13.217; Ariz. Rev. Stat. §13-3721; Cal. [Health & Safety] Code §119300; Col. Rev. Stat. Ann. §25-4-2103; Conn. Gen. Stat. §19a-92a; Del. Code Ann. Title 11, Ch 5 §1114(a); Ga. Code §16-12-71; Ga. Code §16-5-71; Haw. Rev. Stat. § 321-372 to 383; Idaho Code § 18-1523; Idaho Code § 39-2001; Idaho Code § 39-2003; Ill. Comp. Stat. 720§5/12-10; Ind. Code Ann. §35-42-2-7; Iowa Code §135.37; Kan. Admin. Regs. §69-15; Ky. Rev. Stat. §211.760; La. Admin. Code 29§2741-2744; Me. Rev. Stat. Ann. Title 32, Ch. 63 §4201-4301; Me. Rev. Stat. Ann. Title 32-A, Ch. 63 §4311-4317; Md. Code Regs. 09.22.02.01-03; Mich. Comp. Laws Ann. §333.131; Minn. Stat. §609.2246; Miss. Laws §73-61-1; Mo. Rev. Stat. §324.520; Mont. Code Ann. §45-5-623; Mont. Admin. R. 37.112.100; Neb. Rev. Stat. § Sec. 427 71-3; Neb. Rev. Stat. § Sec. 433 71-3; Nev. Admin. Code §29.17.080; N.H. Rev. Stat. Ann. §314-A:3; N.J. Admin. Code §8:27-8; N.Y. Codes R. & Regs. 160.7; N.C. Gen. Stat. §14-400; N.C. Gen. Stat. §130A-283; N.D. Cent. Code §12.1-31; Ohio Rev. Code Ann. §3730.02-.11; Okla. Stat. Title 21 §842.1-.2; Or. Admin. R. 331-550-0000-0020; Pa. Cons. Stat. Title 18 §4729; Pa. Cons. Stat. Title 18 §6311; RI General Laws §11-9-15; RI General Laws §23-1-39; S.C. Code Ann. §40-47-60; S.C. Code Ann. §44-34-60; S.D. Codified Laws Ann. §26-10-19; S.D. Admin. R. 44:12:01:01-35; Tenn. Code Ann. §62-38-207; Tenn. Code Ann. §39-15-403; Texas Health and Safety Code Ann. §146.012; Tex. Admin. Code §229.401; Utah Code Ann. §76-10-2201; Vt. Stat. Ann. Title 26 §4101-4108; Va. Code Ann. §18.2-371.3; Va. Code Ann. §15.2-912; Wash. Rev. Code §26.28.085; Wash. Admin. Code 246-145-010; W. Va. Code §16-38-1-7; Wis. Stat. §252.23; Wis. Stat. §948.70; Wyo. Stat. §14-3-107.

- Allergies – Allergies to different ink pigments can cause problems.
- Scarring – Unwanted scar tissue may form on an initial or removed tattoo.
- MRI complications – Though rare, swelling or burning in the tattoo area when having a magnetic resonance image can occur.

The USFDA has not approved any tattoo pigments for injection into the skin. This applies to all tattoo pigments, including those used for ultraviolet and glow-in-the-dark tattoos. Many pigments used in tattoo inks are industrial-grade colors suitable for printers' ink or automobile paint. In addition, the use of henna in temporary tattoos has also not been approved by the USFDA.

The CDC notes that a risk of HIV transmission exists if instruments contaminated with blood are not sterilized or disinfected, or are used inappropriately between clients. The CDC recommends that single-use instruments intended to penetrate the skin be used once, then disposed of. In addition, reusable instruments or devices that penetrate the skin or contact a client's blood should be thoroughly cleaned and sterilized between clients. The CDC stresses that tattooists should be educated regarding HIV transmission and take precautions to prevent this transmission in their setting.

Biomedical Waste Permitting

Section 381.0098(1), F.S., establishes legislative intent relating to protecting the public's health by establishing safety standards for the packaging, transport, storage, treatment and disposal of biomedical waste. Biomedical waste is defined as "any solid or liquid waste which may present a threat of infection to humans, including waste products that include discarded disposable sharps, human blood, blood products and body fluids." A biomedical waste generator is defined as "a facility, or person that produces or generates biomedical waste." The statute directs the Department of Health (DOH) and the Department of Environmental Protection to develop an interagency agreement to ensure maximum efficiency in coordinating, administering, and regulating biomedical waste. While DOH has no authority to issue a license to a tattooist or a tattoo studio, it does have authority to issue a biomedical waste-generator permit to a tattooist and a tattoo studio.

In chapter 64E-16.011, F.A.C., DOH prescribes minimum sanitary practices relating to the management of biomedical waste and the regulation of biomedical waste generators. Tattoo studios are considered biomedical waste generators and as such are required to obtain an annual permit from DOH. These studios are inspected by DOH personnel at least once a year and re-inspections may be conducted when a facility is found to be in non-compliance with sanitation practices. Current law does not provide authorization for DOH to inspect these establishments relating to other sanitation aspects of tattoo studios, or the licensure or registration of tattoo artists.

DOH estimates that there are approximately 900 permanent make-up and tattoo establishments in Florida.[2] The American Tattooing Institute offers an on-line or mail order certification course that includes studies in skin anatomy and physiology, blood borne pathogens, Occupational Safety and Health Administration standards, food and drug administration information, and body art specialist's code of ethics training.[3]

Regulation of Tattooing in Florida

Section 877.04, F.S., governs the practice of tattooing. Generally, a tattoo may only be performed by:

- A physician licensed under ch. 458 and ch. 459, F.S.;
- A dentist licensed under ch. 466, F.S.; or,
- A person under the general supervision of a physician or dentist.

Any person who tattoos must either be licensed as, or work under the "general supervision," as defined in ch. 64B8-2.002, F.A.C., of a physician or dentist. Additionally, it is unlawful for the body of a minor to

[2] Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 729 (February 8, 2010).
[3] American Tattooing Institute, Body Art Specialist's Code of Ethics, *available* at: http://www.tatsmart.com/code_of_ethics (last viewed March 20, 2010).

be tattooed without the written notarized consent of the parent or legal guardian. Any person who violates this section is guilty of a misdemeanor of the second degree, punishable under s. 775.082 and s. 775.083, F.S.

Professional Regulation and the Florida Sunrise Act

There are three different types or levels of regulation:[4]

1. Licensure is the most restrictive form of state regulation. Under licensure laws, it is illegal for a person to practice a profession without first meeting all of the standards imposed by the state.

2. Certification grants title protection to those who meet training and other standards. Those who do not meet certification standards cannot use the title, but can still perform the services.

3. Registration the least restrictive form of regulation, usually only requires individuals to file their name, address and qualifications with a government agency before practicing the occupation.

Section 456.003, F.S., provides that health care professions be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when:

- Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation;
- The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation; and
- Less restrictive means of regulation are not available.

Section 11.62, F.S., the Sunrise Act, provides legislative intent regarding the regulation of new professions and occupations:[5]

- No profession or occupation is subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose; and
- No profession or occupation is regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

In determining whether to regulate a profession or occupation, s. 11.62(3), F.S., requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;

- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;

[4] Schmitt, K. & Shimberg, B. (1996). Demystifying Occupational and Professional Regulation: Answers to Questions You May Have Been Afraid to Ask. *Council on Licensure, Enforcement, and Regulation.*
[5] s. 11.62(2), F.S.

- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;

- Whether the public is or can be effectively protected by other means; and

- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The Sunrise Act requires proponents of regulation to submit information documenting the need for the proposed regulation. A sunrise questionnaire was submitted by the Florida Professional Tattoo Artist's Guild (Guild). The Guild represents approximately 1800 tattooists. According to the Guild, they have met very little resistance to the proposed regulatory schemes contained in House Bill 729 and estimate that 75 percent of the professional tattoo industry support this legislation.

Sunrise Act Criteria

Substantial Harm or Endangerment

> "Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote."[6]

The practice of tattooing has the potential of exposing clients and tattoo artists to bloodborne pathogens if proper universal precautions[7] are not practiced. According to the Guild, there is a growth in underground tattooing (called "scratchers") where tattoo services are provided at homes, bars, flea markets, camp sites, etc. Scratchers are most likely not practicing universal precautions, concerned with cross contamination, or properly disposing of biomedical waste.[8]

According to the Guild, DOH has no database to document the number of complaints received. The following is a comment from an employee with the Department of Health, Division of Environmental Health, provided by the Guild:

> *"I can say that seldom a day goes by when our staff here in Community Environmental Health do not receive a phone call or e-mail pertaining to tattoo regulations in Florida, both licensure inquiries and complaints about pertaining to unexpected outcomes." 2/2/10*

Specialized Skill or Training, and Measurability

> "Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability."[9]

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[6] s. 11.62(3), F.S.

[7] "Universal precautions," as defined by CDC, are a set of precautions designed to prevent transmission of human immunodeficiency virus (HIV), hepatitis B virus (HBV), and other bloodborne pathogens when providing first aid or health care. Under universal precautions, blood and certain body fluids of all patients are considered potentially infectious for HIV, HBV and other bloodborne pathogens. See Centers for Disease Control and Prevention, Universal Precautions for Prevention of Transmission of HIV and Other Bloodborne Infections, *available* at: http://www.cdc.gov/ncidod/dhqp/bp_universal_precautions.html (last viewed March 19, 2010).

[8] ch. 64E-16, F.A.C., requires facilities that generate biomedical waste to ensure proper management of that waste. Biomedical waste is any solid or liquid waste which may present a threat of infection to humans, including non-liquid tissue, body parts, blood, blood products, and body fluids from humans and other primates; laboratory and veterinary wastes which contain human disease-causing agents; and discarded sharps. The following are also included: (a) used, absorbent materials saturated with blood, blood products, body fluids, or excretions or secretions contaminated with visible blood; and absorbent materials saturated with blood or blood products that have dried. (b) non-absorbent, disposable devices that have been contaminated with blood, body fluids or, secretions or excretions visibly contaminated with blood, but have not been treated by an approved method.

[9] s. 11.62(3), F.S.

Tattooing is a specialized field that is based on peer review of a tattooist artistic ability. A tattoo artist may only work with specific colors or specialize in special designs (i.e. wild life or portraits). The bill does not require tattoo artists to possess formal institutional classroom training that provides them with a specialized skill that is measurable or quantifiable. According to the Guild, "at this time it is left up to the individual tattoo establishment to set their standards." About 90 percent of the beginner tattoo artists receive training through an apprenticeship.

The Alliance of Professional Tattooist (Alliance) provides a blood born pathogen course at the majority of the conventions in the U.S. This course is a total of six hours for training and an examination. According to the Guild, "this course is highly regarded in the tattoo industry as a must complete course and test." According to the Guild, "there is a great deal of knowledge passed from tattooist to tattooist at some of the conventions where training seminars are offered." The Guild and the Alliance do have rules pertaining to codes of practice for their members; however the only recourse for enforcement of the codes is to revoke a membership.

Unreasonable Effect on Job Creation or Job Retention

> "Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment."[10]

The Guild is unaware of any other unregulated occupation that performs similar services. Establishments that offer body piercing services and operate as tattoo establishments will be required to have dual licensure. According to the Guild, the training in bloodborne pathogens and cross contamination is a necessary requirement.

Can the Public be Effectively Protected by Other Means?

> "Whether the public is or can be effectively protected by other means."[11]

Current law[12] requires tattoo artists to work under the general supervision of a licensed medical doctor or doctor of osteopathic medicine. According to the Guild, supervising doctors develop their own procedures regarding the medical conditions of individuals receiving tattoos, treatment of problems resulting during or from tattooing, and procedures in the event of an emergency situation developed during the performance or as a result of tattooing. Thus, these standards vary from doctor-to-doctor. If the supervising doctor is negligent in his or her duties, the Board of Medicine can review the license of the doctor and, if necessary, take disciplinary action on their license.[13] If there is a complaint that a tattoo facility violated the terms of its biowaste permit, the County Health Department staff has the authority to investigation and enforce compliance when necessary.[14]

Favorable Cost-effectiveness and Economic Impact

> "Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable."[15]

According to the Guild, there are approximately 900 tattoo establishments and approximately 1,800 tattoo artists in Florida.[16] Usually there are two tattoo artists practicing in each tattoo establishment and on average each tattoo establishment will complete 25-30 tattoos in one week. The average minimum cost of a tattoo is $30.00. If these values are applied statewide there is a potential of approximately one million tattoos applied annually, which the Guild believes will increase due to the "security the

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[10] *Id.*
[11] *Id.*
[12] ch. 64B8-2.002, F.A.C.
[13] s. 458.331 and s. 459.015, F.S.
[14] ch. 64E-16.013, F.A.C.
[15] *Id.*
[16] DOH supplied the Guild with a recent registration list of biomedical waste permittees to assist in calculating the number of tattoo establishments.

public will feel because of the enforcement provisions." In addition the Guild, believes the cost of regulation will cost tattoo establishments less than what they are paying to a doctor to provide his services of general supervision. Fees doctors charge for supervision vary. According to members of the Guild, some doctors charge $300 per tattoo artist.

THE EFFECTS OF THE BILL

The bill creates definitions for active license or registration; guest tattoo artist; operator; stop use order; tattoo; tattoo artists; tattoo establishment; and temporary establishment.

The bill provides that a person may not tattoo a child younger than 16 years of age unless it is performed for medical or dental purposes. A minor child over the age of 16 may receive a tattoo if the minor is accompanied by a parent or legal guardian; provides proof of identity in the form of a government issued photo identification, provides proof that he/she is the parent or legal guardian of the minor, the parent submits a written notarized consent; and the tattooing may only be performed by a tattoo artist, guest tattoo artist, medical doctor, doctor of osteopathic medicine, or dentist.

General Licensure Provisions

Beginning July 1, 2011, a person may not tattoo the body of a human being in this state except in a tattoo establishment and the person performing the tattooing must be licensed as a tattoo artist or registered as a guest tattoo artist.

The bill exempts licensed medical doctors, doctors of osteopathic medicine, and dentists who perform tattooing exclusively for medical or dental purposes from having to be licensed as a tattoo artist. The bill specifies that these provisions do not preempt any local law or ordinance of a county or municipality that imposes regulations on tattoo establishments, temporary establishments, tattoo artists, or the practice of tattooing.

The bill provides DOH the authority to enforce and discipline individuals who:

- Provide false information on an a DOH application;
- Violate state or local health code or ordinance;
- Practice tattooing without a valid license or registration issued by DOH;
- Found guilty or pleading nolo contendere a crime in any jurisdiction which relates to the practice of tattooing or operation of a tattoo establishment;
- Commit fraud, deceit, negligence, or misconduct in the practice or operation of tattooing;
- Aid, procure, or assist a person in unlawfully practicing tattooing or operating a tattoo establishment.

The bill provides DOH the authority to:

- refuse to issue a license or registration;
- suspend or revoke a license or registration;
- issue a reprimand;
- place an individual on probation;
- issue a stop-use order;
- corrective action; and
- impose stricter penalties for repeat violations;
- consider the severity of the violation distinguishing lesser violations from those that endanger public health.

The bill provides DOH authority to promulgate rules and they must consult with representatives of the tattooing industry during rule development.

The bill provides specific requirements for the following:

1. licensure as a tattoo artist,
2. registration as a guest tattoo artists,
3. licensed tattoo establishments and temporary establishments.

Individuals who practice tattooing without a tattoo artist license, guest tattoo artist registration, tattoo establishment license, or temporary establishment license commit a third degree felony.[17]

1. Tattoo Artist Licensure

The bill provides that a person seeking to practice as a licensed tattoo artist must apply to DOH for licensure starting July 1, 2011. An applicant for licensure must:

- be at least 18 years of age;
- submit a completed application to DOH;
- pay a fee not that may not exceed $150;
- submits proof of successful completion of a DOH approved education course in blood-borne pathogens and communicable disease; and
- submit proof of passage of a DOH approved examination that tests the materials contained in the education course.

The DOH application is required to capture the following information:

- name and address of residence of the applicant; and
- name and address of each tattoo establishment to include temporary establishments the person intends to practice;

A licensed tattoo artist is required to notify DOH within 30 days of a name or address change; and of practice as a tattoo artist for more than 14 days at a tattooing establishment that was not disclosed on the most recent application for licensure.

A licensed tattoo artist must display their registration in a manner that is easily visible to the public at all times while practicing tattooing, comply with all state and local health codes, and maintain sanitary conditions at all times. DOH is required to approve one or more education courses and examinations which are to be made accessible through an Internet website. Licensure as a tattoo artist is valid for one year, is not transferable, and must be renewed annually.

2. Guest Tattoo Artist Registration

The bill provides that effective July 1, 2011, DOH is required to issue a guest tattoo artist registration to an applicant who:

- is at least 18 years of age;
- submits a completed DOH application;
- pays the applicable registration fee that may not exceed $45; and
- holds an active license, registration, or certification issued by a jurisdiction outside of Florida that meets the education and examination requirements for licensure and submits proof of successful completion of an DOH approved education course and examination.

A guest tattoo artist must display the registration in a manner that is easily visible to the public at all times while practicing tattooing comply with all state and local health codes, and maintain sanitary conditions at all times. Registration as a guest tattoo artist is valid for 14 days and is not transferable. A person seeking re-registration as a guest tattoo artist may reregister before or after their current registration expires.

3. Licensed Tattoo Establishments and Temporary Establishments

The bill provides that beginning July 1, 2011, a person may not operate a tattoo establishment or temporary establishment unless it is licensed by DOH. DOH must issue a tattoo establishment license to applicants if they:

- submit a completed DOH application;
- pay the applicable licensure fee that may not exceed $250; and

[17] Third degree felonies are punishable by up to 5 years in prison and/or up to a $5,000 fine. ss. 775.082, 775.083, F.S.

- comply with all applicable local building, occupational, zoning, and health codes.

The DOH application is required to capture the following information:

- name the tattoo establishment will conduct business under;
- physical address and phone number;
- name, mailing address and telephone number of the tattoo establishment operator; and
- name and address of the tattoo establishment's registered agent for service of process.

A licensed tattoo establishment or temporary establishment is required to:

- visibly display the establishment license to the public at all times when tattooing is being performed;
- ensure that all tattoo artists and guest tattoo artists practicing within the establishments meet registration or licensure requirements;
- maintain sanitary conditions at all times;
- comply with state and local health codes and ordinances; and
- allow periodic inspections and enforcement by DOH

A tattoo establishment license is only valid for the location listed on the license and the establishment must notify DOH prior to any change in location. Tattoo establishments with more than one location must obtain a separate license for each location. A tattoo establishment license is valid for one year, is not transferrable, and must be renewed annually. The bill specifies that temporary tattoo establishments must meet the same licensure requirements as permanent tattoo establishments however; the license is only valid for 14 consecutive days.

The bill takes effect July 1, 2010,

B. SECTION DIRECTORY:

Section 1. Creates s. 381.00771, F.S., relating to definitions and terms.
Section 2. Creates s. 381.00773, F.S., relating to tattoo artists; licensure; and registration of guest tattoo artists.
Section 3. Creates s. 381.00775, F.S., relating to application exemptions.
Section 4. Creates s. 381.00777, F.S., relating to tattoo establishments; licensure; and temporary establishments.
Section 5. Creates s. 381.00779, F.S., relating to practice requirements.
Section 6. Creates s. 381.00781, F.S., relating to fees and disposition.
Section 7. Creates s. 381.00783, F.S., relating to grounds for discipline and administrative penalties.
Section 8. Creates s. 381.00785, F.S., relating to rulemaking.
Section 9. Creates s. 381.00787, F.S., relating to criminal penalties.
Section 10. Transfers and Renumbers s. 877.04, F.S., to s. 381.00789, F.S., relating to tattooing of minor children and penalty.
Section 11. Creates s. 381.00791, F.S., relating to local laws and ordinances.
Section 12. Provides that the bill takes effect July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

Section 216.0236, F.S., states that it is the intent of the Legislature that all costs of providing a regulatory service or regulating a profession or business be borne solely by those who receive the service or who are subject to regulation. It is also the intent of the Legislature that the fees charged for providing a regulatory service or regulating a profession or business is reasonable and takes into account the differences between the types of professions or businesses being regulated.

1. Revenues:

The Department of Health, Division of Environmental Health, estimates that 900 permanent tattoo establishments and 150 temporary establishments would be required to pay an annual license fee not to exceed $250. Assuming an estimated average of two artists per tattoo establishment, 1,800 artists will be required to pay a fee not to exceed $150 annually. An estimated 250 guest tattoo artist will be required to pay registration fee not to exceed $45.[18] For the purpose of the fiscal analysis, it is assumed that fee will be $150 for tattoo establishment and temporary establishment licensure; $50 for tattoo artist licensure; and $25 for guest tattoo artist registration.

Estimated Revenue	**1st Year**	**2nd Year**
Licenses for 1050 establishments @ $150 each	$157,500	$157,500
Licenses for 1800 artists @ $50 each	$ 90,000	$ 90,000
Licenses for 250 guest artists @ $25	$ 6,250	$ 6,250
Total Estimated Revenue	**$253,750**	**$253,750**

2. Expenditures:

DOH, Division of Environmental Health, will incur the costs of rule promulgation, development, and presentation of training for DOH County Health Departments (CHDs) who will inspect the establishments. DOH will also incur the costs of training and examination approval for the tattoo industry. CHDs will incur the costs associated with processing applications, issuing licenses, and conducting inspections, re-inspections, and enforcement. The estimated expenditures are to show the cost it would be to perform the inspections, hourly rate for salaries includes the fringe benefits.

Estimated Expenditures	**1st Year**	**2nd Year** (Annualized/Recurr.)
Salaries		
Inspection of 900 permanent and 150 temporary establishments @ $130 per inspection	$ 136,500	$ 136,500
Reinspection of 25% of Establishments	$ 34,125	$ 34,125
Complaint investigation of 20% of establishments	$ 27,300	$ 27,300
Processing 1050 establishment applications, 2100 artists applications/registrations, issuing 3150 licenses	$40,000	$ 40,000
Training development for county health department staff	$ 2,500	$ 1,500
Rule Promulgation	$ 10,000	-0-

[18] Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 729 (February 8, 2010).

Expense		
Travel for staff to provide training at 10 sites	$ 5,000	-0-
Site visits from Central Office staff to perform site evaluations	-0-	$ 5,000
Data support and information distribution	$5,000	$5,000
Total Estimated Expenditures	**$260,425**	**$249,425**

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Not applicable.

2. Expenditures:

   Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be an additional cost to tattoo artists for licensure and possibly training if they have not already taken a course.

D. FISCAL COMMENTS:

According to the Department of Health, Division of Environmental Health, the proposed bill does not provide for late fees or re-inspection fees. Notification of delinquent payment and re-inspection adds additional costs for CHDs. An estimated 20 percent of 1,050 establishments (180) will require a re-inspection.[19]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision in Article VII, Section 18, Fla. Const., appears to apply because the bill may require counties or municipalities to spend funds or take an action requiring the expenditure of funds. However, if the legislature determines that the bill fulfills an important state interest, an exception to the mandates provision exists because the bill applies to all persons similarly situated, including the state. The bill includes a statement of public interest.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill places the provisions for regulation of tattoo artists and guest tattoo artists into ch. 381, F.S., relating to public health. Most regulated professions and persons are governed under chapter 456, F.S. and the regulatory oversight is handled by the Division of Medical Quality Assurance.

[19] Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 729 (February 8, 2010).

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

LEGISLATIVE HISTORY

1. In 1992 the Legislature changed the wording in F.S. 877.04 from direct supervision to general supervision. At that time they asked the Board of Medicine to define general supervision and to attach their ruling to the Statue as the rule.

APPLICANT GROUP IDENTIFICATION

2. The Florida Professional Tattoo Artist's Guild,

Mark Longnecker, President
Endless Summer Tattoo Studio
210 N. Atlantic Ave.
Cocoa Beach, FL. 32931
1-321-799-9776

Danny Knight, Vice President
Cast Iron Tattoo Studio
2818 South Orange Ave.
Orlando, FL. 32806
1-407-843-8009

Wes Diffe, Secretary
Against the Grain Tattoo Studio
1380 Cypress Ave.
Melbourne, FL. 32935
1-321-255-9449

Tom Meyers, Treasurer
Ink Addiction Tattoo Studio
618 S. W. Bryant Ave.
Stuart, FL. 34994

Chris Collins, Board Member
Fat Kats Artistry
14 South Magnolia Ave.
Ocala, FL. 34474
1-352-402-0902

3. Tattoo Artist, and Cosmetology. Approximately 1800 Tattooist. This number is an estimate based on the number of tattoo studios the DOH has registered for Bio Medical waste pick up, which is around 600 studios. There can be more than one tattooed per studio. I would refer any questions concerning the Cosmologist to Rick

Wallace for that information.

4. The Florida Professional Tattoo Artist's Guild.
Many members to the Florida Professional Tattoo Artist's Guild or also members of the Alliance of Professional Tattooist which is an international group of Professional Tattooist. The APT is based on an educational format for the containing training in Blood Born Pathogens prevention. The safety and health of the customer, and the tattooist.

5. At this time we have met very little resistance with this newly proposed language. We have made any and all information about this proposed bill available to the general public, as well as the professional tattoo industry in the State of Florida. It is safe to estimate that 75%+ support this action.

6. Name the group of individual representing the practitioners in this effort to seek regulation. How was this group or individual selected?
The Florida Professional Tattoo Artist Guild (FPTAG) is the group representing the tattoo artists. This organization has been involved with the Florida tattoo laws since 1992. In 2009, Sen. Eleanor Sobel began drafting a bill to regulate the tattoo industry in Florida. Her legislative aide, Samuel Kalmowicz, researched tattoo organizations in Florida, and contacted Bill Hannong, with the FPTAG. That bill died in committee.
In July of 2009, Rep. Mary Brandenburg, the House sponsor for Sen. Sobel's bill, contacted the FPTAG to help draft HB 729.

7. Are all practitioner groups listed in response to questions represented in the organization or by the individual seeking regulation? If not, why not?
The Florida Professional Tattoo Artist Guild (FPTAG) is the only known organization that represents practitioners within the State of Florida, and it is also the organization seeking regulation.

8. Typically we deal with individuals and they range from 18 to very mature in age. We have customers from every job description and including Legislators. Every Studio keeps release forms that are filled out prior to receiving a tattoo that should document the customer base.

9. None we are aware of.

10. Identify the consumer populations not now using practitioner services who will be likely to do so, if regulation is approved.
There are no known specific groups not receiving tattoos that would if the industry were regulated. There may be individual consumers with safety concerns that prevent them from getting a tattoo, and their concerns may be satisfied with statewide standards for safety.
There is no data to support the claim that there are consumer populations not getting tattoos that would if regulation is approved.

11. We are on aware of any groups that would oppose this regulation. We have

posted all of the proposed language on the internet as well as sending written notices of meetings through the US Postal Service. We have also used the services of a well know Tattoo Suppler in the State of Florida to include information about the proposed language and the announcement of meetings which is open to the general public and industry parishioners using their mailing list.

NEED FOR REGULATION

12. In 1992 the Senate directed the Tattoo Industry to seek legislation with regulatory language to remove the Doctor as the surrogate inspector between the State of Florida and the Tattoo Industry. F.S. 877.04 does not provide for the inspection of tattoo studios by the Department of Health to insure the safety of the public as well as the parishioners. The new proposed language would provide authority to DOH to inspect the studios and most importantly pursue the illegal tattooing that is going unchecked on a daily basis at homes, bars, flee markets, camp sites, etc. For the first time underground tattooing (know as scratchers) would be punishable by a third degree felony, fines up to $1500.00 per infraction, jail time, and the ability to issue, a stop order immediately. DOH receives daily phone calls concerning the underground activity and have been unsuccessful in stopping it. This activity also reduces the income of the legal parishioners by removing the unaware customer from receiving their tattoo in a legal studio. It is also apparent that there is no income being claimed by the underground tattooist which also removes money do the State, and the Federal Governments. The new proposed language would also clarify the tattooing of minors and the requirements to do so.

13. What harm to the public has occurred as a result of the unregulated practice of this profession? What is the nature and severity of the harm? Document the physical, social, intellectual, financial, health, safety, and welfare threat to the consumer if this practice goes unregulated.
There is no central database that tracks any complaints or issues involving tattoo artists in Florida. However, the National Institute for Occupational Safety and Health (NIOSH) surveyed two body piercing establishments in Florida. The results of the study indicated that practices employed by body piercers and tattoo artists expose them to blood-borne pathogens, such as the hepatitis B virus and human immunodeficiency virus (HIV), and other potentially infectious hazards, such as possibly contaminated body fluids like saliva, at a significantly higher rate than the general public.
Please see attached Health Hazard Evaluation, Venus & Mars (Orlando) and Body Piercing by Bink (Tallahassee).
Since tattooing generates blood, it is reasonable to anticipate professionals in this industry would have an exposure to blood and other potentially infectious materials at a higher rate than the general public. The tattoo industry should be regulated by the State of Florida because professional tattoo artists are at risk when they are exposed to blood.

14. No data base, no central location for information.

15. What are the estimated numbers of complaints against professionals practicing this

profession? (Some information can be obtained from the Department of Agriculture and Consumer Services or the State Attorney's Office.)
The Department of Health is not charged with regulating the tattoo artists, so they have no database to document the number of complaints they receive. The following is a comment from an employee with the Department of Health—Division of Environmental Health:
"I can say that seldom a day goes by when our staff here in Community Environmental Health do not receive a phone call or e-mail pertaining to tattoo regulations in Florida, both licensure inquiries and complaints about pertaining to unexpected outcomes." 2/2/10
Many complaints against unregulated professions are directed to the Department of Agriculture and Consumer Services.
The Department of Agriculture and Consumer Services place any complaints involving the tattoo industry under a miscellaneous file, organized by year. These files can be search by individual names only—not subject. No central database of individual tattoo artists exists in the State of Florida. Therefore, no reliable numbers can be extrapolated from the Department of Agriculture and Consumer Services to make an educated estimate on the number of complaints against tattoo artists.

16. Creating s. 381.00773,F.S. ; s. 381.00773, F.S. ; s. 381.00775, F.S.; s. 381.00777, F.S.; s. 381.00779, F.S.; s. 381.0081,F.S.; s. 381.0083, F.S.; s. 381.0085, F.S.; S. 381.0087, F.S.; transferring, renumbering, and amending s. 887.04, F.S.; s. 381.00791.

B. Existing protection available to the consumer is insufficient.

17. Consumers currently have no control of their exposure to risk. There is no department or records kept in a central location that a consumer could call and ask about the safety records of a Studio. We have a lot of clients recommending their choice of a Studio to other people they come in contact with who are interested in receiving a tattoo. So at this time it appears most exposure comes from advertising in hard or paper media, radio, television, internet, walk ins, and word of mouth.

18. Yes, it is very common for some one who has had a good experience while receiving a tattoo from a Studio to recommend the Studio and the Artist to every one they come in contact with who is interested in receiving a tattoo. So the referral of one person turns into the referral of many people.

19. In some cases an Tattooist may refer some one to another Tattooist who may better suit the needs of the customer. This would happen if the customer was requesting art work out side the limitations of the Tattooist. Some Tattooist only work with color designs and others only work in black and white designs. There could also be cases where a Tattooist only does wild life designs, and another only does portraits.

20. Nothing from the State of Florida. There are articles written regularly in tattoo magazines that warn and educate people about receiving a tattoo. We talk to people every day and do our best to educate them and answer any and all questions they may

have. I would say the most important training a practitioner should have is in blood born pathogens and cross contamination prevention. Using universal precautions and procedures.

21. What administrative or legal remedies are currently available to redress consumer injury and abuse in this field?
Florida Statutes currently require tattoo artists be under the general supervision of a doctor.
If the supervising doctor is negligent in his or her duties, the Board of Medicine can review the license of the doctor and, if necessary, take disciplinary action on their license.
If the tattoo artist is found negligent, litigation is the available remedy to redress consumer injury.
If there is a complaint that a tattoo facility violated the terms of its bio-waste permit, the County Health Department staff would respond not only with an investigation, but enforcement when necessary.

22. Currently the available remedies are insufficient. There are no regulations at this time to insure the recourse of a customer.

C. No alternatives to regulation will adequately protect the public.

23. As it is right now a Doctor is the acting inspector for the Tattoo Studio, and the instructor for the on going training for the staff of the Tattoo Studio which includes the Tattoo Artist. The inspections and training very considerably from Doctor to Doctor, and Studio to Studio. In most cases the Doctor only inspects the Studio and it's staff when he signs on with the Studio as the inspector and trainer. There is seldom any follow up by the Doctor in that capacity as directed by F.S. 877.04. The worst cases are by underground Tattooist working out side of a Studio that is under a Doctors general supervision. These people perform tattooing in peoples house, flee markets, hotels, mobile utility trailers, parking lots, and have no way of performing a tattoo procedure in a controlled environment. It is common for these people to not have any training in blood born pathogen cross contamination prevention, and universal standard precautions. At this time there is no enforcement of this dangerous activity.

24. See attached document "24.docx"

25. (a) At this time there is no written code of ethics that is taught and there is no way to enforce any code of ethics as a result.

(b) The Florida Professional Tattoo Artist's Guild, and the Alliance of Professional Tattooist do have rules pertaining to codes of practice for their members. Their only recourse for enforcement of those codes is the revocation of the membership.

(c) Only through the civil court system.

(d) To replace F.S. 877.04

(e) The Studios as well as the Tattooist will be licensed through the Department of Health.

(f) This Statute does not regulate the art work.

(g) We know of no other measures.

26. No grandfather clause.

D. Regulation will mitigate existing problems.

27. H.B. 729 will for the first time in Florida set up a state wide standard of training, education, testing, and inspecting of Tattoo Studios. It will also protect minors from receiving tattoos under the age of 18 years old with out the written consent of their parent or guardian. Any one under the age of 16 years old can only be tattooed by a Doctor for medical reasons. Records will be kept by the Department of Health so they can track any and all problems arising from getting a tattoo in a licensed Studio as well as unlicensed activity. For the first time there will be enforcement, backed by fines, license revocation, jail time, or all of the above.

28. Which consumers of practitioner services are most in need of protection? Which require least protection? Which consumers will benefit most and least from regulation? All consumers receive the protection of a safer tattooing environment, with the blood-borne pathogens course and required sanitary conditions in the tattoo establishment.
In addition to these protections, minors are offered additional safeguards from tattooing. With this bill, nobody under 16 would be permitted to receive a tattoo. This provision extends protection to minors further than Florida's current law.

29. (a) If a person has not passed a blood born pathogen test, has not purchased a license to tattoo, and does not have a Studio in which he or she can tattoo from, than that person will be unable to practice the art of tattooing in the state of Florida.

(b) Any person from another state that is licensed to tattoo in that state and has taken a blood born pathogen test at least the equivalent of Florida's requirements that person can purchase a license to tattoo in the state of Florida.

(c) It is projected to cost less to be licensed through DEH than the cost of paying a private Doctor to do the inspections and on going training for the Studios and Practitioners which is required to date.

(d) DOH is already doing inspections in Tattoo Studios for the Bio Medical Waste Program. So it only makes sense they do the inspection requirements in HB729 since they are already in the area.

E. Practitioners operate independently, making decisions of consequences.

30. There is always some degree of judgment made with every customer. These judgments usually pertain to ID's. We have everyone fill out and sign a release form and at that time to verify the information with their ID. The worst case would involve a minor getting tattooed with no ID or an altered or fraudulent ID.

31. The State of Florida has a major problem with underground Tattoo Artist working out of peoples homes, fair grounds, flea markets, mobile cargo trailers, back

rooms in bars, and not being under the direction of F.S. 877.04. The problem with F.S. 877.04 is the lack of enforcement capabilities.

32. The practitioner should be trained in Standard Universal Procedures involving blood born pathogens, and cross contamination prevention.

F. Functions and tasks of the occupation are clearly defined.

33. Does the proposed regulatory scheme define a scope of activity which requires licensure, or merely prevent the use of a designated job title or occupational description without a license? Explain.
The proposed legislation would regulate a scope of activity. An individual would have to be licensed by the Department of Health (DOH) if that individual engages in tattooing. A tattoo artist is defined in this bill as a person licensed to practice tattooing—an activity. Tattooing is defined as a mark or design made on or under the skin by a process of piercing and ingraining a pigment, dye, or ink in the skin.
The bill also requires tattoo establishments be licensed. The tattoo establishment must meet sanitation standards developed by DOH.

34. Making sure the area where the tattoo is to be preformed is in clean and sanitized condition. Make sure the equipment is sterile. Set up all single use gloves, pigments, ointments, rinse cups, etc.. Use bearers on all surfaces, such as customer chair, counter top, spray bottles, clip cords, etc.. Prep and sanitize the area that is to be tattooed on the customer. Upon completion of the tattoo clean the area, bandage, and provide the customer with verbal and written healing instructions.

35. Practicing Standard Universal Procedures in sterile techniques, blood born pathogens training, cross contamination prevention training. The Alliance of Professional Tattooist provides a blood born pathogen course at the majority of the conventions in the U.S. This course is 6 hours long and that includes the training and testing time. This course is highly regarded in the tattoo industry as a must complete course and test.

36. Is such competent practice measurable by objective standards such as peer review? Give examples.
Competent practice is not measured by objective standards. According to Florida Administrative Code 64B8-2.002, the supervising doctors develop their own procedures regarding the medical conditions of individuals receiving tattoos, treatment of problems resulting during or from tattooing, and procedures in the event of an emergency situation developed during the performance or as a result of tattooing. These standards of these procedures vary from doctor-to-doctor.
Magazines, such as Inked and Prick, contain peer reviews on individual tattoo artists' artistic skills, but not on the safety standards of a tattoo artist or establishment.

37. In a industry where a physically invasive procedure is practiced, receiving a tattoo by a person not working in a Studio, not following Standard Universal Procedures in cross contamination prevention could be deadly. The CDC in Atlanta has issued many

warnings in this area.

38. What similar occupations have been regulated in Florida? Is it the business practice that needs to be regulated or the individual providing the service? Explain and give examples.
Body Piercing is the most closely related occupation to be regulated in Florida. Body Piercing studios are often also tattoo establishment. Both body piercers and tattoo artists share many of the same practices.
The business practice and the individual service provider would be regulated. Body Piercing studio operators are licensed. This bill will not license a tattoo establishment operator, but it will license the establishment itself. Individual tattoo artists will also be required to be licensed by DOH.

39. We are ingraining a pigment in the skin to create an image the customer has requested. We are only penetrating the upper three layers of tissue to complete the tattoo process. A properly applied tattoo does not penetrate muscle tissue, vain or arteries, bone, etc.

40. What is the relationship among those groups listed in response to question 38 and practitioners? Can practitioners be considered a branch of a currently regulated occupation?

Many tattoo artists also offer body piercing services in their establishments. The two professions also both target the same consumer populations, but tattoo artists should not be considered a branch of the body piercing industry. Not all tattoo artists are body piercers, or offer body piercing services.
Body piercers puncture holes in the skin, usually piercing through a body part. Tattooing involves skin abrasions, not the creation of holes. These differences require different equipment, methods, and standards of safety. The tattoo industry should have its own unique, stand-alone regulation.

41. What impact will the requested regulation have upon the authority and scope of practice of currently regulated groups?
The establishments belonging to tattoo artists that double as body piercers will need to have dual licenses from the Department of Health.
The Division of Environmental Health currently regulates body piercing establishments, and they establish standards for the facility. They would also be responsible for tattoo establishments, and their sanitary conditions, with this bill. The establishment of the tattoo artist/body piercer will need to be in compliance with the regulations of both industries, if the workers engage in the practice of tattooing and body piercing.

42. None we are aware of.

43. None we are aware of.

H. The occupation requires possession of knowledge, skills, and abilities that are both

teachable and testable.

44. Will this legislation create confusion in the marketplace regarding who is licensed and who is not?
Tattoo Establishment License: All tattoo establishments will be required to be licensed. No tattoo establishments would be exempt from this requirement with this bill. This bill will allow the Department of Health (DOH) to develop standards for tattoo establishments, such as requiring the establishment's license to be on display.
Tattoo Artist License: There are no professionals, other than physicians, that will be permitted to tattoo in the State of Florida without a tattoo license. No tattoo artists are exempt from being required to be licensed by DOH.

45. Will this generate scope of practice or unlicensed activity complaints?
The DOH receives comments or complaints on licensure or tattoo artists almost every day, according to the Division of Environmental Health. Clearly defined statewide safety standards and a complaint process that is more accessible to the consumers can reasonably be expected to generate additional unlicensed activity complaints. There is currently no data to estimate any anticipated increase in the number of complaints.

46. Without training in blood born pathogens, cross contamination prevention, Standard Universal Procedures, no autoclave on site, no sharps containers, no red bags for bio medical waste and how to handle a spill can and will have grave consequences. The CDC in Atlanta has posted warnings about the lack of properly trained and tested practitioners.

47. In states that have regulations for tattooing, requirements are enforced and over seen by their Department of Health. We have no statutory language in Florida that defines knowledge, skills, and abilities. At this time it is left up to the individual studio's to set their standards.

48. Yes. Yes. Yes. The APT, INC. Blood Born Pathogen Test for preventing disease transmission in tattooing. The home office is located: Alliance of Professional Tattooists, Inc. 215 West 18th Street, Suite 210, Kansas City, MO. Phone Number 816-979-1300.

49. At this time we are unaware of any preparatory programs in Florida. It is in the language of HB 729 that the Department of Health will design, interview, and work in concert with the Florida Tattoo Industry to compile any and all necessary courses, and testing for licensure. It is our desire to recognize training and testing in other states provided they meet Florida's minimum standards. We will know what those standards are once we start work on the regulatory language.

50. Apprenticeships are generally offered and vary from Studio to Studio. For a tattooist that moves to Florida from another state the Studio owner may require that person to go through a training program that the Studio offers. Some may require the APT, INC. Blood Born Pathogen test be completed and passed. There is a great deal of knowledge passed from Tattooist to Tattooist at some of the Conventions where training

seminars are offered.

51. Apprenticeships by far are responsible for the training of beginner Tattooist. I would safely estimate 90% of the beginners go through some sort of apprenticeship.

52. The Alliance of Professional Tattooists regularly give blood born pathogen test to Tattooist at conventions, and in some cases will send a reprehensive to a state to give the test to Tattooist in a area once enough people have signed on to take the test.
THE ALLIANCE of PROFESSIONAL TATTOOIST Inc.
215 West 18th Street, suite 210
Kansas City, MO 64108

53. The APT Blood Born Pathogen test is only concerned with the training of prevention of cross contamination in the field of applying a tattoo, which would include setting up to do a tattoo, practices during the tattoo process, and braking down the equipment and other components used during the tattoo process and disposing of said equipment properly and safely. Teaching the Standard Universal Procedures that are used in all physically invasive procedures.

54. We would welcome the APT Blood Born Pathogen test, and it is in the language of HB729 that DEH will work with the Tattoo Industry to develop regulatory language that will protect the public and the industry. We welcome similar test to be sent to DEH for review and acceptance.

ECONOMIC IMPACT

55. There are approximately 900 Tattoo Studios in Florida at this time. That number was supplied to us by DOH who does Bio Medical Waste inspections in every studio in Florida. We estimate there are 2 practitioners per studio and on average each studio will do 25-30 tattoos total per studio for both practitioners in one week. It is our believe HB729 will contribute to an increase in business do to the security the public will feel because of the enforcement by DEH.
2 practitioners per studio
Total tattoos per studio per week----------25-30
Times 50 working weeks per year----------x50
Total tattoos per studio per year----------1,250 to 1,500
Times 900 Tattoo Studios----------x900
Approximant customers per year for entire state----------1,250,900 to 1,350,000

56. The average minimum cost of a tattoo is $30.00. Using the information of 1,2500,900 to 1,350,000 total tattoos done per year for the entire state we would estimate $37,527,000 to $40,500,000. It should on the average cost the Studio owners, and the Practitioners less per year as the licensing fees will be less than they are paying to their private Doctor for his or her services. We picked at random 5 Tattoo Studios and asked them to provide us with this information.
1. Ancient Art Tattoo Studio

1246 North Tamiami Trail Suite 8
North Ft. Myers, FL. 33903

2. Endless Summer Tattoo Studio
210 N. Atlantic Ave.
Cocoa Beach, FL. 32931

3. Ink Addiction Tattoo Studio
618 S.W. Bryant Ave.
Stuart, FL. 34994

4. Fat Kats Artistry
14 South Magnolia Ave.
Ocala, FL. 34474

5. Cadillac Tattoo Studio
8024 Alico Rd. Unit A-7
Ft. Myers, FL. 33912

57. Outline major governmental activities you believe will be necessary to appropriately regulate practitioners.

- The individual tattoo artist and tattoo studio must both be licensed by the Department of Health (DOH).
- The Division of Environmental Health (DEH) will administer the program.
- DEH will approval of educational courses that will satisfy the course on blood-borne pathogens and communicable diseases requirement for licensure.
- DEH will also develop standards for sanitary conditions of tattoo establishments.
- DEH will need to inspect every tattoo establishment annually and ensure regulatory standards are being followed.
- DEH will need to process applications for licensure, course examination results, on-going education requirements, complaints, stop-use orders, and disciplinary actions.

58. Approximately 1800 practitioners plus 900 studios. DOH supplied us with their up to date registration list of their Bio Medical Waste inspections. To the best of their knowledge this is the best number of Studios in the state operating at this time. They also supplied us with the average number of 2 practitioners per studio.

59. 1800 practitioners per year. Plus guest practitioners.

60. If small numbers will apply in answers to 58 and 59, how are costs justified.
The numbers are not small. There are approximately 1800 tattoo artists in the State of Florida.
The Department of Health has analyzed the bill and determined that the fees for licensure

would cover the cost of the program. The bill also has a provision that allows the fees for licensure to rise and fall with inflation. This will prevent the Department of Health from having the request the legislature raise the fees.

61. Does adoption of the requested regulation represent the most cost effective form of regulation? Indicate alternatives considered and costs associated with each.
Florida law currently requires tattoo artists to be under the general supervision of physicians. The fees charged for supervision vary from physician to physician. The board members of the Florida Professional Tattoo Artist Guild pay annually on average $600 for the tattoo establishment inspection, and $300 per artist for the general supervision. One reason the Florida Professional Tattoo Artist Guild and tattoo artists throughout Florida are supporting this bill is because it is the most cost-effective form of regulation. The bill does not establish the price of fees, but does establish a cap. If the Department of Health were to choose to set the fee at the cap, then the department's fees would still be less costly to the tattoo artists than the current regulatory system.

62. See attached document "HB729 ---1-26-10.pdf"

A bill to be entitled

An act relating to the practice of tattooing; creating s. 381.00771, F.S.; defining terms; creating s. 381.00773, F.S.; prohibiting the practice of tattooing except by a person licensed or registered by the Department of Health; requiring tattoo artists to complete an education course and pass an examination; providing for the licensure of tattoo artists and the registration of guest tattoo artists licensed in jurisdictions outside of this state; creating s. 381.00775, F.S.; exempting certain personnel who perform tattooing for medical or dental purposes from regulation under specified provisions; creating s. 381.00777, F.S.; requiring the licensure of permanent tattoo establishments and temporary establishments; creating s. 381.00779, F.S.; providing practice requirements for tattoo artists, guest tattoo artists, tattoo establishments, and temporary establishments; creating s. 381.00781, F.S.; providing for fees for initial licensure or registration and the renewal or reactivation thereof; authorizing the adjustment of fees according to inflation or deflation; creating s. 381.00783, F.S.; specifying acts that constitute grounds for which the department may take disciplinary action; providing penalties; creating s. 381.00785, F.S.; requiring the department to adopt rules to administer the act; creating s. 381.00787, F.S.; providing penalties for certain violations involving the practice of tattooing; transferring, renumbering, and amending s. 877.04, F.S.;

prohibiting the tattooing of a minor child except under certain circumstances; providing penalties; creating s. 381.00791, F.S.; providing that specified provisions do not preempt certain local laws and ordinances; deferring imposition of the licensure and registration requirements until a specified date; providing an effective date.

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

Section 1. Section 381.00771, Florida Statutes, is created to read:

381.00771 Definitions of terms used in ss. 381.00771-381.00791.—As used in ss. 381.00771-381.00791, the term:

(1) "Active license or registration" means a current license or registration issued by the department that is not suspended or revoked.

(2) "Department" means the Department of Health.

(3) "Guest tattoo artist" means a person who is licensed, registered, or certified to practice tattooing in a jurisdiction outside of this state who is registered with the department to practice tattooing in this state.

(4) "Operator" means a person designated by a tattoo establishment or temporary establishment to control the operation of the establishment.

(5) "Stop-use order" means a written notice from the department to a licensee or registrant requiring him or her to remove any tattooing equipment or supplies or cease conducting any particular procedures because the equipment or supplies are

not being used or the procedures are not being conducted in accordance with ss. 381.00771-381.00791 or any rule adopted under those sections.

(6) "Tattoo" means a mark or design made on or under the skin by a process of piercing and ingraining a pigment, dye, or ink in the skin.

(7) "Tattoo artist" means a person licensed under ss. 381.00771-381.00791 to practice tattooing.

(8) "Tattoo establishment" means any permanent location, place, area, structure, or business where tattooing is performed.

(9) "Temporary establishment" means any location, place, area, or structure where tattooing is performed during, and in conjunction with, a convention or other similar event that does not exceed 14 consecutive days.

Section 2. Section 381.00773, Florida Statutes, is created to read:

381.00773 Tattoo artists; licensure; registration of guest tattoo artists.—

(1) Effective July 1, 2011, except as provided in s. 381.00775, a person may not tattoo the body of any human being in this state unless the person is licensed as a tattoo artist or registered as a guest tattoo artist under this section.

(2)(a) A person seeking licensure as a tattoo artist must apply to the department in the format prescribed by the department. An application must include:

1. The name and residence address of the applicant.

2. The name and street address of each tattoo

establishment and temporary establishment at which the applicant intends to practice tattooing in this state.

(b) Effective July 1, 2011, the department shall issue a license to an applicant who:

1. Is 18 years of age or older.

2. Submits a completed application.

3. Pays the applicable license fee established in s. 381.00781.

4. Submits proof of successful completion of an education course approved by the department on blood-borne pathogens and communicable diseases.

5. Submits proof of passage of an examination approved by the department on the material presented in the education course.

(c) The department shall approve one or more education courses and examinations which shall allow a person to complete the requirements of subparagraphs (b)4. and 5. in person or through an Internet website.

(d) A tattoo artist must, within 30 days after a change, notify the department of any change in the following information disclosed in his or her most recent application for issuance or renewal of his or her tattoo artist license in the format prescribed by the department:

1. The name and residence address of the tattoo artist.

2. The name and street address of each tattoo establishment in this state at which the tattoo artist has practiced tattooing for more than 14 days since the most recent renewal of his or her tattoo artist license or, if the license

has not been renewed, since the licensed was issued.

(3)(a) A person seeking registration as a guest tattoo artist must register with the department in the format prescribed by the department. An application must include:

1. The name and residence address of the applicant.

2. The name and street address of each tattoo establishment and temporary establishment at which the applicant will practice under the guest tattoo artist registration.

(b) Effective July 1, 2011, the department shall issue a guest tattoo artist registration to an applicant who:

1. Is 18 years of age or older.

2. Submits a completed application.

3. Pays the applicable registration fee established in s. 381.00781.

4. Holds an active license, registration, or certification issued by a jurisdiction outside of this state, whether by another state, the District of Columbia, any possession or territory of the United States, or any foreign jurisdiction, if:

a. The education and examination requirements of the license, registration, or certification substantially meet or exceed the requirements of subparagraphs (2)(b)4. and 5.; or

b. The applicant submits proof of successful completion of an education course approved by the department under subparagraph (2)(b)4. and proof of passage of an examination approved by the department under subparagraph (2)(b)5.

(4)(a) A tattoo artist license is valid for 1 year and must be renewed annually.

(b) A guest tattoo artist registration is valid for 14

days. A guest tattoo artist may reregister before or after expiration of his or her current registration.

(5) A license or registration issued by the department under this section is not transferable.

Section 3. Section 381.00775, Florida Statutes, is created to read:

381.00775 Application of ss. 381.00771-381.00791; exemption.—Except for s. 381.00789, which applies to all persons, ss. 381.00771-381.00791 do not apply to a person licensed to practice medicine or dentistry under chapter 458, chapter 459, or chapter 466 who performs tattooing exclusively for medical or dental purposes.

Section 4. Section 381.00777, Florida Statutes, is created to read:

381.00777 Tattoo establishments; licensure; temporary establishments.—

(1) Effective July 1, 2011:

(a) Except as provided in s. 381.00775, a person may not tattoo the body of any human being in this state except in a tattoo establishment or temporary establishment licensed under this section.

(b) A person may not operate a tattoo establishment or temporary establishment in this state unless the establishment is licensed under this section.

(2) A person seeking licensure of a tattoo establishment must apply to the department in the format prescribed by the department. An application must include:

(a) The fictitious or business name and any other name

under which the tattoo establishment conducts business in this state.

(b) The street address and telephone number of the tattoo establishment. A license is valid only for the location listed in the license. A tattoo establishment must notify the department in the format prescribed by the department before any change of the licensed location. A tattoo establishment with more than one location must obtain a separate license for each location.

(c) The name, mailing address, and telephone number of the tattoo establishment's operator.

(d) The name and address of the tattoo establishment's registered agent for service of process in the state.

(3) Effective July 1, 2011, the department shall issue a tattoo establishment license to an applicant, if:

(a) The applicant submits a completed application.

(b) The applicant pays the applicable license fee established in s. 381.00781.

(c) The establishment complies with all applicable local building, occupational, zoning, and health codes.

(4) A temporary establishment must meet the same requirements for licensure as a permanent tattoo establishment.

(5)(a) A tattoo establishment license is valid for 1 year and must be renewed annually.

(b) A temporary establishment license is valid for the duration of the convention or other similar event for which the license is issued not to exceed 14 consecutive days.

(6) A license issued by the department under this section

is not transferable.

Section 5. Section 381.00779, Florida Statutes, is created to read:

381.00779 Practice requirements.—

(1) A tattoo establishment or temporary establishment must:

(a) Display an active license for the establishment in a manner that is easily visible to the public at all times while tattooing is performed in the establishment.

(b) Ensure that each tattoo artist and guest tattoo artist, while practicing tattooing in the establishment, meets all applicable requirements of ss. 381.00771-381.00791.

(c) Maintain sanitary conditions at all times in the establishment.

(d) Comply with all state and local health codes and ordinances.

(e) Allow periodic inspections and enforcement by authorized agents of the department.

(2) A tattoo artist or guest tattoo artist must:

(a) Display his or her active license in a manner that is easily visible to the public at all times while practicing tattooing.

(b) Practice tattooing exclusively in an establishment licensed under ss. 381.00771-381.00791.

(c) Maintain sanitary conditions at all times in an establishment.

(d) Comply with all state and local health codes and ordinances.

(3) A tattoo artist or guest tattoo artist may tattoo the body of a minor child only to the extent authorized in s. 381.00789. A tattoo establishment or temporary establishment must keep, for the period prescribed by the department, each written notarized consent submitted under s. 381.00789(2)(c) by the parent or legal guardian of a minor child who is tattooed in the establishment.

Section 6. Section 381.00781, Florida Statutes, is created to read:

381.00781 Fees; disposition.—

(1) The department shall establish by rule the following fees:

(a) Fee for the initial licensure of a tattoo establishment and the renewal of such license, which, except as provided in subsection (2), may not exceed $250 per year.

(b) Fee for licensure of a temporary establishment, which, except as provided in subsection (2), may not exceed $250.

(c) Fee for the initial licensure of a tattoo artist and the renewal of such license, which, except as provided in subsection (2), may not exceed $150 per year.

(d) Fee for registration or reregistration of a guest tattoo artist, which, except as provided in subsection (2), may not exceed $45.

(e) Fee for reactivation of an inactive tattoo establishment license or tattoo artist license. A license becomes inactive if it is not renewed before the expiration of the current license.

(2) The department may annually adjust the maximum fees

authorized under subsection (1) according to the rate of inflation or deflation indicated by the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, as reported by the United States Department of Labor.

Section 7. Section 381.00783, Florida Statutes, is created to read:

381.00783 Grounds for discipline; administrative penalties.—

(1) The following acts constitute grounds for which disciplinary action specified in subsection (2) may be taken by the department against any tattoo establishment, temporary establishment, tattoo artist, guest tattoo artist, operator of a tattoo establishment, or unlicensed person engaged in activities regulated under ss. 381.00771-381.00791:

(a) Providing false information on an application for licensure or registration.

(b) Violating a state or local health code or ordinance.

(c) Violating any provision of ss. 381.00771-381.00791, rule adopted under those sections, or lawful order of the department.

(d) Being found guilty of or pleading nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of tattooing or the operation of a tattoo establishment or temporary establishment.

(e) Committing fraud, deceit, negligence, or misconduct in the practice of tattooing or the operation of a tattoo establishment or temporary establishment.

(f) Aiding, procuring, or assisting a person to unlawfully

practice tattooing or unlawfully operate a tattoo establishment or temporary establishment.

(g) Failing to keep the written notarized consent of the parent or legal guardian of a minor child who is tattooed in a tattoo establishment or temporary establishment for the period specified pursuant to s. 381.00779(3) or knowingly making false entries in a parent's or legal guardian's written notarized consent.

(2) When the department determines that a person commits any of the acts set forth in subsection (1), the department may enter an order imposing one or more of the following penalties:

(a) Refusal to issue a license or registration or renew a license.

(b) Suspension or revocation of a license or registration.

(c) Imposition of an administrative fine not to exceed $1,500 for each count or separate violation.

(d) Issuance of a reprimand.

(e) Placement of the licensee or registrant on probation for a specified period and subject to the conditions that the department may specify.

(f) Issuance of a stop-use order.

(g) Corrective action.

(3) The department shall impose stricter penalties for the repetition of violations and as the severity of violations escalate, distinguishing lesser violations from those that endanger the public health.

(4) Disciplinary proceedings shall be conducted as provided in chapters 120.

Section 8. Section 381.00785, Florida Statutes, is created to read:

381.00785 Rulemaking.—The department shall adopt rules to administer ss. 381.00771-381.00791. The department shall consult with representatives of the tattooing industry in this state during the development of such rules.

Section 9. Section 381.00787, Florida Statutes, is created to read:

381.00787 Criminal penalties.—

(1) Effective July 1, 2011, a person may not:

(a) Operate a tattoo establishment or temporary establishment in this state without a license.

(b) Practice tattooing in this state without a tattoo artist license or guest tattoo artist registration, except as provided in s. 381.00775.

(c) Practice tattooing in this state at any place other than a tattoo establishment or temporary establishment, except as provided in s. 381.00775.

(d) Obtain or attempt to obtain a license or registration by means of fraud, misrepresentation, or concealment.

(2) A person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. Section 877.04, Florida Statutes, is transferred, renumbered as section 381.00789, Florida Statutes, and amended to read:

381.00789 ~~877.04~~ Tattooing of minor children ~~prohibited~~; penalty.—

(1) A ~~It is unlawful for any~~ person may not ~~to~~ tattoo the body of a minor child younger than 16 years of age unless the ~~any human being; except that~~ tattooing is ~~may be~~ performed for medical or dental purposes by a person licensed to practice medicine or dentistry under chapter ~~chapters~~ 458, chapter ~~and~~ 459, or chapter 466~~, or by a person under his or her general supervision as defined by the Board of Medicine~~.

~~(2) Any person who violates the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

(2)~~(3)~~ A person may not tattoo the ~~No~~ body of a minor child who is at least 16 years of age, but younger than 18 years of age, unless:

(a) The minor child is accompanied by his or her parent or legal guardian.

(b) The minor child and his or her parent or legal guardian each submit proof of his or her identity by producing a government-issued photo identification.

(c) The parent or legal guardian submits his or her ~~shall be tattooed without the~~ written notarized consent in the format prescribed by the department ~~of the parent or legal guardian~~.

(d) The parent or legal guardian submits proof that he or she is the parent or legal guardian of the minor child.

(e) The tattooing is performed by a tattoo artist or guest tattoo artist licensed under ss. 381.00771-381.00791 or a person licensed to practice medicine or dentistry under chapter 458, chapter 459, or chapter 466.

(3) A person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 11. Section 381.00791, Florida Statutes, is created to read:

381.00791 Local laws and ordinances.—Sections 381.00771-381.00791 do not preempt any local law or ordinance of a county or municipality that imposes regulations on tattoo establishments, temporary establishments, tattoo artists, or the practice of tattooing which are in addition to those sections.

Section 12. This act shall take effect July 1, 2010.

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 Care Regulation Policy Committee

Representative Brandenburg offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 381.00771, Florida Statutes, is created to read:

381.00771 Definitions of terms used in ss. 381.00771-381.00791.—As used in ss. 381.00771-381.00791, the term:

(1) "Active license or registration" means a current license or registration issued by the department that is not suspended or revoked.

(2) "Department" means the Department of Health.

(3) "Guest tattoo artist" means a person who is licensed, registered, or certified to practice tattooing in a jurisdiction outside of this state who is registered with the department to practice tattooing in this state.

(4) "Operator" means a person designated by a tattoo establishment or temporary establishment to control the operation of the establishment.

(5) "Stop-use order" means a written notice from the department to a licensee or registrant requiring him or her to remove any tattooing equipment or supplies, or cease conducting any particular procedures, because the equipment or supplies are not being used or the procedures are not being conducted in accordance with ss. 381.00771-381.00791 or any rule adopted under those sections.

(6) "Tattoo" means a mark or design made on or under the skin of a human being by a process of piercing and ingraining a pigment, dye, or ink in the skin.

(7) "Tattoo artist" means a person licensed under ss. 381.00771-381.00791 to practice tattooing.

(8) "Tattoo establishment" means any permanent location, place, area, structure, or business where tattooing is performed.

(9) "Temporary establishment" means any location, place, area, or structure where tattooing is performed during, and in conjunction with, a convention or other similar event that does not exceed 14 consecutive days.

Section 2. Section 381.00773, Florida Statutes, is created to read:

381.00773 Application of ss. 381.00771-381.00791; exemption.—

(1) Except for s. 381.00787, which applies to all persons, ss. 381.00771-381.00791 do not apply to a person licensed to

practice medicine or dentistry under chapter 458, chapter 459, or chapter 466 who performs tattooing exclusively for medical or dental purposes.

(2) Sections 381.00771-381.00791 apply exclusively to the tattooing of human beings and do not apply to the tattooing of any animal.

Section 3. Section 381.00775, Florida Statutes, is created to read:

381.00775 Tattoo artists; licensure; registration of guest tattoo artists.—

(1) Except as provided in s. 381.00773, a person may not tattoo the body of any human being in this state unless the person is licensed as a tattoo artist or registered as a guest tattoo artist under this section.

(2)(a) A person seeking licensure as a tattoo artist must apply to the department in the format prescribed by the department. An application must include:

1. The name and residence address of the applicant.

2. The name and street address of each tattoo establishment and temporary establishment at which the applicant intends to practice tattooing in this state.

(b) The department shall issue a license to an applicant who:

1. Is 18 years of age or older.

2. Submits a completed application.

3. Pays the applicable license fee established in s. 381.00781.

4. Submits proof of successful completion of an education course approved by the department on blood-borne pathogens and communicable diseases.

5. Submits proof of passage of an examination approved by the department on the material presented in the education course.

(c) The department shall approve one or more education courses and examinations that allows a person to complete the requirements of subparagraphs (b)4. and 5. in person or through an Internet website.

(d) A tattoo artist must, within 30 days after a change, notify the department of any change in the following information disclosed in his or her most recent application for issuance or renewal of his or her tattoo artist license in the format prescribed by the department:

1. The name and residence address of the tattoo artist.

2. The name and street address of each tattoo establishment in this state at which the tattoo artist has practiced tattooing for more than 14 days since the most recent renewal of his or her tattoo artist license or, if the license has not been renewed, since the licensed was issued.

(3)(a) A person seeking registration as a guest tattoo artist must apply to the department in the format prescribed by the department. An application must include:

1. The name and residence address of the applicant.

2. The name and street address of each tattoo establishment and temporary establishment at which the applicant will practice under the guest tattoo artist registration.

(b) The department shall issue a guest tattoo artist registration to an applicant who:

1. Is 18 years of age or older.

2. Submits a completed application.

3. Pays the applicable registration fee established in s. 381.00781.

4. Holds an active license, registration, or certification issued by a jurisdiction outside this state, whether by another state, the District of Columbia, any possession or territory of the United States, or any foreign jurisdiction, if:

a. The education and examination requirements of the license, registration, or certification substantially meet or exceed the requirements of subparagraphs (2)(b)4. and 5.; or

b. The applicant submits proof of successful completion of an education course approved by the department under subparagraph (2)(b)4. and proof of passage of an examination approved by the department under subparagraph (2)(b)5.

(4)(a) A tattoo artist license is valid for 1 year and must be renewed annually.

(b) A guest tattoo artist registration is valid for 14 days. A guest tattoo artist may apply for reregistration before or after expiration of his or her current registration.

(5) A license or registration issued by the department under this section is not transferable.

Section 4. Section 381.00777, Florida Statutes, is created to read:

381.00777 Tattoo establishments; licensure; temporary establishments.—

(1)(a) Except as provided in s. 381.00773, a person may not tattoo the body of any human being in this state except in a tattoo establishment or temporary establishment licensed under this section.

(b) A person may not operate a tattoo establishment or temporary establishment in this state unless the establishment is licensed under this section.

(2) A person seeking licensure of a tattoo establishment must apply to the department in the format prescribed by the department. An application must include:

(a) The registered business name, including any fictitious names under which the tattoo establishment conducts business in the state.

(b) The street address and telephone number of the tattoo establishment.

(c) The name, mailing address, and telephone number of the tattoo establishment's operator.

(d) The name and address of the tattoo establishment's registered agent for service of process in the state.

(3) The department shall issue a tattoo establishment license to an applicant, if:

(a) The applicant submits a completed application.

(b) The applicant pays the applicable license fee established in s. 381.00781.

(c) The establishment complies with all applicable local building, occupational, zoning, and health codes.

(4) A temporary establishment must meet the same requirements for licensure as a permanent tattoo establishment.

(5)(a) A license is valid only for the location listed on the license. A tattoo establishment must notify the department in the format prescribed by the department before any change of the licensed location. A tattoo establishment with more than one location must obtain a separate license for each location.

(b) A tattoo establishment license is valid for 1 year and must be renewed annually.

(c) A temporary establishment license is valid for the duration of a convention or other similar event for which the license is issued not to exceed 14 consecutive days.

(6) A license issued by the department under this section is not transferable.

Section 5. Section 381.00779, Florida Statutes, is created to read:

381.00779 Practice requirements.—

(1) A tattoo establishment or temporary establishment must:

(a) Display an active license for the establishment in a manner that is easily visible to the public at all times while tattooing is performed in the establishment.

(b) Ensure that each tattoo artist and guest tattoo artist, while practicing tattooing in the establishment, meets all applicable requirements of ss. 381.00771-381.00791.

(c) Maintain sanitary conditions at all times in the establishment.

(d) Comply with all state and local health codes and ordinances.

(e) Allow the department to inspect the establishment pursuant to subsection (4).

(f) Comply with s. 381.0098 and rules adopted under that section.

(2) A tattoo artist or guest tattoo artist must:

(a) Display his or her active license in a manner that is easily visible to the public at all times while practicing tattooing.

(b) Practice tattooing exclusively in an establishment licensed under ss. 381.00771-381.00791.

(c) Maintain sanitary conditions at all times in an establishment.

(d) Comply with all state and local health codes and ordinances.

(3) A tattoo artist or guest tattoo artist may tattoo the body of a minor child only to the extent authorized in s. 381.00787. A tattoo establishment or temporary establishment must keep, for the period prescribed by the department, each written notarized consent submitted under s. 381.00787(3)(c) by the parent or legal guardian of a minor child who is tattooed in the establishment.

(4) The department may inspect and investigate each tattoo establishment and temporary establishment as necessary to ensure compliance with ss. 381.00771-381.00791. However, the department shall inspect each tattoo establishment at least annually and shall inspect each temporary establishment before and, as necessary, during a convention or similar event with which the establishment is connected.

Section 6. Section 381.00781, Florida Statutes, is created to read:

381.00781 Fees; disposition.—

(1) The department shall establish by rule the following fees:

(a) Fee for the initial licensure of a tattoo establishment and the renewal of such license, which, except as provided in subsection (2), may not exceed $250 per year.

(b) Fee for licensure of a temporary establishment, which, except as provided in subsection (2), may not exceed $250.

(c) Fee for the initial licensure of a tattoo artist and the renewal of such license, which, except as provided in subsection (2), may not exceed $150 per year.

(d) Fee for registration or reregistration of a guest tattoo artist, which, except as provided in subsection (2), may not exceed $45.

(e) Fee for reactivation of an inactive tattoo establishment license or tattoo artist license. A license becomes inactive if it is not renewed before the expiration of the current license.

(2) The department may annually adjust the maximum fees authorized under subsection (1) according to the rate of inflation or deflation indicated by the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, as reported by the United States Department of Labor.

Section 7. Section 381.00783, Florida Statutes, is created to read:

381.00783 Grounds for discipline; administrative penalties.—

(1) The following acts constitute grounds for which disciplinary action specified in subsection (2) may be taken by the department against any tattoo establishment, temporary establishment, tattoo artist, guest tattoo artist, operator of a tattoo establishment, or unlicensed person engaged in activities regulated under ss. 381.00771-381.00791:

(a) Providing false information on an application for licensure or registration.

(b) Violating a state or local health code or ordinance.

(c) Violating any provision of ss. 381.00771-381.00791, rule adopted under those sections, or lawful order of the department.

(d) Being found guilty of or pleading nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of tattooing or the operation of a tattoo establishment or temporary establishment.

(e) Committing fraud, deceit, negligence, or misconduct in the practice of tattooing or the operation of a tattoo establishment or temporary establishment.

(f) Aiding, procuring, or assisting a person to unlawfully practice tattooing or unlawfully operate a tattoo establishment or temporary establishment.

(g) Failing to keep the written notarized consent of the parent or legal guardian of a minor child who is tattooed in a tattoo establishment or temporary establishment for the period specified pursuant to s. 381.00779(3) or knowingly making false

entries in a parent's or legal guardian's written notarized consent.

(2) When the department determines that a person commits any of the acts set forth in subsection (1), the department may enter an order imposing one or more of the following penalties:

(a) Refusal to issue a license or registration or renew a license.

(b) Suspension or revocation of a license or registration.

(c) Imposition of an administrative fine not to exceed $1,500 for each count or separate violation.

(d) Issuance of a reprimand.

(e) Placement of the licensee or registrant on probation for a specified period and subject to the conditions that the department may specify.

(f) Issuance of a stop-use order.

(g) Corrective action.

(3) The department shall impose stricter penalties for the repetition of violations and as the severity of violations escalate, distinguishing lesser violations from those that endanger the public health.

(4) Disciplinary proceedings shall be conducted as provided in chapter 120.

Section 8. Section 381.00785, Florida Statutes, is created to read:

381.00785 Criminal penalties.—

(1) A person may not:

(a) Operate a tattoo establishment or temporary establishment in this state without a license.

(b) Practice tattooing in this state without a tattoo artist license or guest tattoo artist registration, except as provided in s. 381.00773.

(c) Practice tattooing in this state at any place other than a tattoo establishment or temporary establishment, except as provided in s. 381.00773.

(d) Obtain or attempt to obtain a license or registration by means of fraud, misrepresentation, or concealment.

(2) A person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 9. Section 877.04, Florida Statutes, is transferred, renumbered as section 381.00787, Florida Statutes, and amended to read:

381.00787 ~~877.04~~ Tattooing prohibited; penalty.—

(1) A ~~It is unlawful for any~~ person may not ~~to~~ tattoo the body of a minor child younger than 16 years of age unless the ~~any human being; except that~~ tattooing is ~~may be~~ performed for medical or dental purposes by a person licensed to practice medicine or dentistry under chapter ~~chapters~~ 458, chapter ~~and~~ 459, or chapter 466~~, or by a person under his or her general supervision as defined by the Board of Medicine~~.

(2) Any person who violates the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person may not tattoo the ~~No~~ body of a minor child who is at least 16 years of age, but younger than 18 years of age, unless:

(a) The minor child is accompanied by his or her parent or legal guardian;

(b) The minor child and his or her parent or legal guardian each submit proof of his or her identity by producing a government-issued photo identification;

(c) The parent or legal guardian submits his or her ~~shall be tattooed without the~~ written notarized consent in the format prescribed by the department; ~~of~~

(d) The parent or legal guardian submits proof that he or she is the parent or legal guardian of the minor child; and

(e) The tattooing is performed by a tattoo artist or guest tattoo artist licensed under ss. 381.00771-381.00791 or a person licensed to practice medicine or dentistry under chapter 458, chapter 459, or chapter 466.

(4) A person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, a person who tattoos the body of a minor child younger than 18 years of age does not violate this section, if:

(a) The person carefully inspects what appears to be a government-issued photo identification that represents that the minor child is 18 years of age or older.

(b) The minor child falsely represents himself or herself as being 18 years of age or older and presents a fraudulent identification.

(c) A reasonable person of average intelligence would believe that the minor child is 18 years of age or older and

that the photo identification is genuine, was issued to the minor child, and truthfully represents the minor child's age.

Section 10. Section 381.00789, Florida Statutes, is created to read:

381.00789 Rulemaking.—The department shall adopt rules to administer ss. 381.00771-381.00791. Such rules may include, but are not limited to, rules defining terms; prescribing educational requirements for tattoo artists and guest tattoo artists, health and safety requirements, sanitation practices, and sterilization requirements and procedures; and providing requirements for tattoo equipment, customer notification, the contents of customer records, the retention of records, and physical plants. The department shall consult with representatives of the tattooing industry in this state during the development of such rules.

Section 11. Section 381.00791, Florida Statutes, is created to read:

381.00791 Local laws and ordinances.—Sections 381.00771-381.00791 do not preempt any local law or ordinance of a county or municipality that imposes regulations on tattoo establishments, temporary establishments, tattoo artists, or the practice of tattooing which are in addition to those sections.

Section 12. This act shall take effect January 1, 2012.

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

Amendment No. 1

An act relating to the practice of tattooing; creating s. 381.00771, F.S.; defining terms; creating s. 381.00773, F.S.; exempting certain personnel who perform tattooing for medical or dental purposes from regulation under specified provisions; creating s. 381.00775, F.S.; prohibiting the practice of tattooing except by a person licensed or registered by the Department of Health; requiring tattoo artists to complete an education course and pass an examination; providing for the licensure of tattoo artists and the registration of guest tattoo artists licensed in jurisdictions outside this state; creating s. 381.00777, F.S.; requiring the licensure of permanent tattoo establishments and temporary establishments; creating s. 381.00779, F.S.; providing practice requirements for tattoo artists, guest tattoo artists, tattoo establishments, and temporary establishments; requiring the department to inspect the establishments at specified intervals; creating s. 381.00781, F.S.; providing for fees for initial licensure or registration and the renewal or reactivation thereof; authorizing the adjustment of fees according to inflation or deflation; creating s. 381.00783, F.S.; specifying acts that constitute grounds for which the department may take disciplinary action; providing penalties; creating s. 381.00785, F.S.; providing penalties for certain violations involving the practice of tattooing; transferring, renumbering, and amending s. 877.04, F.S.; prohibiting the tattooing of a minor child except under

certain circumstances; providing penalties; providing exceptions; creating s. 381.00789, F.S.; requiring the department to adopt rules to administer the act; creating s. 381.00791, F.S.; providing that specified provisions do not preempt certain local laws and ordinances; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 911 Electronic Health Information
SPONSOR(S): Hudson
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 958

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Regulation Policy Committee		Holt	Calamas
2)	Health Care Appropriations Committee			
3)	Health & Family Services Policy Council			
4)				
5)				

SUMMARY ANALYSIS

House Bill 911 requires the Agency for Health Care Administration (AHCA) to adopt, by rule, a Florida Health Information Exchange Participation Agreement to facilitate the electronic exchange and use of health information. Use of this form is optional. However, a health care provider that participates in the exchange of health information in reliance on an agreement that contains all of the uniform elements does not violate any right of confidentiality and is immune from civil liability for accessing or releasing an identifiable health record.

The bill directs AHCA to coordinate with regional extension centers to increase the readiness of health care providers to participate in implementing electronic health records and qualify for federal and state incentive programs for adoption of electronic health record. The bill provides AHCA the authority to establish guidelines for services provided by regional extension centers to Medicaid providers.

The bill requires the State Consumer Health Information and Policy Advisory Council to develop AHCA's strategic plan for the adoption and use of electronic health records. The bill revises the list of stakeholders with which AHCA must collaborate concerning the clearinghouse of information on electronic prescribing and amends the electronic prescribing annual report requirements.

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

The bill takes effect July 1, 2010

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Health Information Technology Definitions

Discussions of health information technology often contain numerous technical terms that are difficult to understand for those who are not familiar with such usage. In addition, there is very little agreement amongst organizations in the health information technology community regarding the definitions of these terms. However, for the purposes of this analysis, the following terms are used:

- **Electronic Health Record (EHR).** Also known as an electronic medical record, an electronic health record is a computer-based record of one or more clinical encounters between a healthcare provider and a specific patient. An EHR may include a number of data items, from patient demographics to diagnostic images.

- **Electronic Health Records System (EHR system).** An electronic health record system is a software program that allows computer-based management of clinical information documenting the delivery of health care to multiple patients. An EHR system may include multiple functionalities, such as management of procedure results and electronic entry of clinical and prescription data.

- **Electronic Prescribing System (E-Prescribing System).** An electronic prescribing system is a software program for electronically creating and transmitting a prescription to a participating pharmacy. An e-prescribing system maintains a record of a patient's prescriptions and notifies a health care practitioner of conflicting medications. EHR systems generally include e-prescribing functionality; however, an e-prescribing system may also be purchased and operated independently.

- **Regional Health Information Organization (RHIO).** A regional health information organization is a neutral organization with a defined governance structure which is composed of and facilitates collaboration among its stakeholders in a given medical trading area, community, or region through secure electronic health information exchange to advance the effective and efficient delivery of healthcare for individuals and communities. The geographic footprint of a RHIO can range from a local community to a large multi-state region.

Applicability of EHR and E-Prescribing systems

Widespread adoption of EHR and e-prescribing systems holds the promise of improving patient safety and reducing the cost of health care by preventing unnecessary procedures. However, in a 2005 report, the National Center for Health Statistics (NCHS) within the United States Centers for Disease Control and Prevention noted that adoption of information technology within the health care sector is trailing behind other sectors in the economy of the United States.[1] The adoption of EHRs by hospitals and physicians has been particularly slow.

As part of its annual National Health Care Survey[2], NCHS found that, from 2001 through 2003:

- The most frequent IT application used in physician offices was an electronic billing system. Nearly three-fourths (73 percent) of physicians submitted claims electronically. Electronic submission of claims was more likely among physicians in the Midwest and South, in nonmetropolitan areas, among physicians under 50 years of age, and for physicians with 10 or more managed care contracts. Physicians in medical specialties such as psychiatry, dermatology, or sports medicine (among others) were least likely to submit claims electronically.

- EHRs were used more frequently in hospital settings (31 percent in emergency departments) than in physician offices (17 percent). Among physician office practices, there were no statistically significant differences in EMR use by region, metropolitan status, specialty physician age, type of practice, or number of managed care contracts.

A more recent 2007 NCHS report indicates that physician office use of EHR systems continues to grow; roughly 29 percent use full or partial (i.e., part paper) EHR systems, a 22 percent increase since 2005, and a 60 percent increase since 2001.[3] The report also noted that EHR system use was higher in health maintenance organizations than among private practice physicians.[4]

Federal Health Information Technology Efforts

The federal government has embarked upon recent initiatives to incentivize the adoption of health information technology.

The first initiative is an incentive payment program for the adoption of an EHR system and reporting and performance on 26 quality measures.[5] The program began in 2008 and will operate over a five-year period in two phases in 12 locations. The first phase began on June 1, 2009.[6] The second phase includes six counties in the Jacksonville area, namely Baker, Clay, Duval, Nassau, Putnam and St. Johns counties.[7]

The second initiative is the E-Prescribing Incentive Program, which, beginning January 1, 2009, provides incentive payments to health care practitioners for e-prescribing.[8] A successful e-prescriber under the program will gain an incentive payment of 2 percent in calendar years 2009 and 2010; 1 percent in calendar years 2011 and 2012; and .5 percent in calendar year 2013.[9] Health care

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[1] C.W. Burt and E. Hing, *Use of Computerized Clinical Support Systems in Medical Settings: United States, 2001–03*, Advance Data from Vital and Health Statistics no. 353, March 15, 2005.

[2] Centers for Disease Control and Prevention, National Health Care Surveys, *available* at: http://www.cdc.gov/nchs/nhcs/nhcs_surveys.htm (last viewed March 21, 2010).

[3] E. Hing, C.W. Burt, and D. Woodwell, *Electronic Medical Record Use by Office-Based Physicians and Their Practices:United States, 2006*, Advance Data from Vital and Health Statistics no. 393, October 26, 2007.

[4] *Id.*

[5] Centers for Medicare and Medicaid Services, "Electronic Health Records Demonstration," *available* at: http://www.cms.hhs.gov/DemoProjectsEvalRpts/downloads/EHR_DemoSummary.pdf (last viewed March 20, 2010).

[6] *Id.*

[7] *Id.*

[8] Centers for Medicare and Medicaid Services, "E-Prescribing Incentive Program Overview," *available* at: http://www.cms.hhs.gov/ERXincentive/ (last viewed March 20, 2010).

[9] Centers for Medicare and Medicaid Services, "Medicare's Practical Guide to the E-Prescribing Incentive Program," *available* at: http://www.facs.org/ahp/pgri/2009erxprogramguide.pdf (last viewed March 20, 2010) (In order to be a "successful" e-prescriber, a health

practitioners who do not qualify as successful e-prescribers will be penalized beginning in 2012; the penalty is 1 percent in 2012; 1.5 percent in 2013; and 2 percent in 2014.[10]

American Recovery and Reinvestment Act of 2009 Funded Programs

In addition to these incentive programs, the Centers for Medicare and Medicaid Services (CMS) published a proposed rule in December 2009 to implement provisions of The American Recovery and Reinvestment Act of 2009 (ARRA). The rule provided incentive payments for the meaningful use of certified EHR technology. The CMS proposed rule phases in criteria for demonstrating meaningful use in three stages through 2013. In addition, the Office of the National Coordinator for Health Information Technology issued an interim final regulation that sets initial standards, implementation specifications, and certification criteria for EHR technology.

The Medicare EHR incentive program will provide incentive payments to eligible professionals, eligible hospitals, and critical access hospitals that are meaningful users of certified EHR technology. The Medicaid EHR incentive program will provide incentive payments to eligible professionals and hospitals for efforts to adopt, implement, or upgrade certified EHR technology for meaningful use in the first year of their participation in the program and for demonstrating meaningful use during each of five subsequent years.

On February 26, 2010, the CMS announced that AHCA will receive $1.69 million in federal matching funds to cover 90 percent of the costs for the state's planning activities to implement and administer the EHR incentive payments to Medicaid providers.[11] These planning activities will include conducting a comprehensive analysis to determine the current status of health information technology activities in the state and the creation of a State Medicaid Health Information Technology Plan.

The ARRA also provided grant funding for approximately 70 Health Information Technology Regional Extension Centers nationally to support health care providers with direct, individualized and on-site technical assistance in:[12]

- Selecting a certified EHR product that offers best value for the providers' needs;
- Achieving effective implementation of a certified EHR product;
- Enhancing clinical and administrative workflows to optimally leverage an EHR system's potential to improve quality and value of care, including patient experience as well as outcome of care; and,
- Observing and complying with applicable legal, regulatory, professional and ethical requirements to protect the integrity, privacy and security of patients' health information.

Within Florida, The Health Choice Network Regional Extension Center was awarded an $8.5 million grant under this program on February 12, 2010.[13] Currently, there are three additional proposed regional extension centers in Florida: the Rural / North Florida Regional Extension Center, USF – Paper Free Florida HIT Regional Extension Center, and UCF Medical School Regional Extension Center.[14] Several counties in Florida are currently not covered by one of these four Regional Extension Centers.[15]

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care practitioner must "report the e-prescribing quality measure through [his or her] Medicare Part B claims on at least 50% of applicable cases during the reporting year").

[10] *Id.*

[11] Florida Health Information Network, Medicaid Electronic Health Record Incentive Program, *available* at: http://www.fhin.net/FHIN/MedicaidElectronicHealthRecordIncentiveProgram.shtml (last viewed March 20, 2010).

[12] Federal Register, Vol. 74, No. 101., (May 28, 2009).

[13] Florida Health Information Network, Regional Extension Centers, Health Choice Network Funding Award, *available* at: http://www.fhin.net/FHIN/RegExtCenters.shtml (last viewed March 20, 2010).

[14] Florida Health Information Network, Regional Extension Centers, *available* at: http://www.fhin.net/FHIN/RegExtCenters.shtml (last viewed March 20, 2010).

[15] Florida Health Information Network, Regional Extension Centers, *available* at: http://www.fhin.net/FHIN/RegExtCenters.shtml (last viewed March 20, 2010).

Florida Health Information Technology Efforts

Florida Health Information Network Grants Program

In 2006, the Legislature authorized AHCA to administer a grants program to advance the development of a health information network.[16] According to AHCA[17], grants are currently awarded to RHIOs in three categories:[18]

- Assessment and planning grants, which support engaging appropriate healthcare stakeholders to develop a strategic plan for health information exchange in their communities.

- Operations and evaluation grants, which support projects that demonstrate health information exchange among two or more competing provider organizations.

- Training and technical assistance grants, which support practitioner training and technical assistance activities designed to increase physician and dentist use of electronic health record systems.

From Fiscal Year 2005-2006 through Fiscal Year 2007-2008, a total of $5.5 million has been appropriated by the legislature to fund the grants program. No funding was appropriated in Fiscal Year 2008-2009 or 2009-2010.

Electronic Prescribing Clearinghouse

In 2007, the Legislature created the Electronic Prescribing Clearinghouse within AHCA.[19] The stated intent of the clearinghouse is to promote the implementation of electronic prescribing by health care practitioners, health care facilities, and pharmacies in order to prevent prescription drug abuse, improve patient safety, and reduce unnecessary prescriptions.[20] AHCA is required to annually publish a report by January 31 regarding the progress of implementing electronic prescribing.

Florida Health Records Exchange Act

In 2009, the Florida Legislature enacted the Florida Electronic Health Records Exchange Act (Act) in s. 408.051, F.S. In addition to defining terms, the Act authorizes the emergency release of identifiable health records without a patient's consent under certain conditions for use in the treatment of the patient for an emergency medical condition.

The Act also requires the Agency to develop a universal patient authorization form that may be used by a health care provider to document patient authorization for the use or release of an identifiable health record by July 1, 2010. The Act provides that the use of this form to request an identifiable health record is optional. The exchange of an identifiable health record upon receipt of the universal patient authorization form creates a rebuttable presumption that the release of the record was appropriate and did not violate any right of confidentiality.

State Consumer Health Information and Policy Advisory Council

The Council is established in s. 408.05(8), F.S., within the Agency to assist the Florida Center for Health Information and Policy Analysis (Florida Center) in reviewing the comprehensive health information system, including the identification, collection, standardization, sharing, and coordination of

[16] s. 408.05(4)(b), F.S.

[17] Agency for Health Care Administration, Florida Center for Health Information and Policy Analysis, Health Information Exchange Coordinating Committee Meeting, Proposed Changes to FY 2008 – 2009 FHIN Grant Program Requirements, *available* at: www.fhin.net/FHIN/.../ProposedChangesFHINgrantRequirements122607.pdf (last viewed March 21, 2010).

[18] *Id.*

[19] ch. 2007-156, L.O.F.

[20] *Id.*

health-related data, fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities; and to recommend improvements for purposes of public health, policy analysis, and transparency of consumer health care information.[21]

The Council consists of an employee of the Executive Office of the Governor, Office of Insurance Regulation, and Department of Education and 10 persons appointed by the Secretary of the Agency, representing other state and local agencies, state universities, business and health coalitions, local health councils, professional health-care-related associations, consumers, and purchasers.[22] The council is required to meet at least quarterly.[23]

The Council's duties and responsibilities include, but are not limited to:

- Developing a mission statement, goals, and plan of action for the identification, collection, standardization, sharing, and coordination of health-related data across federal, state, and local government and private sector entities;[24]
- Developing a review process to ensure cooperative planning among agencies that collect or maintain health-related data;[25] and
- Creating ad hoc issue-oriented technical workgroups on an as-needed basis to make recommendations to the council.[26]

Effects of the Bill

The bill requires the State Consumer Health Information and Policy Advisory Council to develop AHCA's strategic plan for the adoption and use of EHR.

The bill defines "health information exchange participation agreement", and requires AHCA to identify and describe, by July 1, 2011, the elements of a Florida Health Information Exchange Participation Agreement (Agreement) for use by health care providers to specify the terms and conditions for the exchange of health information. AHCA is required to adopt this agreement by rule and post it on its website. The agreement must require the use of a universal patient authorization, which AHCA is to adopt by rule.

The bill provides that health care providers are not required to incorporate one or more of the uniform elements in an agreement. Additionally, health care providers that participate in health information exchange under the auspices of an agreement which contain all of the uniform elements does not violate any right of confidentiality and is immune from civil liability for accessing or releasing an identifiable health record.

The bill requires the AHCA to coordinate with regional extension centers to increase health care provider readiness to implement the use of electronic health records to enable them to participate in health information exchange, electronic prescribing and reporting of performance measures, which is required to qualify for federal and state electronic health record adoption incentive programs. The bill provides AHCA the authority to establish guidelines for services and conditions of participation for Medicaid providers.

The bill revises the list of stakeholders with which AHCA must collaborate with to create a clearinghouse of information on electronic prescribing. The bill requires that AHCA report on the metrics of the implementation of electronic prescribing and the report is to be published on its Internet website instead of being submitted to the Governor and the Legislature. The bill requires AHCA to publish on its website total health care expenditures in the state; and repeals the requirement for the agency to publish a report of state health expenditures.

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[21] s. 408.05 (8)(a), F.S.
[22] s. 408.05 (8)(a)1.-4., F.S.
[23] s. 408.05 (8)(c), F.S.
[24] s. 408.05 (8)(h)1., F.S.
[25] s. 408.05 (8)(h)2., F.S.
[26] s. 408.05 (8)(h)3., F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 408.05, F.S., relating to the Florida Center for Health Information and Policy Analysis.
Section 2. Amends s. 408.051,F.S., relating to the Florida Electronic Health Records Exchange Act.
Section 3. Amends s. 408.0513, F.S., relating to the Florida Health Information Exchange Participation Agreement.
Section 4. Amends s. 408.0514, F.S., relating to regional extension centers.
Section 5. Amends s. 408.061, F.S., relating to data collection; uniform systems of financial reporting; information relating to physician charges; confidential information; and immunity.
Section 6. Amends s. 408.0611, F.S., relating to electronic prescribing clearinghouse.
Section 7. Amends s. 408.062, F.S., relating to research, analysis, studies, and reports.
Section 8. Amends s. 408.063, F.S., relating to dissemination of health care information.
Section 9. Provides that the bill takes effect July 1, 2010.

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:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to electronic health information; amending s. 408.05, F.S.; requiring the State Consumer Health Information and Policy Advisory Council to develop the Agency for Health Care Administration's strategic plan relating to electronic health records; amending s. 408.051, F.S.; defining the terms "agency" and "health information exchange participation agreement"; creating s. 408.0513, F.S.; requiring the agency to develop uniform elements of a Florida Health Information Exchange Participation Agreement for use by health care providers; requiring the agency to post the agreement on the agency's Internet website; providing for immunity from civil liability for accessing or releasing certain health records; providing that health care providers are not required to incorporate the uniform elements of the agreement; creating s. 408.0514, F.S.; requiring the agency to coordinate with regional extension centers to implement the use of electronic health records; authorizing the agency to establish guidelines for center services and state Medicaid participation and use of such services; amending s. 408.061, F.S.; deleting a reference to an administrative rule relating to certain data reported by health care facilities; amending s. 408.0611, F.S.; revising provisions relating to a clearinghouse on information on electronic prescribing; requiring the State Consumer Health Information and Policy Advisory Council or a workgroup representing electronic prescribing and other

health information technology stakeholders to participate in quarterly meetings on the implementation of electronic prescribing; requiring the agency to provide a report on the agency's Internet website; amending s. 408.062, F.S.; requiring the agency to post certain information on health care expenditures on the agency's Internet website; amending s. 408.063, F.S.; deleting the requirement that the agency annually publish a report on state health expenditures; providing an effective date.

WHEREAS, the use of electronic health information technology has improved the quality of health care, and

WHEREAS, coordinating federally funded training and outreach activities with a state-based health information technology program will advance the adoption and meaningful use of electronic health records, and

WHEREAS, the Agency for Health Care Administration is responsible for developing a strategy for the implementation of an electronic health information network in this state, NOW, THEREFORE,

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

Section 1. Paragraph (h) of subsection (8) of section 408.05, Florida Statutes, is amended to read:

408.05 Florida Center for Health Information and Policy Analysis.—

(8) STATE CONSUMER HEALTH INFORMATION AND POLICY ADVISORY

COUNCIL.—

(h) The council's duties and responsibilities include, but are not limited to~~, the following~~:

1. Developing ~~To develop~~ a mission statement, goals, and a plan of action for the identification, collection, standardization, sharing, and coordination of health-related data across federal, state, and local government and private sector entities.

2. Developing the agency's strategic plan for the adoption and use of electronic health records, as specified in s. 408.062(5).

3.~~2.~~ Developing ~~To develop~~ a review process that ensures ~~to ensure~~ cooperative planning among agencies that collect or maintain health-related data.

4.~~3.~~ Establishing ~~To create~~ ad hoc, issue-oriented technical workgroups as needed ~~on an as-needed basis~~ to make recommendations to the council.

Section 2. Subsection (2) of section 408.051, Florida Statutes, is amended to read:

408.051 Florida Electronic Health Records Exchange Act.—

(2) DEFINITIONS.—As used in this section and ss. 408.0512-408.0514, the term:

(a) "Agency" means the Agency for Health Care Administration.

(b)~~(c)~~ "Certified electronic health record technology" means a qualified electronic health record that is certified pursuant to s. 3001(c)(5) of the Public Health Service Act as meeting standards adopted under s. 3004 of that ~~such~~ act which

are applicable to the type of record involved, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals.

(c) ~~(a)~~ "Electronic health record" means a record of an individual's ~~a person's~~ medical treatment which is created by a licensed health care provider and stored in an interoperable and accessible digital format.

(d) "Health information exchange participation agreement" means a comprehensive, multiparty trust agreement that can be used by health care providers and other organizations, both public and private, that wish to participate in a health information exchange network. The agreement provides the legal framework that governs participation in the network by requiring the signatories to abide by a common set of terms and conditions to support the secure, interoperable exchange of health care data among authorized participants.

(e) ~~(d)~~ "Health record" means any information, recorded in any form or medium, which relates to the past, present, or future health of an individual for the primary purpose of providing health care and health-related services.

(f) ~~(e)~~ "Identifiable health record" means a ~~any~~ health record that identifies the patient or for ~~with respect to~~ which there is a reasonable basis to believe the information can be used to identify the patient.

(g) ~~(f)~~ "Patient" means an individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.

(h) ~~(g)~~ "Patient representative" means a parent of a minor

patient, a court-appointed guardian for the patient, a health care surrogate, or a person holding a power of attorney or notarized consent appropriately executed by the patient granting permission for ~~to~~ a health care facility or health care provider to disclose the patient's health care information to that person. In the case of a deceased patient, the term also means the personal representative of the estate of the deceased patient; the deceased patient's surviving spouse, surviving parent, or surviving adult child; the parent or guardian of a surviving minor child of the deceased patient; the attorney for the patient's surviving spouse, parent, or adult child; or the attorney for the parent or guardian of a surviving minor child.

(i) ~~(b)~~ "Qualified electronic health record" means an electronic record of health-related information concerning an individual which includes patient demographic and clinical health information, such as medical history and problem lists, and which has the capacity to provide clinical decision support, to support physician order entry, to capture and query information relevant to health care quality, and to exchange electronic health information with, and integrate such information from, other sources.

Section 3. Section 408.0513, Florida Statutes, is created to read:

408.0513 Florida Health Information Exchange Participation Agreement.—

(1) By July 1, 2011, the agency shall identify and describe elements of a Florida Health Information Exchange Participation Agreement (or Florida HIE Participation Agreement)

for use by health care providers in the state which specifies the terms and conditions for the exchange of health information.

(2) The agency shall adopt by rule the elements for a Florida HIE Participation Agreement and make the uniform elements available on the agency's Internet website, pursuant to s. 408.05. The elements of the agreement must include a requirement to use the universal patient authorization form, as provided in s. 408.051(4), when such form is adopted by rule.

(3) A health care provider that participates in the exchange of health information in reliance on a Florida HIE Participation Agreement containing all of the uniform elements does not violate any right of confidentiality and is immune from civil liability for accessing or releasing an identifiable health record under the agreement.

(4) A health care provider is not required under this section to incorporate one or more of the uniform elements adopted and distributed by the agency in a Florida HIE Participation Agreement.

Section 4. Section 408.0514, Florida Statutes, is created to read:

408.0514 Regional extension centers.—

(1) The agency shall coordinate with federally funded regional extension centers operating in this state to increase provider readiness in implementing the use of electronic health records in order to enable provider participation in health information exchange and electronic prescribing, including, but not limited to, readiness to prepare, use, and report

performance measures required to qualify for federal and state electronic health record adoption incentive programs.

(2) The agency may establish guidelines for services provided to Medicaid providers by regional extension centers and conditions for state Medicaid participation and use of such services.

Section 5. Paragraph (a) of subsection (1) of section 408.061, Florida Statutes, is amended to read:

408.061 Data collection; uniform systems of financial reporting; information relating to physician charges; confidential information; immunity.—

(1) The agency shall require the submission by health care facilities, health care providers, and health insurers of data necessary to carry out the agency's duties. Specifications for data to be collected under this section shall be developed by the agency with the assistance of technical advisory panels including representatives of affected entities, consumers, purchasers, and such other interested parties as may be determined by the agency.

(a) Data submitted by health care facilities, including ~~the~~ facilities as defined in chapter 395, must ~~shall~~ include, but is ~~are~~ not limited to: case-mix data~~;~~ patient admission and discharge data~~;~~ hospital emergency department data, which includes ~~shall include~~ the number of patients treated in the hospital's emergency department and ~~of a licensed hospital~~ reported by patient acuity level~~;~~ data on hospital-acquired infections as specified by rule~~;~~ data on complications as specified by rule~~;~~ data on readmissions as specified by rule,

which includes ~~with~~ patient and provider-specific identifiers; ~~included,~~ actual charge data by diagnostic groups; ~~,~~ financial data; ~~,~~ accounting data; ~~,~~ operating expenses; ~~,~~ expenses incurred for rendering services to patients who cannot or do not pay; ~~,~~ interest charges; ~~,~~ depreciation expenses based on the expected useful life of the property and equipment involved; ~~,~~ and demographic data. The agency shall adopt nationally recognized risk adjustment methodologies or software consistent with the standards of the Agency for Healthcare Research and Quality and as selected by the agency for all data submitted under ~~as required by~~ this section. Data may be obtained from documents such as, but not limited to: leases, contracts, debt instruments, itemized patient bills, medical record abstracts, and related diagnostic information. Reported data elements shall be reported electronically, and ~~in accordance with rule 59E-7.012, Florida Administrative Code. Data submitted shall be certified by~~ the chief executive officer or an appropriate and duly authorized representative or employee of the licensed facility must certify that the information submitted is true and accurate.

Section 6. Subsections (3) and (4) of section 408.0611, Florida Statutes, are amended to read:

408.0611 Electronic prescribing clearinghouse.—

(3) The agency shall work in collaboration with private sector electronic prescribing initiatives and relevant stakeholders to create a clearinghouse of information on electronic prescribing for health care practitioners, health care facilities, regional health information organizations,

health care consumers, ~~and~~ pharmacies, and regional extension centers that promote adoption of electronic health records. ~~These stakeholders shall include organizations that represent health care practitioners, organizations that represent health care facilities, organizations that represent pharmacies, organizations that operate electronic prescribing networks, organizations that create electronic prescribing products, and regional health information organizations.~~ Specifically, the agency shall~~, by October 1, 2007~~:

(a) Provide on its website:

1. Information regarding the process of electronic prescribing and the availability of electronic prescribing products, including no-cost or low-cost products;

2. Information regarding the advantages of electronic prescribing, including using medication history data to prevent drug interactions, prevent allergic reactions, and deter doctor and pharmacy shopping for controlled substances;

3. Links to federal and private sector websites that provide guidance on selecting an appropriate electronic prescribing product; and

4. Links to state, federal, and private sector incentive programs for the implementation of electronic prescribing.

(b) Convene quarterly meetings of the State Consumer Health Information and Policy Advisory Council or a workgroup representing electronic prescribing and other health information technology stakeholders to assess and accelerate the implementation of electronic prescribing.

(4) Pursuant to s. 408.061, the agency shall monitor the

implementation of electronic prescribing by health care practitioners, health care facilities, and pharmacies. By January 31 of each year, the agency shall report metrics on the ~~progress of~~ implementation of electronic prescribing on the agency's Internet website ~~to the Governor and the Legislature~~. The information reported must ~~pursuant to this subsection shall~~ include federal and private sector electronic prescribing initiatives and, to the extent that data is readily available from organizations that operate electronic prescribing networks, the number of health care practitioners using electronic prescribing and the number of prescriptions electronically transmitted.

Section 7. Paragraph (e) of subsection (1) of section 408.062, Florida Statutes, is amended to read:

408.062 Research, analyses, studies, and reports.—

(1) The agency shall conduct research, analyses, and studies relating to health care costs and access to and quality of health care services as access and quality are affected by changes in health care costs. Such research, analyses, and studies shall include, but not be limited to:

(e) Total health care expenditures in the state according to the sources of payment and the type of expenditure shall be published on the agency's Internet website.

Section 8. Subsections (5) and (6) of section 408.063, Florida Statutes, are amended to read:

408.063 Dissemination of health care information.—

~~(5) The agency shall publish annually a comprehensive report of state health expenditures. The report shall identify:~~

~~(a) The contribution of health care dollars made by all payors.~~

~~(b) The dollars expended by type of health care service in Florida.~~

(5)~~(6)~~ ~~The staff of the~~ Agency staff may conduct or sponsor consumer information and education seminars at locations throughout the state and ~~may~~ hold public hearings to solicit consumer concerns or complaints relating to health care costs and make recommendations to the agency for study, action, or investigation.

Section 9. This act shall take effect July 1, 2010.

Amendment No.

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 Care Regulation Policy Committee

Representative(s) Hudson offered the following:

Amendment (with title amendment)

Remove lines 92-173 and insert:

Section 4. Section 408.0514, Florida Statutes, is created to read:

408.0514 Regional extension centers.—

The agency shall coordinate with federally funded regional extension centers operating in this state to increase provider readiness in implementing the use of electronic health records in order to enable provider participation in health information exchange and electronic prescribing, including, but not limited to, readiness to prepare, use, and report performance measures required to qualify for federal and state electronic health record adoption incentive programs.

Amendment No.

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

Remove lines 7-22 and insert:

408.051, F.S.; defining the term "agency"; creating s. 408.0514, F.S.; requiring the agency to coordinate with regional extension centers to implement the use of electronic health records; amending s. 408.061, F.S.; deleting a reference

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

The bill sunsets all departmental divisions on July 1, 2011, unless reviewed and reenacted by the Legislature DOH is authorized to establish multi-county service areas for its County Health Departments. The PCB removes provisions authorizing DOH to use state and federal funds to administer a variety of promotional programs and public health campaigns, and a provision authorizing DOH to hold copyrights, trademarks, and service marks. Beginning in fiscal year 2010-2011, DOH is precluded from initiating or commencing new programs, including federally-funded or grant-supported programs, without express legislative authority.

The PCB amends the definition of group care facilities regulated in the DOH environmental health program and redefines "food service establishment" for purposes of its food service program. Under the new definition, food service inspections are limited to detention facilities, public or private schools, migrant labor camps, assisted living facilities, adult family-care homes, adult day care centers, short term residential treatment centers, residential treatment facilities, crisis stabilization units, hospices, prescribed pediatric care centers, intermediate care facilities for the developmentally disabled, boarding schools, summer 24-hour camps, civic or fraternal organizations, bars and lounges, and vending machines dispensing potentially hazardous foods. The PCB authorizes DOH to advise other agencies about food service inspections, and makes conforming changes elsewhere in statute.

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

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

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

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Department of Health

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

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

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

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

[1] Created by s. 8, Ch. 96-403, Laws of Florida.
[2] s. 20.43(1), F.S.

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

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

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

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

When DOH was created in 1996, it received a total appropriation of $1.4 billion, including $384 million of general revenue, and had 2599 FTEs.[6] In Fiscal Year 2009-2010, DOH received more than $470 million in general revenue and is authorized to spend a total of $2.9 billion. Today, more than 17,000 persons are employed by DOH.

Office of Women's Health Strategy

In 2004, the Legislature passed CS/SB 2448, creating the Women's Health Strategy (the "Strategy").[7] The Strategy is administered by a Women's Health Officer and is intended to focus on the unique health care needs of women.

The Officer of Women's Health Strategy is tasked with[8]:

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

[3] S.20.43(2),F.S.
[4] s. 20.43(3), F.S.
[5] s. 20.43(7), F.S.
[6] Does not include County Health Department staff.
[7] s. 381.04015, F.S. (Ch. 2004-350, Laws of Florida).
[8] s. 381.04015(4), F.S.

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

The Women's Health Officer provides an annual report to the Governor and presiding officers of the Legislature that includes recommended policy changes for implementing the Strategy.[9] According to the National Conference on State Legislatures, at least 18 states have created either offices or commissions dedicated to women's health, while three states – Florida, Illinois and Maine have designated a women's health officer or coordinator.[10]

Food Safety Programs

Three state departments operate food safety programs in Florida: the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, and DOH. The three agencies carry out similar regulatory activities, but have varying statutory authority, regulate separate sectors of the food service industry, and are funded at different levels due to statutory fee caps.[11] Each agency issues food establishment licenses or permits, conducts food safety inspections and enforces regulations through fines and other disciplinary actions.[12]

Each agency has authority over specific types of food establishments. In general, DOH licenses facilities that serve high-risk populations such as hospitals, nursing homes, group care facilities, child care facilities, detention centers, and schools.[13] The Department of Business and Professional Regulation licenses restaurants, clubs, theaters, truck stops and gas stations.[14] The Department of Agriculture and Consumer Services regulates grocery stores and supermarkets, food packaging and processing plants.[15] While these agencies do not perform duplicate inspections, a single establishment with multiple food operations could be licensed or have food permits from multiple departments.[16]

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

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[9] s. 381.04015(2)(p), F.S.
[10] "Laws and Initiatives on Women's Health," National Conference of State Legislatures (Updated February 2010); located at http://www.ncsl.org/default.aspx?tabid=14377 (last viewed on March 17, 2010).
[11] Office of Program Policy Analysis & Government Accountability, State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, Report No. 08-67 (December 2008).
[12] Office of Program Policy Analysis & Government Accountability, State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, Report No. 08-67 (December 2008).
[13] Section 381.0072, F.S.
[14] Section 509, F.S.
[15] Section 500, F.S.
[16] [16] Office of Program Policy Analysis & Government Accountability, State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, Report No. 08-67 (December 2008).

Services (DCF), which include some food service regulations and inspections. For example, nursing homes licensed and regulated by AHCA have a federal food safety requirement, which requires a complete kitchen inspection by a surveyor who has been trained, passed the Surveyor Minimum Qualifications Test and is qualified to conduct a Quality Indicator Survey Process.[17] AHCA also uses hospital surveyors to inspect sanitary conditions in hospitals under the Condition of Infection Control using the FDA Food Code.

DCF licenses or certifies and inspects child care facilities, as well as family day care and large family day care homes. DOH also inspects child care facilities.[18] On December 30, 2009, the Office of Program Policy Analysis and Government Accountability (OPPAGA) issued a memorandum which highlighted the overlap in agency regulatory functions for child care facilities and determined that both DOH and DCF inspect 66 percent of the licensed child care establishments (DCF alone inspects the remaining 34 percent) for a variety of environmental health issues.[19] With regard to food service inspections, the two agencies consider the following:

Department of Children and Families[20]	Department of Health[21]
• Cleanliness/sanitary conditions • Handwashing • Drinking water • Types of meals provided – Nutrition & Menu • Proper refrigeration • Proper use of single service items (forks and spoons)	• Source/wholesomeness of food • Food storage • Equipment/Preparation • Sanitizing • Handwash sink • Hot and cold water • Temperatures • Other

DCF also certifies and regulates Florida's 42 certified domestic violence centers. Most centers have kitchen areas which are equipped with basic supplies and tools residents may use to prepare their own meals; however, they do not provide meals for the residents. Only one center provides meals to residents.[22]

Emergency Management

The Florida Department of Emergency Management has designated DOH the lead agency for Emergency Support Function – 8 (ESF-8), which concerns medical and health issues. ESF-8, through DOH and at least 12 other support agencies such as AHCA, DCF and the American Red Cross, oversees medical and health-related preparedness, recovery, mitigation, and response efforts in the event of a major natural or man-made disaster. ESF-8 agencies coordinate and manage overall public health response, triage, treatment and transportation of victims of a disaster, including transporting people out of a potentially affected area prior to an event. These agencies provide immediate support to hospitals and nursing homes, provide emergency behavioral health services and crisis counseling for victims, and assist in reestablishing health and medical systems post-event.[23]

Statewide Injury Prevention Program

In 2004, the Legislature tasked DOH with establishing an injury prevention program (the "program") to provide for statewide coordination and expansion of injury-prevention activities.[24] Pursuant to the program, DOH is required to collect data, provide surveillance, provide education, and promote interventions related to injury prevention, including[25]:

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

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

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

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

Children's Early Investment Program

In 1989, the Legislature created the Children's Early Investment Program (program).[26] The program targeted young children who are at risk of developmental dysfunction or delay and for their families. The services provided were to enhance family independence and provide social and educational resources needed for healthy child development. According to DOH, the Children's Early Investment Act was created as a pilot initiative that was executed through a contract with The Ounce of Prevention Fund of Florida.[27] The pilot initiative and all funding ceased over ten years ago.[28]

Effect of the Bill

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

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

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

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

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[26] Section 411.232, F.S.
[27] Email correspondence with Department of Health staff on file with the Health Care Regulation Policy Committee (March 9, 2010)
[28] *Id.*

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

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

The PCB deletes a subsection allowing DOH to hold copyrights, trademarks, and service marks, and enforce its rights with respect to those interests. Beginning in fiscal year 2010-2011, the PCB precludes DOH from initiating or commencing new programs, including federally funded or grant-supported programs or making changes in existing programs without express legislative authority.

Additionally, the PCB repeals s. 381.001, which provides legislative intent language related to DOH's public health mission. The PCB also amends s. 381.011, F.S., relating to the duties and powers of DOH. Generally, the duties are amended to comply with the revised departmental responsibilities. In this section, the PCB also expands upon DOH's role in managing and coordinating emergency preparedness and disaster response functions by providing that DOH:

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

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

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

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

The PCB amends this definition to specifically reference the following facilities: public or private schools; assisted living facilities; adult family-care homes; adult day care centers; short term residential treatment centers; residential treatment facilities; home for special services transitional living facilities; crisis stabilization units; hospices; prescribed pediatric extended care centers; intermediate care

facilities for persons with developmental disabilities (ICF/DDs); boarding schools; or summer 24-hour camps. The PCB limits DOH's rulemaking authority to these entities, except that the Department of Education shall develop rules related to public and private schools in consultation with DOH.

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

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

The PCB amends the definition of "food service establishment" to the following specific entities: detention facilities, public or private schools, migrant labor camps, assisted living facilities, adult family-care homes, adult day care centers, short term residential treatment centers, residential treatment facilities, crisis stabilization units, hospices, prescribed pediatric care centers, ICF/DDs, boarding schools, summer 24-hour camps, civic or fraternal organizations, bars and lounges, and vending machines dispensing potentially hazardous foods at facilities these facilities. The PCB authorizes DOH to advise Agency for Health Care Administration, Department of Business and Professional Regulation, Department of Agriculture and Consumer Services, and Department of Children and Families concerning procedures related to the storage, preparation, serving and display of food at any building, structure or facility not expressly included in this section that may be inspected, licensed or regulated by those agencies. Additionally, the bill exempts civic organizations and facilities not regulated by DOH under this section from the requirement to have a certified food manager.

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

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

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

B. SECTION DIRECTORY:

Section 1. Amends s. 20.43, F.S. relating to the Department of Health.
Section 2. Repeals s. 381.001, F.S. relating to legislative intent; public health system.
Section 3. Amends s. 381.0011, F.S., relating to duties and powers of the Department of Health.
Section 4. Amends s. 381.006, F.S., relating to environmental health.
Section 5. Amends s. 381.0072, F.S., relating to food service protection.
Section 6. Amends s. 381.0101, F.S. relating to environmental health professionals.
Section 7. Repeals s. 381.04015, F.S. relating to Women's Health Strategy; legislative intent; duties of Officer of Women's Health Strategy; other state agency duties.
Section 8. Repeals s. 401.243, F.S., relating to injury prevention.
Section 9. Repeals s. 411.23, F.S., relating to short title.
Section 10. Repeals s. 411.231, F.S., relating to legislative intent; purpose.
Section 11. Repeals s. 411.232, F.S., relating to Children's Early Investment Program.

Section 12. Amending s. 509.013, F.S., relating to definitions.
Section 13. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

The bill has an indeterminate fiscal impact. There is a cost to County Health Departments to perform annual or quarterly facility inspections, for which they may receive a fee depending on how fees may be shared among multiple inspecting entities. The bill reduces the number of facilities that County Health Departments will inspect and reduces the fees that come from them. It is possible that the bill will reduce costs and result in a positive fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

At lines 794-795 and 837-838, the bill does not reference facilities certified or licensed and regulated by the Department of Children and Families in the exemption. Because some entities regulated by DCF,

such as child care facilities, group homes, and certified domestic violence centers are not included in the definition of "food service establishment" under s. 381.0072, F.S., they should be exempted from s. 509.013, F.S., as well.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to reorganization of the Department of Health; amending s. 20.43, F.S.; revising the department's missions and responsibilities; modifying the responsibilities related to communicable diseases to include; providing that the department is responsible for implementing interventions that prevent the spread of disease; providing that the department maintain and coordinate preparedness and response for public health emergencies; deleting provision requiring the department to conduct special studies of the causes of diseases and formulate preventive strategies; deleting provision authorizing the department to accumulate health statistics necessary to establish disease trends and to design health programs; modifying provision related to environmental health function by providing that the department is responsible for regulating environmental activities directly impacting the state; modifying and combining several missions related to health care and related services administered by the department to provide that the department is responsible for administering and providing such services to targeted populations in the state; providing that it is the responsibility of the department to collect, manage, and analyze vital statistics in the state; deleting provision related to providing leadership, in cooperation with public and private sectors, in establishing statewide and community public health delivery systems; deleting provision

providing that the department develop working associations with all agencies and organizations involved and interested in health care delivery; deleting provision requiring the department to analyze trends in the evolution of health systems and promote the use of innovative, cost-effective health delivery systems; deleting provision requiring the department to serve as the statewide repository of all aggregated health care data accumulated by state agencies; deleting a provision requiring specified information be included in the department's long-range plan; requiring the agency to submit a plan to the Legislature by a specified date proposing a new department structure based upon the amended department responsibilities; specifying information that must be included in the proposal; requiring the State Surgeon General be responsible for managing the responsibilities of the department; deleting the requirement for a Officer of Women's Health Strategy; providing a July 1, 2011 sunset date for the department's divisions unless reviewed and reenacted by the Legislature; authorizing the department to establish multi-county service areas for county health departments; deleting provision authorizing the State Surgeon General to prescribe the duties of the service areas; deleting provisions that authorizes the department to develop service areas based upon the service districts of the Department of Children and Families and the jobs and education regional boards; removing a provision that

allows division directors to appoint ad hoc advisory committees; deleting subsection authorizing the department to use state or federal funds to protect and improve public health in a specified manner; deleting subsection allowing the department to hold copyrights, trademarks and service marks and to enforce its rights under those marks; specifying that beginning in fiscal year 2010-2011, the department can initiate and commence new programs or modify current programs only with express legislative approval; renumbering sections and subsections; repealing s. 381.001, relating to legislative intent; public health system; F.S.; amending s. 381.0011, F.S.; revising duties and powers of the department; modifying how the department assesses public health status and needs of the state; removing a provision authorizing the department to formulate general policies affecting the public health of the state; providing that the department manage and coordinate emergency preparedness and disaster response functions and specifying the purpose of those functions; requiring the strategic plan developed by the department relate to the responsibilities delegated to the department; removing general provision allowing department to administer and enforce laws related to the general health of the people; transferring a provision authorizing the department to cooperate with the federal government in enforcing public health laws and regulations; modifying duties of the department related to communicable diseases and interventions that prevent or limit the spread of

disease; authorizing the department to issue health alerts or advisories for specific reasons; requiring a workshop before issuing such alert or advisory; removing provision allowing the department to disseminate information related to prevention, control and cure of diseases, illnesses and hazards to human health; removing provision relating to department's authority to cooperate with other entities for the improvement and preservation of public health; removing provision authorizing the department to maintain a statewide injury prevention program; providing that the department is not authorized to inspect a building or facility without statutory authority; providing that the departments other duties must be expressly authorized in law; amending s. 381.006, F.S.; modifying the definition of group care facilities; specifying entities that are group care facilities; limiting the department's rulemaking authority to facilities defined in the paragraph; providing that rules related to public and private schools shall be developed by the Department of Education in consultation with the department; adding students and faculty to the list of people the department seeks to protect in group facilities; amending s. 381.0072, F.S.; modifying the definition of "food service establishment"; specifying entities that are food service establishments for purpose of this section; amending exclusions from the definition to provide that the definition excludes any entity not expressly named in the definition; authorizing the department to consult with or

advise specified agencies concerning procedures related to food service protection for other entities not regulated under this section; modifying rulemaking authority of the department for rules requiring manager certification to conform; adding provision to limit licensure to conform; amending s. 381.0101, F.S.; modifying definition of primary environmental health program to limit department's authority to determine which programs apply by requiring such programs must be expressly authorized in statute; providing cross reference for food service establishments; repealing s. 381.04015, F.S.; relating to women's health strategy; legislative intent; duties of Officer of Women's Health Strategy; other state agency duties; repealing s. 401.243, F.S.; relating to injury prevention program; repealing s. 411.23, F.S.; relating to short title for Children's Early Investment Act; repealing s. 411.231, F.S.; relating to legislative intent and purpose of the Children's Early Investment Act; repealing s. 411.232, F.S.; relating to Children's Early Investment Program; amending s. 509.013, F.S.; modifying exemptions from transient public lodging definition relating to health care-related facilities to conform to changes in the bill; modifying exemptions from public food service establishment definition relating to health care-related facilities to conform to changes in the bill; providing an effective date.

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

Section 1. Section 20.43, Florida Statutes, is amended to read:

20.43 Department of Health.~~—~~There is created a Department of Health.

(1)(a) The ~~purpose of the~~ Department of Health is responsible for ~~to promote and protect the health of all residents and visitors in the state through organized state and community efforts, including cooperative agreements with counties. The department shall~~:

1.~~(a)~~ Identifying, diagnosing, investigating and conducting surveillance of communicable diseases in the state ~~Prevent to the fullest extent possible, the occurrence and progression of communicable and noncommunicable diseases and disabilities~~.

2.~~(b)~~ Implementing interventions that prevent or limit the impact and spread of disease in the state ~~Maintain a constant surveillance of disease occurrence and accumulate health statistics necessary to establish disease trends and to design health programs~~.

3.~~(c)~~ Maintaining and coordinating preparedness and response for public health emergencies in the state ~~Conduct special studies of the causes of diseases and formulate preventive strategies~~.

4.~~(d)~~ Regulating environmental activities that have a direct impact on ~~Promote the maintenance and improvement of the environment as it affects~~ public health in the state.

5.~~(e)~~ Administering and providing health and related

services for targeted populations in ~~Promote the maintenance and improvement of health in the residents of~~ the state.

6.~~(f)~~ Collecting, managing, and analyzing vital statistics data in the state ~~Provide leadership, in cooperation with the public and private sectors, in establishing statewide and community public health delivery systems~~.

~~(g) Provide health care and early intervention services to infants, toddlers, children, adolescents, and high risk perinatal patients who are at risk for disabling conditions or have chronic illnesses.~~

~~(h) Provide services to abused and neglected children through child protection teams and sexual abuse treatment programs.~~

~~(i) Develop working associations with all agencies and organizations involved and interested in health and health care delivery.~~

~~(j) Analyze trends in the evolution of health systems, and identify and promote the use of innovative, cost-effective health delivery systems.~~

~~(k) Serve as the statewide repository of all aggregate data accumulated by state agencies related to health care; analyze that data and issue periodic reports and policy statements, as appropriate; require that all aggregated data be kept in a manner that promotes easy utilization by the public, state agencies, and all other interested parties; provide technical assistance as required; and work cooperatively with the state's higher education programs to promote further study and analysis of health care systems and health care outcomes.~~

~~(1) Include in the department's strategic plan developed under s. 186.021 an assessment of current health programs, systems, and costs; projections of future problems and opportunities; and recommended changes that are needed in the health care system to improve the public health.~~

7.~~(m)~~ Regulating ~~Regulate~~ health practitioners, to the extent authorized by the Legislature, as necessary for the preservation of the health, safety, and welfare of the public.

(b) By December 1, 2010, the department shall submit a proposal to the President of the Senate, Speaker of the House of Representatives, and the appropriate substantive legislative committees for a new department structure based upon the department's responsibilities delegated in subsection (1)(a). The proposal shall include reductions in the number of departmental bureaus and divisions and limits on the number of executive positions in a manner that enables the department to meet the responsibilities delegated in subsection (1)(a). The department shall identify existing functions and activities that are inconsistent with the responsibilities delegated in subsection (1)(a) and shall provide a job description for each bureau chief and division director position proposed for retention.

(2)~~(a)~~ The head of the Department of Health is the State Surgeon General and State Health Officer. The State Surgeon General must be a physician licensed under chapter 458 or chapter 459 who has advanced training or extensive experience in public health administration. The State Surgeon General is appointed by the Governor subject to confirmation by the Senate.

The State Surgeon General serves at the pleasure of the Governor. ~~The State Surgeon General shall serve as the leading voice on wellness and disease prevention efforts, including the promotion of healthful lifestyles, immunization practices, health literacy, and the assessment and promotion of the physician and health care workforce in order to meet the health care needs of the state.~~ The State Surgeon General shall manage ~~focus on~~ the department in carrying out its responsibilities provided for in subsection (1)(a) ~~advocating healthy lifestyles, developing public health policy for the state, and building collaborative partnerships with schools, businesses, health care practitioners, community based organizations, and public and private institutions in order to promote health literacy and optimum quality of life for all Floridians~~.

~~(b) The Officer of Women's Health Strategy is established within the Department of Health and shall report directly to the State Surgeon General.~~

(3) The following divisions of the Department of Health are established:

(a) Division of Administration. This paragraph expires July 1, 2011, unless reviewed and reenacted by the Legislature before that date.

(b) Division of Environmental Health. This paragraph expires July 1, 2011, unless reviewed and reenacted by the Legislature before that date.

(c) Division of Disease Control. This paragraph expires July 1, 2011, unless reviewed and reenacted by the Legislature before that date.

(d) Division of Family Health Services. This paragraph expires July 1, 2011, unless reviewed and reenacted by the Legislature before that date.

(e) Division of Children's Medical Services Network. This paragraph expires July 1, 2011, unless reviewed and reenacted by the Legislature before that date.

(f) Division of Emergency Medical Operations. This paragraph expires July 1, 2011, unless reviewed and reenacted by the Legislature before that date.

(g) Division of Medical Quality Assurance, which is responsible for the following boards and professions established within the division:

1. The Board of Acupuncture, created under chapter 457.

2. The Board of Medicine, created under chapter 458.

3. The Board of Osteopathic Medicine, created under chapter 459.

4. The Board of Chiropractic Medicine, created under chapter 460.

5. The Board of Podiatric Medicine, created under chapter 461.

6. Naturopathy, as provided under chapter 462.

7. The Board of Optometry, created under chapter 463.

8. The Board of Nursing, created under part I of chapter 464.

9. Nursing assistants, as provided under part II of chapter 464.

10. The Board of Pharmacy, created under chapter 465.

11. The Board of Dentistry, created under chapter 466.

12. Midwifery, as provided under chapter 467.

13. The Board of Speech-Language Pathology and Audiology, created under part I of chapter 468.

14. The Board of Nursing Home Administrators, created under part II of chapter 468.

15. The Board of Occupational Therapy, created under part III of chapter 468.

16. Respiratory therapy, as provided under part V of chapter 468.

17. Dietetics and nutrition practice, as provided under part X of chapter 468.

18. The Board of Athletic Training, created under part XIII of chapter 468.

19. The Board of Orthotists and Prosthetists, created under part XIV of chapter 468.

20. Electrolysis, as provided under chapter 478.

21. The Board of Massage Therapy, created under chapter 480.

22. The Board of Clinical Laboratory Personnel, created under part III of chapter 483.

23. Medical physicists, as provided under part IV of chapter 483.

24. The Board of Opticianry, created under part I of chapter 484.

25. The Board of Hearing Aid Specialists, created under part II of chapter 484.

26. The Board of Physical Therapy Practice, created under chapter 486.

27. The Board of Psychology, created under chapter 490.

28. School psychologists, as provided under chapter 490.

29. The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491.

This paragraph expires July 1, 2011, unless reviewed and reenacted by the Legislature before that date.

(h) Division of Children's Medical Services Prevention and Intervention. This paragraph expires July 1, 2011, unless reviewed and reenacted by the Legislature before that date.

(i) Division of Information Technology. This paragraph expires July 1, 2011, unless reviewed and reenacted by the Legislature before that date.

(j) Division of Health Access and Tobacco. This paragraph expires July 1, 2011, unless reviewed and reenacted by the Legislature before that date.

(k) Division of Disability Determinations. This paragraph expires July 1, 2011, unless reviewed and reenacted by the Legislature before that date.

(4)(a) The members of each board within the department shall be appointed by the Governor, subject to confirmation by the Senate. Consumer members on the board shall be appointed pursuant to paragraph (b). Members shall be appointed for 4-year terms, and such terms shall expire on October 31. However, a term of less than 4 years may be used to ensure that:

1. No more than two members' terms expire during the same calendar year for boards consisting of seven or eight members.

2. No more than 3 members' terms expire during the same

calendar year for boards consisting of 9 to 12 members.

3. No more than 5 members' terms expire during the same calendar year for boards consisting of 13 or more members.

A member whose term has expired shall continue to serve on the board until such time as a replacement is appointed. A vacancy on the board shall be filled for the unexpired portion of the term in the same manner as the original appointment. No member may serve for more than the remaining portion of a previous member's unexpired term, plus two consecutive 4-year terms of the member's own appointment thereafter.

(b) Each board with five or more members shall have at least two consumer members who are not, and have never been, members or practitioners of the profession regulated by such board or of any closely related profession. Each board with fewer than five members shall have at least one consumer member who is not, and has never been, a member or practitioner of the profession regulated by such board or of any closely related profession.

(c) Notwithstanding any other provision of law, the department is authorized to establish uniform application forms and certificates of licensure for use by the boards within the department. Nothing in this paragraph authorizes the department to vary any substantive requirements, duties, or eligibilities for licensure or certification as provided by law.

(5) The department shall ~~plan and~~ administer authorized public health programs through its county health departments and may, for administrative purposes and efficient service delivery,

establish multi-county ~~up to 15~~ service areas ~~to carry out such duties as may be prescribed by the State Surgeon General~~. ~~The boundaries of the service areas shall be the same as, or combinations of, the service districts of the Department of Children and Family Services established in s. 20.19 and, to the extent practicable, shall take into consideration the boundaries of the jobs and education regional boards~~.

(6) The State Surgeon General may ~~and division directors are authorized to~~ appoint ad hoc advisory committees as necessary to address issues related to the responsibilities delegated to the department in section (1)(a). The issue or problem that the ad hoc committee shall address, and the timeframe within which the committee is to complete its work, shall be specified at the time the committee is appointed. Ad hoc advisory committees shall include representatives of groups or entities affected by the issue or problem that the committee is asked to examine. Members of ad hoc advisory committees shall receive no compensation, but may, within existing departmental resources, receive reimbursement for travel expenses as provided in s. 112.061.

~~(7) To protect and improve the public health, the department may use state or federal funds to:~~

~~(a) Provide incentives, including, but not limited to, the promotional items listed in paragraph (b), food and including food coupons, and payment for travel expenses, for encouraging healthy lifestyle and disease prevention behaviors and patient compliance with medical treatment, such as tuberculosis therapy and smoking cessation programs. Such incentives shall be~~

~~intended to cause individuals to take action to improve their health. Any incentive for food, food coupons, or travel expenses may not exceed the limitations in s. 112.061.~~

~~(b) Plan and conduct health education campaigns for the purpose of protecting or improving public health. The department may purchase promotional items, such as, but not limited to, t-shirts, hats, sports items such as water bottles and sweat bands, calendars, nutritional charts, baby bibs, growth charts, and other items printed with health promotion messages, and advertising, such as space on billboards or in publications or radio or television time, for health information and promotional messages that recognize that the following behaviors, among others, are detrimental to public health: unprotected sexual intercourse, other than with one's spouse; cigarette and cigar smoking, use of smokeless tobacco products, and exposure to environmental tobacco smoke; alcohol consumption or other substance abuse during pregnancy; alcohol abuse or other substance abuse; lack of exercise and poor diet and nutrition habits; and failure to recognize and address a genetic tendency to suffer from sickle cell anemia, diabetes, high blood pressure, cardiovascular disease, or cancer. For purposes of activities under this paragraph, the Department of Health may establish requirements for local matching funds or in kind contributions to create and distribute advertisements, in either print or electronic format, which are concerned with each of the targeted behaviors, establish an independent evaluation and feedback system for the public health communication campaign, and monitor and evaluate the efforts to determine which of the~~

~~techniques and methodologies are most effective.~~

~~(c) Plan and conduct promotional campaigns to recruit health professionals to be employed by the department or to recruit participants in departmental programs for health practitioners, such as scholarship, loan repayment, or volunteer programs. To this effect the department may purchase promotional items and advertising.~~

~~(8) The department may hold copyrights, trademarks, and service marks and enforce its rights with respect thereto, except such authority does not extend to any public records relating to the department's responsibilities for health care practitioners regulated under part II of chapter 455.~~

(7)~~(9)~~ There is established within the Department of Health the Office of Minority Health.

(8) Beginning in fiscal year 2010-2011, the department shall only initiate or commence new programs, including any new federally funded or grant supported initiative, or make changes in current programs when the Legislature expressly authorizes the department to do so.

Section 2. Section 381.001, Florida Statutes, is repealed.

Section 3. Section 381.0011, Florida Statutes, is amended to read:

381.0011 Duties and powers of the Department of Health.—It is the duty of the Department of Health to:

(1) Assess the public health status and needs of the state pursuant to the responsibilities delegated to the department in s. 20.43 ~~through statewide data collection and other appropriate means, with special attention to future needs that may result~~

~~from population growth, technological advancements, new societal priorities, or other changes~~.

(2) Manage and coordinate emergency preparedness and disaster response functions to: investigate and control the spread of disease; coordinate the availability and staffing of special needs shelters; support patient evacuation; assure the safety of food and drugs; provide critical incident stress debriefing; and provide surveillance and control of radiological, chemical, biological and other environmental hazards ~~Formulate general policies affecting the public health of the state~~.

(3) Include in the department's strategic plan developed under s. 186.021 a summary of all aspects of the public health related to the responsibilities delegated to the department under s. 20.43(1) ~~mission and health status objectives to direct the use of public health resources with an emphasis on prevention~~.

(4) Administer and enforce laws and rules relating to sanitation, control of communicable diseases, and illnesses and hazards to health among humans and from animals to humans~~, and the general health of the people of the state~~.

(5) Cooperate with and accept assistance from federal, state, and local officials for the prevention and suppression of communicable and other diseases, illnesses, injuries, and hazards to human health; and cooperate with the federal government in enforcing public health laws and regulations.

(6) Declare, enforce, modify, and abolish quarantine of persons, animals, and premises as the circumstances indicate for

controlling communicable diseases or providing protection from unsafe conditions that pose a threat to public health, except as provided in ss. 384.28 and 392.545-392.60.

(a) The department shall adopt rules to specify the conditions and procedures for imposing and releasing a quarantine. The rules must include provisions related to:

1. The closure of premises.

2. The movement of persons or animals exposed to or infected with a communicable disease.

3. The tests or treatment, including vaccination, for communicable disease required prior to employment or admission to the premises or to comply with a quarantine.

4. Testing or destruction of animals with or suspected of having a disease transmissible to humans.

5. Access by the department to quarantined premises.

6. The disinfection of quarantined animals, persons, or premises.

7. Methods of quarantine.

(b) Any health regulation that restricts travel or trade within the state may not be adopted or enforced in this state except by authority of the department.

(7) Identify, diagnose, investigate, and conduct surveillance of communicable diseases in the state and promote and implement interventions that prevent or limit the impact and spread of disease in the state ~~Provide for a thorough investigation and study of the incidence, causes, modes of propagation and transmission, and means of prevention, control, and cure of diseases, illnesses, and hazards to human health~~.

(8) ~~Provide for the dissemination of information to the public relative to the prevention, control, and cure of diseases, illnesses, and hazards to human health.~~ The department ~~shall~~ may issue health alerts or advisories ~~conduct a workshop before issuing any health alert or advisory~~ relating to food-borne illness or communicable disease in public lodging or food service establishments in order to inform persons, trade associations, and businesses of the risk to public health and to seek the input of affected persons, trade associations, and businesses on the best methods of informing and protecting the public. The department shall conduct a workshop before issuing any such alert or advisory, except in an emergency, in which case the workshop must be held within 14 days after the issuance of the emergency alert or advisory.

(9) Act as registrar of vital statistics.

~~(10) Cooperate with and assist federal health officials in enforcing public health laws and regulations.~~

~~(11) Cooperate with other departments, local officials, and private boards and organizations for the improvement and preservation of the public health.~~

~~(12) Maintain a statewide injury prevention program.~~

(10) ~~(13)~~ Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it. This subsection does not authorize the department to require a permit or license, or inspect a building or facility, unless such requirement is specifically provided by law.

(11) ~~(14)~~ Perform any other duties expressly assigned ~~prescribed~~ to the department by law.

Section 4. Subsection (16) of section 381.006, Florida Statutes, is amended to read:

381.006 Environmental health.—The department shall conduct an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. The environmental health program shall include, but not be limited to:

(16) A group-care-facilities function, where a group care facility means any public or private school, assisted living facility; adult family-care home; adult day care center; short term residential treatment center; residential treatment facility; home for special services transitional living facility; crisis stabilization unit; hospice; prescribed pediatric extended care center; intermediate care facility for persons with developmental disabilities; boarding school; or summer 24-hour camp ~~housing, building or buildings, section of a building, or distinct part of a building or other place, whether operated for profit or not, which undertakes, through its ownership or management, to provide one or more personal services, care, protection, and supervision to persons who require such services and who are not related to the owner or administrator~~. The department may adopt rules necessary to protect the health and safety of residents, staff, and patrons of group care facilities as defined in this paragraph.~~, such as child care facilities, family day care homes, assisted living facilities, adult day care centers, adult family care homes, hospices, residential treatment facilities, crisis stabilization~~

~~units, pediatric extended care centers, intermediate care facilities for the developmentally disabled, group care homes, and,~~ Rules related to public and private schools shall be developed by ~~jointly with~~ the Department of Education in consultation with the department~~, at private and public schools~~. Rules ~~These rules~~ may include definitions of terms; provisions relating to operation and maintenance of facilities, buildings, grounds, equipment, furnishings, and occupant-space requirements; lighting; heating, cooling, and ventilation; food service; water supply and plumbing; sewage; sanitary facilities; insect and rodent control; garbage; safety; personnel health, hygiene, and work practices; and other matters the department finds are appropriate or necessary to protect the safety and health of the residents, staff, students, faculty, or patrons. The department may not adopt rules that conflict with rules adopted by the licensing or certifying agency. The department may enter and inspect at reasonable hours to determine compliance with applicable statutes or rules. In addition to any sanctions that the department may impose for violations of rules adopted under this section, the department shall also report such violations to any agency responsible for licensing or certifying the group care facility. The licensing or certifying agency may also impose any sanction based solely on the findings of the department.

The department may adopt rules to carry out the provisions of this section.

Section 5. Subsections (1), (2), (3) and (6) of section 381.0072, Florida Statutes, are amended to read:

381.0072 Food service protection.—It shall be the duty of the Department of Health to adopt and enforce sanitation rules consistent with law to ensure the protection of the public from food-borne illness. These rules shall provide the standards and requirements for the storage, preparation, serving, or display of food in food service establishments as defined in this section and which are not permitted or licensed under chapter 500 or chapter 509.

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

(a) "Department" means the Department of Health or its representative county health department.

(b) "Food service establishment" means detention facilities; public or private schools; migrant labor camps; assisted living facilities; adult family-care homes; adult day care centers; short term residential treatment centers; residential treatment facilities; homes for special services transitional living facilities; crisis stabilization units; hospices; prescribed pediatric extended care centers; intermediate care facilities for persons with developmental disabilities; boarding schools; summer 24-hour camps; civic or fraternal organizations; bars and lounges; vending machines that dispense potentially hazardous foods at facilities expressly named in this section; and facilities used as temporary food events or mobile food units at any facility expressly named in this section, ~~any facility, as described in this paragraph,~~ where food is prepared and intended for individual portion service, including ~~and includes~~ the site at which individual portions are provided, ~~. The term includes any such facility~~

regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. ~~The term includes detention facilities, child care facilities, schools, institutions, civic or fraternal organizations;~~ , ~~bars and lounges and facilities used at temporary food events, mobile food units, and vending machines at any facility regulated under this section.~~ The term does not include any entity not expressly named in this definition ~~private homes where food is prepared or served for individual family consumption; nor does the term include churches, synagogues, or other not-for-profit religious organizations as long as these organizations serve only their members and guests and do not advertise food or drink for public consumption, or any facility or establishment permitted or licensed under chapter 500 or chapter 509; nor does the term include any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters; nor does the term include a research and development test kitchen limited to the use of employees and which is not open to the general public~~.

(c) "Operator" means the owner, operator, keeper, proprietor, lessee, manager, assistant manager, agent, or employee of a food service establishment.

(2) DUTIES.—

(a) The department may advise and consult with the Agency for Health Care Administration, the Department of Business and Professional Regulation, the Department of Agriculture and Consumer Services and the Department of Children and Families concerning procedures related to the storage, preparation,

serving, or display of food at any building, structure or facility not expressly included in this section that is inspected, licensed or regulated by those agencies.

(b) ~~(a)~~ The department shall adopt rules, including definitions of terms which are consistent with law prescribing minimum sanitation standards and manager certification requirements as prescribed in s. 509.039, and which shall be enforced in food service establishments as defined in this section. The sanitation standards must address the construction, operation, and maintenance of the establishment; lighting, ventilation, laundry rooms, lockers, use and storage of toxic materials and cleaning compounds, and first-aid supplies; plan review; design, construction, installation, location, maintenance, sanitation, and storage of food equipment and utensils; employee training, health, hygiene, and work practices; food supplies, preparation, storage, transportation, and service, including access to the areas where food is stored or prepared; and sanitary facilities and controls, including water supply and sewage disposal; plumbing and toilet facilities; garbage and refuse collection, storage, and disposal; and vermin control. Public and private schools, if the food service is operated by school employees; ~~hospitals licensed under chapter 395; nursing homes licensed under part II of chapter 400; child care facilities as defined in s. 402.301; residential facilities colocated with a nursing home or hospital, if all food is prepared in a central kitchen that complies with nursing or hospital regulations; and~~ bars and lounges; civic organizations; and any other facilities not

regulated under this section~~, as defined by department rule~~, are exempt from the rules developed for manager certification. The department shall administer a comprehensive inspection, monitoring, and sampling program to ensure such standards are maintained. With respect to food service establishments permitted or licensed under chapter 500 or chapter 509, the department shall assist the Division of Hotels and Restaurants of the Department of Business and Professional Regulation and the Department of Agriculture and Consumer Services with rulemaking by providing technical information.

(c) ~~(b)~~ The department shall carry out all provisions of this chapter and all other applicable laws and rules relating to the inspection or regulation of food service establishments as defined in this section, for the purpose of safeguarding the public's health, safety, and welfare.

(d) ~~(c)~~ The department shall inspect each food service establishment as often as necessary to ensure compliance with applicable laws and rules. The department shall have the right of entry and access to these food service establishments at any reasonable time. In inspecting food service establishments as provided under this section, the department shall provide each inspected establishment with the food recovery brochure developed under s. 570.0725.

(e) ~~(d)~~ The department or other appropriate regulatory entity may inspect theaters exempted in subsection (1) to ensure compliance with applicable laws and rules pertaining to minimum sanitation standards. A fee for inspection shall be prescribed by rule, but the aggregate amount charged per year per theater

establishment shall not exceed $300, regardless of the entity providing the inspection.

(3) LICENSES REQUIRED.—

(a) Licenses; annual renewals.—Each food service establishment regulated under this section shall obtain a license from the department annually. Food service establishment licenses shall expire annually and are not transferable from one place or individual to another. However, those facilities licensed by the department's Office of Licensure and Certification, the Child Care Services Program Office, or the Agency for Persons with Disabilities are exempt from this subsection. It shall be a misdemeanor of the second degree, punishable as provided in s. 381.0061, s. 775.082, or s. 775.083, for such an establishment to operate without this license. The department may refuse a license, or a renewal thereof, to any establishment that is not constructed or maintained in accordance with law and with the rules of the department. Annual application for renewal is not required.

(b) Application for license.—Each person who plans to open a food service establishment <u>regulated under this section and</u> not regulated under chapter 500 or chapter 509 shall apply for and receive a license prior to the commencement of operation.

(6) IMMINENT DANGERS; STOP-SALE ORDERS.—

(a) In the course of epidemiological investigations or for those establishments regulated <u>by the department</u> under this chapter, the department, to protect the public from food that is unwholesome or otherwise unfit for human consumption, may examine, sample, seize, and stop the sale or use of food to

729 determine its condition. The department may stop the sale and
730 supervise the proper destruction of food when the State Health
731 Officer or his or her designee determines that such food
732 represents a threat to the public health.
733 (b) The department may determine that a food service
734 establishment regulated under this section is an imminent danger
735 to the public health and require its immediate closure when such
736 establishment fails to comply with applicable sanitary and
737 safety standards and, because of such failure, presents an
738 imminent threat to the public's health, safety, and welfare. The
739 department may accept inspection results from state and local
740 building and firesafety officials and other regulatory agencies
741 as justification for such actions. Any facility so deemed and
742 closed shall remain closed until allowed by the department or by
743 judicial order to reopen.
744 Section 6. Paragraph (g) of subsection (2) of section
745 381.0101, Florida Statutes, is amended to read:
746 381.0101 Environmental health professionals.—
747 (2) DEFINITIONS.—As used in this section:
748 (g) "Primary environmental health program" means those
749 programs ~~determined by~~ the department is expressly authorized in
750 statute to administer ~~to be essential~~ for providing basic
751 environmental and sanitary protection to the public. These ~~At a~~
752 ~~minimum, these~~ programs shall include food protection program
753 work at food service establishments as defined in s. 381.0072
754 and onsite sewage treatment and disposal system evaluations.
755 Section 7. Section 381.04015, Florida Statutes, is
756 repealed.

Section 8. Section 401.243, Florida Statutes, is repealed.

Section 9. Section 411.23, Florida Statutes, is repealed.

Section 10. Section 411.231, Florida Statutes, is repealed.

Section 11. Section 411.232, Florida Statutes, is repealed.

Section 12. Subsections (4) and (5) of section 509.013, Florida Statutes, are amended to read:

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

(4)(a) "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.

(b) The following are excluded from the definitions in paragraph (a):

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors;

2. Any facility ~~hospital, nursing home~~ licensed and regulated by the Agency for Health Care Administration ~~sanitarium, assisted living facility,~~ or other similar place regulated under s. 381.0072;

3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients;

4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent;

5. Any migrant labor camp or residential migrant housing permitted by the Department of Health; under ss. 381.008-381.00895; and

6. Any establishment inspected by the Department of Health and regulated by chapter 513.

(5)(a) "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or private school, college, or university:

a. For the use of students and faculty; or

b. Temporarily to serve such events as fairs, carnivals, and athletic contests.

2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:

a. For the use of members and associates; or

b. Temporarily to serve such events as fairs, carnivals, or athletic contests.

3. Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.

4. Any eating place maintained by a facility licensed and regulated by the Agency for Health Care Administration ~~hospital, nursing home, sanitarium, assisted living facility, adult day care center,~~ or other similar place that is regulated under s.

381.0072.

5. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.

6. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.

7. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

8. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.

9. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.

10. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

Section 13. This act shall take effect July 1, 2010.

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 PCB: Health Care Regulation Policy Committee

Representative(s) Hudson offered the following:

Amendment

Remove line 205 and insert:

(b) By November 1, 2010, the department shall submit a

Amendment No. 2

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 PCB: Health Care Regulation Policy Committee

Representative(s) Hudson offered the following:

Amendment

Remove lines 548-549 and insert:

persons with developmental disabilities; or boarding school ~~housing, building or buildings, section of a~~

Amendment No. 3

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 PCB: Health Care Regulation Policy Committee

Representative(s) Hudson offered the following:

Amendment

Remove line 608 and insert:

disabilities; boarding schools; civic or

Amendment No. 4

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 PCB: Health Care Regulation Policy Committee

Representative(s) Hudson offered the following:

Amendment

Remove lines 794-795 and insert:

2. Any facility ~~hospital, nursing home~~ certified or licensed and regulated by the Agency for Health Care Administration or Department of Children and Families,

COUNCIL/COMMITTEE AMENDMENT

PCB Name: PCB HCR 10-03 (2010)

Amendment No. 5

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 PCB: Health Care Regulation Policy Committee

Representative(s) Hudson offered the following:

Amendment

Remove lines 837-838 and insert:

4. Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or Department of Children and Families, ~~hospital,~~