

Florida State University College of Law

Scholarship Repository

Staff Analyses & Legislative Documents

Florida Legislative Documents

1997

Session Law 97-261

Florida Senate & House of Representatives

Follow this and additional works at: <https://ir.law.fsu.edu/staff-analysis>



Part of the Law Commons

Recommended Citation

.

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analyses & Legislative Documents by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.

JOINT LEGISLATIVE MANAGEMENT COMMITTEE

LEGISLATIVE INFORMATION DIVISION

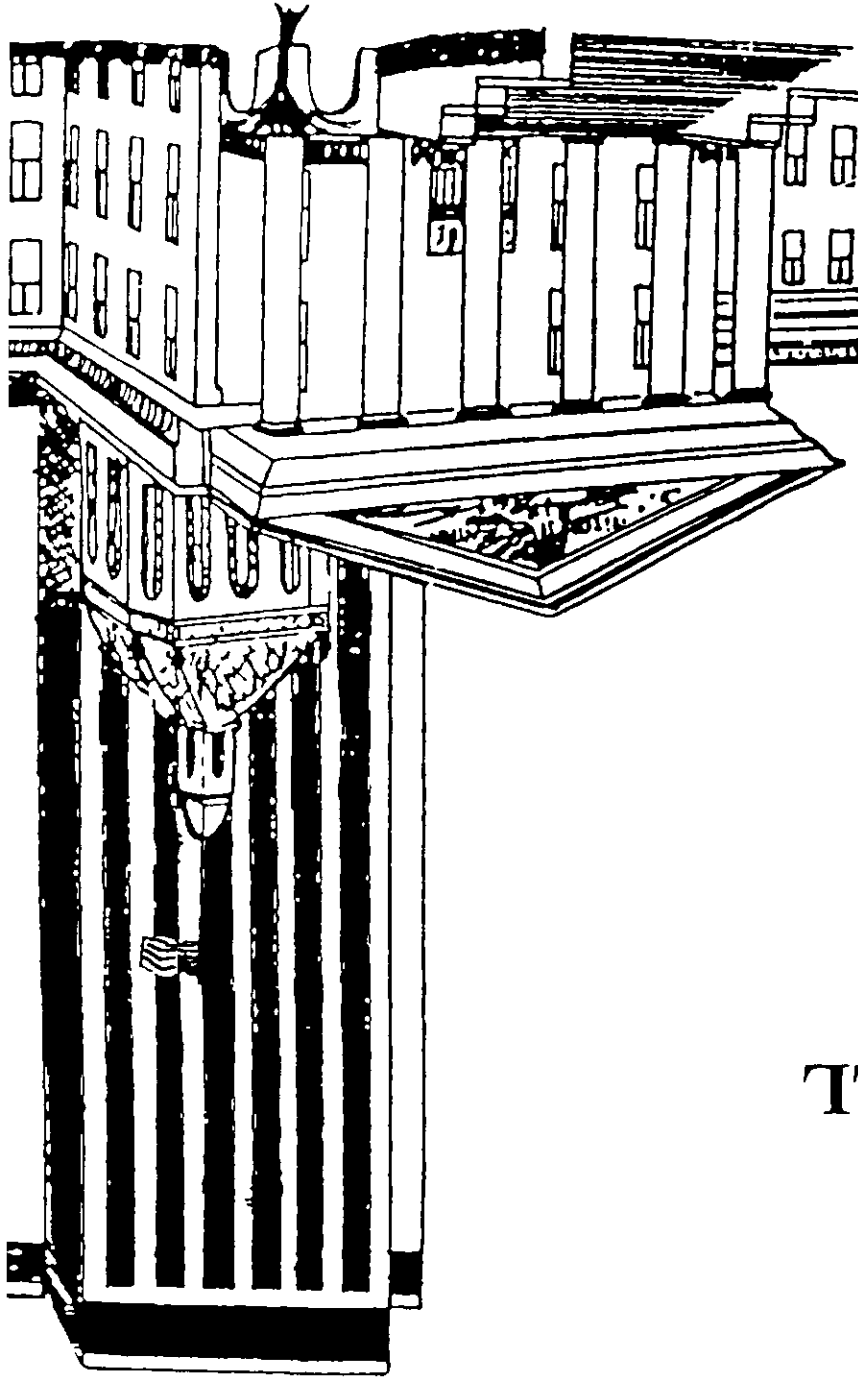
Claude Pepper Building, Room 704

111 West Madison Street

Tallahassee, Florida 32399-1400

Telephone (904) 488-4371

prepared by:



1997 Regular Session

**FINAL
LEGISLATIVE BILL
INFORMATION**

FLORIDA LEGISLATURE

HISTORY OF HOUSE BILLS

H 1925 (CONTINUED)

05/02/97 SENATE
 Carried over to 1998 Session pursuant to House Rule 96,
 Introduced, not referred

H 1919 GENERAL BILL by CoeGroove (Similar S 2240)
 Psychological Services, revises definition of "practice of psychology" to include
 authority to prescribe & administer psychotropic drugs & provides require-
 ments, requires testing laboratories to provide certain test results requested
 by prescribing psychologists, amends provision re definitions of "practice of
 practical nursing," "advanced or specialized nursing practice" & "practitioner,"
 etc Amends 490.003, 464.003, 012, 893.02 Effective Date 10/01/1997

04/04/97 HOUSE
 Introduced -HJ 00479

04/09/97 HOUSE
 Referred to Health Care Standards & Regulatory Reform (GSC), Business Regulation & Consumer Affairs (EIC),
 Health & Human Services Appropriations -HJ 00558

05/02/97 HOUSE
 Carried over to 1998 Session pursuant to House Rule 96,
 In House Committee on Health Care Standards & Regu-
 latory Reform (GSC)

H 1921 GENERAL BILL by CoeGroove (Identical S 1638)
 Vital Settlement Act, prescribes information to be included in application
 for vital provider license, authorizes licensee to execute security bond, pro-
 vides for waiver by Insurance Dept. of deposit requirement under specified con-
 ditions, modifies conditions for unconditional rescission of vital settlement
 contract; provides for waiver of unconditional rescission provision, repeals pro-
 vision re visitors with dependent children, etc Amends Ch 626 Effective Date:
 Upon becoming law

04/04/97 HOUSE
 Filed

04/09/97 HOUSE
 Introduced -HJ 00479

05/02/97 HOUSE
 Carried over to 1998 Session pursuant to House Rule 96,
 Introduced, not referred

H 1923 JOINT RESOLUTION by Feeney; (CO-SPONSORS) Posey;
 Maygarden; Bronson; Thresher; Andrews (Similar H 0337, S 0199)
 Taxes/New/Increased/Voter Approval; constitutional amendment, effective day
 after its approval, to require that electors of state or political subdivision ap-
 prove any new tax or increase in rate of existing tax unless Legislature or local
 governing body, by 3/5ths vote & for no more than 12 months, imposes or in-
 creases tax to protect public health or safety Amends s 1, Art VII

04/04/97 HOUSE
 Filed

04/09/97 HOUSE
 Introduced -HJ 00479

05/02/97 HOUSE
 Carried over to 1998 Session pursuant to House Rule 96,
 Introduced, not referred

H 1925 GENERAL BILL/1ST ENG by Health Care Standards &
 Regulatory Reform (GSC); Jones; Lippman; (CO-SPONSORS)
 Maygarden; Minton; Saunders; Wasserman Schultz; Diaz de la Portilla
 (Similar S 1633, Compare H 0809, 2ND ENG/H 1357, CS/1ST ENG/H
 143, H 1893, 3RD ENG/H 2013, S 0100, CS/S 0595, CS/2ND ENG/S 0948,
 CS/S 1132, S 1590, CS/C/S 1814, CS/C/S/2ND ENG/S 2142)
 Health Care Protections/Regulation, transfers certain functions of AHCA to
 Health Dept., prescribes guidelines for appointments to boards within dept.,
 provides for continuing licenses of members of Armed Forces, provides for
 qualifications of immigrants for prof. licensure examination, provides method
 of contacting regulatory board, directs dept. to suspend license under certain
 circumstances, increases malpractice indemnity, etc Amends Chs 20, 408,
 455, 458, 459, 468, 627 Effective Date 07/01/1997 except as otherwise provid-
 ed

04/04/97 HOUSE
 Filed

04/09/97 HOUSE
 Introduced -HJ 00480

04/14/97 HOUSE
 In Government Services Council, pending ranking -HJ
 00559

04/17/97 HOUSE
 Placed on Government Services Council Calendar -HJ
 00657

04/23/97 HOUSE
 Read second time -HJ 00679

04/28/97 HOUSE
 Read third time -HJ 01094, Passed, YEAS 116 NAYS 0
 -HJ 01095

04/28/97 SENATE
 In Messages

04/29/97 SENATE
 Received, referred to Health Care, Ways and Means -SJ
 00941, Withdrawn from Health Care, Ways and Means -SJ
 00894, Substituted for CS/SB 1632 -SJ 00894, Read
 00894, -SJ 00936, -SJ 00937

04/30/97 SENATE
 Read third time -SJ 01034, Amendment adopted as fur-
 ther amended -SJ 01034, -SJ 01051, Passed as amended,
 YEAS 39 NAYS 0 -SJ 01052

04/30/97 HOUSE
 In returning messages

05/01/97 HOUSE
 Was taken up -HJ 01637, Amendment(s) to Senate
 amendment(s) adopted -HJ 01716, Concurred in Senate
 amendment(s) as amended -HJ 01716, Passed as amend-
 ed, YEAS 116 NAYS 0 -HJ 01716

05/01/97 SENATE
 In returning messages

(PAGE NUMBERS REFLECT DAILY SENATE AND HOUSE JOURNALS
 - PLACEMENT IN FINAL BOUND JOURNALS MAY VARY)

H 1933 GENERAL BILL/2ND ENG by Financial Services (EIC); Salfey;
 Lippman; (CO-SPONSORS) Maygarden; Sanderson; Bainter; Lawson;
 Ertman; Rayson; Ball; Dennis (Compare 1ST ENG/H 1703, CS/S 1464, S
 2480, S 2488, S 2490)
 Workers' Compensation, revises procedures & requirements for reimburse-
 ment from Special Disability Trust Fund, provides for accounting for anticipat-
 ed recoveries under trust fund, establishes standards for use of future in-
 vestment income as asset for self-insurance funds, creates "Florida Workers'
 Compensation Insurance Guaranty Association Act", creates Fla. Workers'
 Compensation Insurance Guaranty Fund Account, etc Amends Chs 624, 440,
 628, 631, 625 Appropriation \$8,043,000 Effective Date 05/30/1997 except as
 otherwise provided

04/07/97 HOUSE
 Filed

04/09/97 HOUSE
 Referred to Education/K-12 (AEC), Education Appropria-
 tions -HJ 00559

04/18/97 HOUSE
 On Committee agenda -Education/K-12 (AEC),
 04/23/97, 10 30 am, 413C

04/23/97 HOUSE
 Comm. Action Unanimously Favorable with 1 amend-
 ment(s) by Education/K-12 (AEC) -HJ 00877

04/24/97 HOUSE
 Now in Education Appropriations -HJ 00877

05/01/97 HOUSE
 Withdrawn from Education Appropriations, Withdrawn
 from further cons. (Identical/Compare Bill(s) passed, refer
 to CS/SB 1956 (Ch 97-309), CS/SB 458 (Ch 97-2) -HJ
 01753

H 1933 GENERAL BILL/2ND ENG by Financial Services (EIC); Salfey;
 Lippman; (CO-SPONSORS) Maygarden; Sanderson; Bainter; Lawson;
 Ertman; Rayson; Ball; Dennis (Compare 1ST ENG/H 1703, CS/S 1464, S
 2480, S 2488, S 2490)
 Workers' Compensation, revises procedures & requirements for reimburse-
 ment from Special Disability Trust Fund, provides for accounting for anticipat-
 ed recoveries under trust fund, establishes standards for use of future in-
 vestment income as asset for self-insurance funds, creates "Florida Workers'
 Compensation Insurance Guaranty Association Act", creates Fla. Workers'
 Compensation Insurance Guaranty Fund Account, etc Amends Chs 624, 440,
 628, 631, 625 Appropriation \$8,043,000 Effective Date 05/30/1997 except as
 otherwise provided

04/07/97 HOUSE
 Filed

04/09/97 HOUSE
 Referred to Education/K-12 (AEC), Education Appropria-
 tions -HJ 00559

04/18/97 HOUSE
 On Committee agenda -Education/K-12 (AEC),
 04/23/97, 10 30 am, 413C

04/23/97 HOUSE
 Comm. Action Unanimously Favorable with 1 amend-
 ment(s) by Education/K-12 (AEC) -HJ 00877

04/24/97 HOUSE
 Now in Education Appropriations -HJ 00877

05/01/97 HOUSE
 Withdrawn from Education Appropriations, Withdrawn
 from further cons. (Identical/Compare Bill(s) passed, refer
 to CS/SB 1956 (Ch 97-309), CS/SB 458 (Ch 97-2) -HJ
 01753

500.82

By the Committee on Health Care and Senator Myers

317-1737-97

1 A bill to be entitled

2 An act relating to regulation of professions;

3 dividing ch. 455, F.S., into parts;

4 transferring those provisions of ch. 455, F.S.,

5 that pertain to health-related professions into

6 the second part; duplicating publication of

7 extant provisions affecting both health-related

8 professions and other professions in the second

9 part; amending s. 11, ch. 96-403, Laws of

10 Florida; transferring certain functions from

11 the Agency for Health Care Administration to

12 the Department of Health; amending s. 20.43,

13 F.S.; prescribing guidelines for appointments

14 to boards within the Department of Health;

15 amending ss. 455.01, 455.203, 455.205, 455.207,

16 455.208, 455.209, 455.211, 455.213, 455.214,

17 455.217, 455.2175, 455.218, 455.2185, 455.221,

18 455.2226, 455.2228, 455.223, 455.224, 455.225,

19 455.227, 455.2273, 455.2275, 455.228, 455.2285,

20 455.229, 455.232, 455.24, 455.242, 455.243,

21 455.245, F.S.; conforming those sections to the

22 transfer of regulatory authority over

23 health-related professions from the Agency for

24 Health Care Administration to the Department of

25 Health; conforming those sections to the

26 subdivision of ch. 455, F.S.; creating s.

27 455.501, F.S.; providing definitions; creating

28 s. 455.504, F.S.; providing applicability;

29 creating s. 455.507, F.S.; providing for

30 continuing licensure of members of the Armed

31 Forces; creating s. 455.511, F.S.; prohibiting

CODING: Words stricken are deletions; words underlined are additions.

1 IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING
 2 TO THE ADVERTISEMENT FOR THE FEE, DISCOUNTED FEE, OR REDUCED
 3 FEE SERVICE, EXAMINATION, OR TREATMENT. However, the required
 4 statement shall not be necessary as an accompaniment to an
 5 advertisement of a licensed health care provider defined by
 6 this section if the advertisement appears in a classified
 7 directory the primary purpose of which is to provide products
 8 and services at free, reduced, or discounted prices to
 9 consumers and in which the statement prominently appears in at
 10 least one place.

11 Section 82. Section 455.241, Florida Statutes, 1996
 12 Supplement, is transferred, renumbered as section 455.667,
 13 Florida Statutes, and amended to read:
 14 455.667 455-244 Ownership and control of patient
 15 records; report or copies of records to be furnished.--

16 (1) As used in this section, the term "records owner"
 17 means any health care practitioner who generates a medical
 18 record after making a physical or mental examination of, or
 19 administering treatment or dispensing legend drugs to, any
 20 person; any health care practitioner to whom records are
 21 transferred by a previous records owner; or any health care
 22 practitioner's employer, including, but not limited to, group
 23 practices and staff-model health maintenance organizations.
 24 provided the employment contract between the employer and the
 25 health care practitioner designates the employer as the
 26 records owner.

27 (2) As used in this section, the terms "records
 28 owner," "health care practitioner," and "health care
 29 practitioner's employer" do not include any of the following
 30 persons or entities; furthermore, any of the following persons
 31 or entities that employ such persons are not authorized to

1 acquire or own medical records, but are authorized to maintain
 2 those documents required by the part or chapter under which
 3 they are licensed or regulated;
 4 (a) Facilities licensed under chapter 395.
 5 (b) Certified nursing assistants regulated under s.
 6 400.211.
 7 (c) Pharmacists and pharmacies licensed under chapter
 8 465.
 9 (d) Dental hygienists licensed under s. 466.023.
 10 (e) Nursing home administrators licensed under part II
 11 of chapter 468.
 12 (f) Respiratory therapists regulated under part V of
 13 chapter 468.
 14 (g) Athletic trainers licensed under part XIV of
 15 chapter 468.
 16 (h) Electrolytists licensed under chapter 478.
 17 (i) Clinical laboratory personnel licensed under part
 18 III of chapter 483.

19 (j) Medical physicists licensed under part IV of
 20 chapter 483.
 21 (k) Opticians licensed under part I of chapter 484.
 22 (l) Persons or entities practicing under s.
 23 527.736(7).

24 (3)(+) Any health care practitioner licensed by the
 25 department or a board within the department who makes a
 26 physical or mental examination of, or administers treatment or
 27 dispenses legend drugs to, any person shall, upon request of
 28 such person or the person's legal representative, furnish, in
 29 a timely manner, without delays for legal review, copies of
 30 all reports and records relating to such examination or
 31 treatment, including X rays and insurance information.

1 However, when a patient's psychiatric, chapter 490
2 psychological, or chapter 491 psychotherapeutic records are
3 requested by the patient or the patient's legal
4 representative, the health care practitioner may provide a
5 report of examination and treatment in lieu of copies of
6 records. Upon a patient's written request, complete copies of
7 the patient's psychiatric records shall be provided directly
8 to a subsequent treating psychiatrist. The furnishing of such
9 report or copies shall not be conditioned upon payment of a
10 fee for services rendered.

11 (4)(2) Except as otherwise provided in this section
12 and in s. 440.13(4)(c)(2), such records may not be furnished
13 to, and the medical condition of a patient may not be
14 discussed with, any person other than the patient or the
15 patient's legal representative or other health care
16 practitioners and providers involved in the care or treatment
17 of the patient, except upon written authorization of the
18 patient. However, such records may be furnished without
19 written authorization under the following circumstances:

20 (a) To any person, firm, or corporation that has
21 procured or furnished such examination or treatment with the
22 patient's consent.

23 (b) or When compulsory physical examination is made
24 pursuant to Rule 1.360, Florida Rules of Civil Procedure, in
25 which case copies of the medical records shall be furnished to
26 both the defendant and the plaintiff.

27 (c) Such records may be furnished in any civil or
28 criminal action, unless otherwise prohibited by law, upon the
29 issuance of a subpoena from a court of competent jurisdiction
30 and proper notice to the patient or the patient's legal
31 representative by the party seeking such records.

1 (d) For statistical and scientific research, provided
2 the information is abstracted in such a way as to protect the
3 identity of the patient or provided written permission is
4 received from the patient or the patient's legal
5 representative.

6 (5) Except in a medical negligence action or
7 administrative proceeding when a health care practitioner or
8 provider is or reasonably expects to be named as a defendant,
9 information disclosed to a health care practitioner by a
10 patient in the course of the care and treatment of such
11 patient is confidential and may be disclosed only to other
12 health care practitioners and providers involved in the care
13 or treatment of the patient, or if permitted by written
14 authorization from the patient or compelled by subpoena at a
15 deposition, evidentiary hearing, or trial for which proper
16 notice has been given.

17 (6) The department or the Agency for Health-Care
18 Administration as appropriate may obtain patient records and
19 insurance information, if the complaint being investigated
20 alleges inadequate medical care based on termination of
21 insurance. The department may access these records pursuant
22 to a subpoena without written authorization from the patient
23 if the department or the Agency for Health-Care Administration
24 and the probable cause panel of the appropriate board, if any,
25 find reasonable cause to believe that a health care
26 practitioner has excessively or inappropriately prescribed any
27 controlled substance specified in chapter 893 in violation of
28 this part chapter or any professional practice act or that a
29 health care practitioner has practiced his or her profession
30 below that level of care, skill, and treatment required as
31 defined by this part chapter or any professional practice act;

1 provided, however, the patient record obtained by the
 2 department or the agency pursuant to this subsection shall be
 3 used solely for the purpose of the department or the agency
 4 and the appropriate regulatory board in disciplinary
 5 proceedings. The records record shall otherwise be
 6 confidential and exempt from s. 119.07(1). This section does
 7 not limit the assertion of the psychotherapist-patient
 8 privilege under s. 90.503 in regard to records of treatment
 9 for mental or nervous disorders by a medical practitioner
 10 licensed pursuant to chapter 458 or chapter 459 who has
 11 primarily diagnosed and treated mental and nervous disorders
 12 for a period of not less than 3 years, inclusive of
 13 psychiatric residency. However, the health care practitioner
 14 shall release records of treatment for medical conditions even
 15 if the health care practitioner has also treated the patient
 16 for mental or nervous disorders. If the department or the
 17 agency has found reasonable cause under this section and the
 18 psychotherapist-patient privilege is asserted, the department
 19 or the agency may petition the circuit court for an in camera
 20 review of the records by expert medical practitioners
 21 appointed by the court to determine if the records or any part
 22 thereof are protected under the psychotherapist-patient
 23 privilege.

24 (7)(3) All patient records obtained by the department
 25 or the Agency for Health-Care-Administration and any other
 26 documents maintained by the department or the agency which
 27 identify the patient by name are confidential and exempt from
 28 s. 119.07(1) and shall be used solely for the purpose of the
 29 department or the Agency for Health-Care-Administration and
 30 the appropriate regulatory board in its investigation,
 31 prosecution, and appeal of disciplinary proceedings. The

1 records shall not be available to the public as part of the
 2 record of investigation for and prosecution in disciplinary
 3 proceedings made available to the public by the department or
 4 the Agency for Health-Care-Administration or the appropriate
 5 board.

6 (8) All records owners shall develop and implement
 7 policies, standards, and procedures to protect the
 8 confidentiality and security of the medical record. Employees
 9 of records owners shall be trained in these policies,
 10 standards, and procedures.

11 (9) Records owners are responsible for maintaining a
 12 record of all disclosures of information contained in the
 13 medical record to a third party, including the purpose of the
 14 disclosure request. The record of disclosure may be
 15 maintained in the medical record. The third party to whom
 16 information is disclosed is prohibited from further disclosing
 17 any information in the medical record without the expressed
 18 written consent of the patient or the patient's legal
 19 representative.

20 (10) Notwithstanding the provisions of s. 455.677,
 21 records owners shall place an advertisement in the local
 22 newspaper or notify patients, in writing, when they are
 23 terminating practice, retiring, or relocating, and no longer
 24 available to patients, and offer patients the opportunity to
 25 obtain a copy of their medical record.

26 (11) Notwithstanding the provisions of s. 455.677,
 27 records owners shall notify the appropriate board office when
 28 they are terminating practice, retiring, or relocating, and no
 29 longer available to patients, specifying who the new records
 30 owner is and where medical records can be found.

1 (12) Whenever a records owner has turned records over
 2 to a new records owner, the new records owner shall be
 3 responsible for providing a copy of the complete medical
 4 record, upon written request, of the patient or the patient's
 5 legal representative.
 6 (13) Licensees in violation of the provisions of this
 7 section shall be disciplined by the appropriate licensing
 8 authority.

9 (14) The Attorney General is authorized to enforce the
 10 provisions of this section for records owners not otherwise
 11 licensed by the state, through injunctive relief and fines not
 12 to exceed \$5,000 per violation.

13 (15)(4) A health care practitioner furnishing copies
 14 of reports or records pursuant to this section shall charge no
 15 more than the actual cost of copying, including reasonable
 16 staff time, or the amount specified in administrative rule by
 17 the appropriate board, or the department when there is no
 18 board.

19 (16) Nothing in this section shall be construed to
 20 limit health care practitioner consultations, as necessary.

21 (17) A records owner shall release to a health care
 22 practitioner who, as an employee of the records owner,
 23 previously provided treatment to a patient, those records that
 24 the health care practitioner actually created or generated
 25 when the health care practitioner treated the patient.

26 Records released pursuant to this subsection shall be released
 27 only upon written request of the health care practitioner and
 28 shall be limited to the notes, plans of care, and orders and
 29 summaries that were actually generated by the health care
 30 practitioner requesting the record.

1 Section 83. Section 455.2415, Florida Statutes, 1996
 2 Supplement, is transferred, renumbered as section 455.671,
 3 Florida Statutes, and amended to read:

4 455.671 455.2445 Communications confidential;
 5 exceptions.--Communications between a patient and a
 6 psychiatrist, as defined in s. 394.455 s.-394-455(23), shall
 7 be held confidential and shall not be disclosed except upon
 8 the request of the patient or the patient's legal
 9 representative. Provision of psychiatric records and reports
 10 shall be governed by s. 455.667 s.-455-244. Notwithstanding
 11 any other provision provisions of this section or s. 90.503,
 12 where:

13 (1) A patient is engaged in a treatment relationship
 14 with a psychiatrist;

15 (2) Such patient has made an actual threat to
 16 physically harm an identifiable victim or victims; and

17 (3) The treating psychiatrist makes a clinical
 18 judgment that the patient has the apparent capability to
 19 commit such an act and that it is more likely than not that in
 20 the near future the patient will carry out that threat,

21
 22 the psychiatrist may disclose patient communications to the
 23 extent necessary to warn any potential victim or to
 24 communicate the threat to a law enforcement agency. No civil
 25 or criminal action shall be instituted, and there shall be no
 26 liability on account of disclosure of otherwise confidential
 27 communications by a psychiatrist in disclosing a threat
 28 pursuant to this section.

29 Section 84. Section 455.2416, Florida Statutes, is
 30 transferred and renumbered as section 455.674, Florida
 31 Statutes.

317-1737-97

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1632

1
2
3
4 The committee substitute requires the Department of Health to
5 contract with the Agency for Health Care Administration until
6 July 1, 1999, for consumer complaint, investigation, and
7 prosecutorial services required by the health care professions
8 within the Division of Medical Quality Assurance. The
9 committee substitute revises disciplinary procedures used by
10 the Department of Health and its contractual agent, the Agency
11 for Health Care Administration, for health care professions
12 under the department's jurisdiction. The committee substitute
13 requires the director of the Agency for Health Care
14 Administration to issue emergency orders suspending the
15 license of health care professionals under the Department of
16 Health.

17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
The committee substitute revises procedures for the ownership
and control of medical records and procedures used by the
Department of Health to administer licensure examinations for
health care professionals under its jurisdiction. The
committee substitute requires the Secretary of the Department
of Health to appoint a task force of representatives to
develop procedures for validating professional credentials of
health care practitioners.

27-438B-97

1 A bill to be entitled
2 An act relating to regulation of professions;
3 dividing ch. 455, F.S., into parts;
4 transferring those provisions of ch. 455, F.S.,
5 that pertain to health-related professions into
6 the second part; duplicating publication of
7 extant provisions affecting both health-related
8 professions and other professions in the second
9 part; amending s. 11, ch. 96-403, Laws of
10 Florida; transferring certain functions from
11 the Agency for Health Care Administration to
12 the Department of Health; amending s. 20.43,
13 F.S.; prescribing guidelines for appointments
14 to boards within the Department of Health;
15 amending ss. 455.01, 455.203, 455.205, 455.207,
16 455.208, 455.209, 455.211, 455.213, 455.214,
17 455.217, 455.2175, 455.218, 455.2185, 455.221,
18 455.2226, 455.2228, 455.223, 455.224, 455.225,
19 455.227, 455.2273, 455.2275, 455.228, 455.2285,
20 455.229, 455.232, 455.24, 455.242, 455.245,
21 F.S.; conforming those sections to the transfer
22 of regulatory authority over health-related
23 professions from the Agency for Health Care
24 Administration to the Department of Health;
25 conforming those sections to the subdivision of
26 ch. 455, F.S.; creating s. 455.501, F.S.;
27 providing definitions; creating s. 455.504,
28 F.S.; providing applicability; creating s.
29 455.507, F.S.; providing for continuing
30 licensure of members of the Armed Forces;
31 creating s. 455.511, F.S.; prohibiting

1 IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING
 2 TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED
 3 FEE SERVICE, EXAMINATION, OR TREATMENT. HOWEVER, THE REQUIRED
 4 STATEMENT SHALL NOT BE NECESSARY AS AN ACCOMPANIMENT TO AN
 5 ADVERTISEMENT OF A LICENSED HEALTH CARE PROVIDER DEFINED BY
 6 THIS SECTION IF THE ADVERTISEMENT APPEARS IN A CLASSIFIED
 7 DIRECTORY THE PRIMARY PURPOSE OF WHICH IS TO PROVIDE PRODUCTS
 8 AND SERVICES AT FREE, REDUCED, OR DISCOUNTED PRICES TO
 9 CONSUMERS AND IN WHICH THE STATEMENT PROMINENTLY APPEARS IN AT
 10 LEAST ONE PLACE.

11 Section 81. Section 455.241, Florida Statutes, 1996
 12 Supplement, is transferred, renumbered as section 455.667,
 13 Florida Statutes, and amended to read:
 14 455.667 455-241 Patient records; report or copies of
 15 records to be furnished.--

16 (1) Any health care practitioner licensed by the
 17 department or a board within the department who makes a
 18 physical or mental examination of, or administers treatment or
 19 dispenses legend drugs to, any person shall, upon request of
 20 such person or the person's legal representative, furnish, in
 21 a timely manner, without delays for legal review, copies of
 22 all reports and records relating to such examination or
 23 treatment, including X rays and insurance information.
 24 However, when a patient's psychiatric, chapter 490
 25 psychological, or chapter 491 psychotherapeutic records are
 26 requested by the patient or the patient's legal
 27 representative, the practitioner may provide a report of
 28 examination and treatment in lieu of copies of records. Upon
 29 a patient's written request, complete copies of the patient's
 30 psychiatric records shall be provided directly to a subsequent
 31 treating psychiatrist. The furnishing of such report or copies

1 shall not be conditioned upon payment of a fee for services
 2 rendered.

3 (2) Except as otherwise provided in s. 440.13(2), such
 4 records may not be furnished to, and the medical condition of
 5 a patient may not be discussed with, any person other than the
 6 patient or the patient's legal representative or other health
 7 care providers involved in the care or treatment of the
 8 patient, except upon written authorization of the patient.
 9 However, such records may be furnished without written
 10 authorization to any person, firm, or corporation that has
 11 procured or furnished such examination or treatment with the
 12 patient's consent or when compulsory physical examination is
 13 made pursuant to Rule 1.360, Florida Rules of Civil Procedure,
 14 in which case copies of the medical records shall be furnished
 15 to both the defendant and the plaintiff. Such records may be
 16 furnished in any civil or criminal action, unless otherwise
 17 prohibited by law, upon the issuance of a subpoena from a
 18 court of competent jurisdiction and proper notice to the
 19 patient or the patient's legal representative by the party
 20 seeking such records. Except in a medical negligence action
 21 when a health care provider is or reasonably expects to be
 22 named as a defendant, information disclosed to a health care
 23 practitioner by a patient in the course of the care and
 24 treatment of such patient is confidential and may be disclosed
 25 only to other health care providers involved in the care or
 26 treatment of the patient, or if permitted by written
 27 authorization from the patient or compelled by subpoena at a
 28 deposition, evidentiary hearing, or trial for which proper
 29 notice has been given. The department or the Agency-for-Health
 30 Care-Administration, as appropriate may obtain patient
 31 records pursuant to a subpoena without written authorization

1 from the patient if the department or the Agency for Health
2 Care Administration and the probable cause panel of the
3 appropriate board, if any, find reasonable cause to believe
4 that a practitioner has excessively or inappropriately
5 prescribed any controlled substance specified in chapter 893
6 in violation of this Part chapter or any professional practice
7 act or that a practitioner has practiced his profession below
8 that level of care, skill, and treatment required as defined
9 by this Part chapter or any professional practice act;
10 provided, however, the patient record obtained by the
11 department or the agency pursuant to this subsection shall be
12 used solely for the purpose of the department or the agency
13 and the appropriate regulatory board in disciplinary
14 proceedings. The record shall otherwise be confidential and
15 exempt from s. 119.07(1). This section does not limit the
16 assertion of the psychotherapist-patient privilege under s.
17 90.503 in regard to records of treatment for mental or nervous
18 disorders by a medical practitioner licensed pursuant to
19 chapter 458 or chapter 459 who has primarily diagnosed and
20 treated mental and nervous disorders for a period of not less
21 than 3 years, inclusive of psychiatric residency. However, the
22 practitioner shall release records of treatment for medical
23 conditions even if the practitioner has also treated the
24 patient for mental or nervous disorders. If the department or
25 the agency has found reasonable cause under this section and
26 the psychotherapist-patient privilege is asserted, the
27 department or the agency may petition the circuit court for an
28 in camera review of the records by expert medical
29 practitioners appointed by the court to determine if the
30 records or any part thereof are protected under the
31 psychotherapist-patient privilege.

122

CODING: Words stricken are deletions; words underlined are additions.

1 (3) All patient records obtained by the department or
2 the Agency for Health-Care Administration and any other
3 documents maintained by the department or the agency which
4 identify the patient by name are confidential and exempt from
5 s. 119.07(1) and shall be used solely for the purpose of the
6 department or the Agency for Health-Care Administration and
7 the appropriate regulatory board in its investigation,
8 prosecution, and appeal of disciplinary proceedings. The
9 records shall not be available to the public as part of the
10 record of investigation for and prosecution in disciplinary
11 proceedings made available to the public by the department or
12 the Agency for Health-Care Administration or the appropriate
13 board.

14 (4) A health care practitioner furnishing copies of
15 reports or records pursuant to this section shall charge no
16 more than the actual cost of copying, including reasonable
17 staff time, or the amount specified in administrative rule by
18 the appropriate board.

19 Section 82. Section 455.2415, Florida Statutes, 1996
20 Supplement, is transferred, renumbered as section 455.671,
21 Florida Statutes, and amended to read:

22 455.671 455-2445 Communications confidential;
23 exceptions.--Communications between a patient and a
24 psychiatrist, as defined in s. 394.455 s.-394-455(23), shall
25 be held confidential and shall not be disclosed except upon
26 the request of the patient or the patient's legal
27 representative. Provision of psychiatric records and reports
28 shall be governed by s. 455.667 s.-455-244. Notwithstanding
29 any other Division provisions of this section or s. 90.503,
30 where:

31

123

CODING: Words stricken are deletions; words underlined are additions.

SENATE SUMMARY

Divides chapter 455, Florida Statutes, relating to the regulation of professions and occupations, into two parts. The bulk of existing chapter 455 becomes part I, relating to professions under the jurisdiction of the Department of Business and Professional Regulation. Those provisions dealing with health-related professions are transferred into the new part II, and general provisions also applicable to those professions, including extant provisions exempting certain records and meetings from open records and public meetings laws, are created, in duplicate, in part II.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Sec. 99

HB 1925

Florida House of Representatives - 1997

By the Committee on Health Care Standards & Regulatory Reform and Representatives Jones, Lippman, Maygarden, Minton, Saunders, Hessermer Schultz and Diaz de la Portilla

1 A bill to be entitled

2 An act relating to regulation of health care

3 practitioners; creating part II of chapter 455,

4 F.S., to provide regulatory provisions

5 applicable to the Department of Health that are

6 separate from those applicable to the

7 Department of Business and Professional

8 Regulation; creating ss. 455.401, 455.402,

9 455.403, 455.404, 455.405, 455.406, 455.407,

10 455.408, 455.409, 455.411, 455.412, 455.414,

11 455.415, 455.416, 455.417, 455.418, 455.419,

12 455.421, 455.422, 455.424, 455.427, 455.428,

13 455.429, 455.431, 455.432, 455.433, 455.436,

14 455.438, 455.439, 455.441, 455.442, 455.443,

15 455.444, 455.445, 455.446, 455.447, 455.448,

16 455.449, 455.451, 455.452, 455.453, 455.457,

17 455.458, 455.461, 455.465, 455.466, 455.467,

18 455.468, and 455.469, F.S., to conform;

19 providing intent; providing for a procedure for

20 updating boards on major public health policy;

21 providing for appointment of a task force to

22 develop uniform procedures to standardize the

23 validation of health care practitioner

24 credentials; providing requirements with

25 respect to examinations, including requirements

26 for national, contracted, and shared

examinations and translations of examinations;

restricting board meetings to those determined

to be in the public interest; providing for

appointment of nonboard members to board

committees under certain circumstances;

Deletions are ~~stricken~~; additions are underlined.

1 requiring applicants for initial licensure to
 2 submit a full set of fingerprints; providing
 3 additional grounds for disciplinary action
 4 relating to keeping legible records, payments
 5 on federally or state guaranteed educational
 6 loans or service-conditional scholarships,
 7 providing proper identification to patients,
 8 and reporting of disciplinary actions of
 9 another jurisdiction; revising provisions
 10 relating to ownership and control of patient
 11 records; transferring s. 455.247, F.S., to
 12 conform; transferring and amending ss.
 13 455.2055, 455.2141, 455.2142, 455.2173,
 14 455.222, 455.2224, 455.241, 455.2415, 455.2416,
 15 455.244, 455.2455, and 455.2456, F.S., to
 16 conform; amending ss. 455.01, 455.017, 455.10,
 17 455.203, 455.205, 455.207, 455.208, 455.209,
 18 455.211, 455.213, 455.214, 455.217, 455.2175,
 19 455.218, 455.219, 455.221, 455.2228, 455.225,
 20 455.227, 455.2273, 455.2275, 455.228, 455.2285,
 21 455.229, 455.232, 455.26, 455.261, and 455.273,
 22 F.S., to conform; transferring and amending s.
 23 455.2205, F.S., relating to the Health Care
 24 Trust Fund, to conform; amending ss. 215.20,
 25 391.208, 391.217, 400.5575, and 408.20, F.S.;
 26 correcting cross references, to conform;
 27 transferring and amending ss. 455.24, 455.242,
 28 455.243, and 455.245, F.S., relating to
 29 veterinary medical practice, to conform;
 30 amending s. 455.25, F.S., relating to
 31 disclosure of financial interest; requiring

1 physicians or other health care providers to
 2 disclose their financial interest in certain
 3 entities; eliminating entity disclosure of
 4 financial interest; repealing s. 455.220, F.S.,
 5 relating to fees required by the boards to
 6 cover the costs of regulation, to conform;
 7 repealing s. 455.2226, F.S., relating to
 8 instruction on human immunodeficiency virus and
 9 acquired immune deficiency syndromes; creating
 10 part I of the remaining provisions of chapter
 11 455, F.S., as amended, to conform; amending ss.
 12 120.80, 212.06, 215.37, 240.215, 310.102,
 13 337.162, 381.0039, 383.32, 395.0193, 395.0197,
 14 395.3025, 400.491, 408.061, 408.704, 415.1055,
 15 415.5055, 415.51, 440.13, 457.103, 458.307,
 16 458.3115, 458.331, 458.343, 458.347, 459.004,
 17 459.015, 459.019, 459.022, 460.404, 460.4061,
 18 461.004, 461.013, 463.003, 463.016, 464.004,
 19 465.004, 465.006, 466.004, 466.007, 466.018,
 20 466.022, 466.028, 468.1135, 468.1145, 468.1185,
 21 468.1295, 468.1665, 468.1755, 468.1756,
 22 468.205, 468.219, 468.364, 468.365, 468.402,
 23 468.4315, 468.453, 468.456, 468.4571, 468.506,
 24 468.507, 468.513, 468.523, 468.526, 468.532,
 25 468.535, 468.703, 468.707, 468.711, 468.719,
 26 469.009, 470.003, 470.036, 471.008, 471.015,
 27 471.033, 472.015, 473.3035, 473.308, 473.311,
 28 473.323, 474.204, 474.214, 474.2145, 475.021,
 29 475.181, 475.25, 475.624, 476.204, 477.029,
 30 480.044, 481.2055, 481.213, 481.225, 481.2251,
 31 481.306, 481.311, 481.325, 483.605, 483.807,

1 challenged examination questions and answers to the
2 administrative law judge. The examination questions and
3 answers provided at the hearings are confidential and exempt
4 from s. 119.07(1), unless invalidated by the administrative
5 law judge.

6 (3) Unless an applicant notifies the department at
7 least 5 days prior to an examination hearing of the
8 applicant's inability to attend, or unless an applicant can
9 demonstrate an extreme emergency for failing to attend, the
10 department may require an applicant who fails to attend to pay
11 reasonable attorney's fees, costs, and court costs of the
12 department for the examination hearing.

13 Section 47. Section 455.452, Florida Statutes, is
14 created to read:

15 455.452 Disclosure of confidential information.--

16 (1) No officer, employee, person, or agent under
17 contract with the department, or any board therein, or any
18 subject of an investigation shall convey knowledge or
19 information to any person who is not lawfully entitled to such
20 knowledge or information about any public meetings or public
21 record, which at the time such knowledge or information is
22 conveyed is exempt from the provisions of s. 119.01, s.
23 119.07(1), or s. 286.011.

24 (2) Any person who willfully violates any provision of
25 this section commits a misdemeanor of the first degree,
26 punishable as provided in s. 775.082 or s. 775.083, and may be
27 subject to discipline pursuant to s. 455.443, and, if
28 applicable, shall be removed from office, employment, or the
29 contractual relationship.

30 Section 48. Section 455.453, Florida Statutes, is
31 created to read:

1 455.453 Advertisement by a health care practitioner of
2 free or discounted services; required statement.--In any
3 advertisement for a free, discounted fee, or reduced fee
4 service, examination, or treatment by a health care
5 practitioner as defined in s. 455.402, the following statement
6 shall appear in capital letters clearly distinguishable from
7 the rest of the text: THE PATIENT AND ANY OTHER PERSON
8 RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL
9 PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE,
10 EXAMINATION, OR TREATMENT WHICH IS PERFORMED AS A RESULT OF
11 AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE
12 FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR
13 TREATMENT. However, the required statement shall not be
14 necessary as an accompaniment to an advertisement of a
15 licensed health care practitioner as defined in s. 455.402 if
16 the advertisement appears in a classified directory the
17 primary purpose of which is to provide products and services
18 at free, reduced, or discounted prices to consumers and in
19 which the statement prominently appears in at least one place.
20 Section 49. Section 455.241, Florida Statutes, 1996
21 Supplement, is renumbered as section 455.454, Florida
22 Statutes, and amended to read:

23 455.454 455:844 Ownership and control of patient
24 records; report or copies of records to be furnished.--

25 (1) As used in this section, the term "records owner"
26 means any health care practitioner who generates a medical
27 record after making a physical or mental examination of, or
28 administering treatment or dispensing legend drugs to, any
29 person; any health care practitioner to whom records are
30 transferred by a previous records owner; or any health care
31 practitioner's employer, including, but not limited to, group

1 practices and staff-model health maintenance organizations.
2 provided the employment contract between the employer and the
3 health care practitioner designates the employer as the
4 records owner.
5 (2) As used in this section, the terms "records
6 owner," "health care practitioner," and "health care
7 practitioner's employer" do not include any of the following
8 persons or entities: furthermore, the following persons or
9 entities are not authorized to acquire or own medical records,
10 but are authorized to maintain those documents required by the
11 part of chapter under which they are licensed or regulated:
12 (a) Certified nursing assistants regulated under s.
13 400.211.
14 (b) Pharmacists and pharmacies licensed under chapter
15 465.
16 (c) Dental hygienists licensed under s. 466.023.
17 (d) Nursing home administrators licensed under part II
18 of chapter 466.
19 (e) Respiratory therapists regulated under part V of
20 chapter 466.
21 (f) Athletic trainers licensed under part XIV of
22 chapter 466.
23 (g) Electrolysisists licensed under chapter 478.
24 (h) Clinical laboratory personnel licensed under part
25 III of chapter 483.
26 (i) Medical physicists licensed under part IV of
27 chapter 483.
28 (j) Opticians and optical establishments licensed or
29 permitted under part I of chapter 484.
30 (k) Persons or entities practicing under s.
31 627.736(7).

1 (3) This section does not apply to facilities licensed
2 under chapter 395.
3 (4)(4) Any health care practitioner licensed by the
4 department or a board within the department who makes a
5 physical or mental examination of, or administers treatment or
6 dispenses legend drugs to, any person shall, upon request of
7 such person or the person's legal representative, furnish, in
8 a timely manner, without delays for legal review, copies of
9 all reports and records relating to such examination or
10 treatment, including X rays and insurance information.
11 However, when a patient's psychiatric, chapter 490
12 psychological, or chapter 491 psychotherapeutic records are
13 requested by the patient or the patient's legal
14 representative, the health care practitioner may provide a
15 report of examination and treatment in lieu of copies of
16 records. Upon a patient's written request, complete copies of
17 the patient's psychiatric records shall be provided directly
18 to a subsequent treating psychiatrist. The furnishing of such
19 report or copies shall not be conditioned upon payment of a
20 fee for services rendered.
21 (5)(5) Except as otherwise provided in this section
22 and in s. 440.13(5)(c)(2), such records may not be furnished
23 to, and the medical condition of a patient may not be
24 discussed with, any person other than the patient or the
25 patient's legal representative or other health care
26 practitioner and providers involved in the care or treatment
27 of the patient, except upon written authorization of the
28 patient. However, such records may be furnished without
29 written authorization under the following circumstances:
30
31

1 (a) To any person, firm, or corporation that has
2 procured or furnished such examination or treatment with the
3 patient's consent.

4 (b) or When compulsory physical examination is made
5 pursuant to Rule 1.360, Florida Rules of Civil Procedure, in
6 which case copies of the medical records shall be furnished to
7 both the defendant and the plaintiff.

8 (c) Such records may be furnished in any civil or
9 criminal action, unless otherwise prohibited by law, upon the
10 issuance of a subpoena from a court of competent jurisdiction
11 and proper notice to the patient or the patient's legal
12 representative by the party seeking such records.

13 (d) For statistical and scientific research, provided
14 the information is abstracted in such a way as to protect the
15 identity of the patient or provided written permission is
16 received from the patient or the patient's legal
17 representative.

18 (e) Except in a medical negligence action or
19 administrative proceeding when a health care practitioner or
20 provider is or reasonably expects to be named as a defendant,
21 information disclosed to a health care practitioner by a
22 patient in the course of the care and treatment of such
23 patient is confidential and may be disclosed only to other
24 health care practitioners and providers involved in the care
25 or treatment of the patient, or if permitted by written
26 authorization from the patient or compelled by subpoena at a
27 deposition, evidentiary hearing, or trial for which proper
28 notice has been given.

29 (7) The department or the Agency for Health-Care
30 Administration, as appropriate, may obtain patient records and
31 insurance information, if the complaint being investigated

1 alleges inadequate medical care based on termination of
2 insurance. The department may access these records pursuant
3 to a subpoena without written authorization from the patient
4 if the department or the Agency for Health-Care Administration
5 and the probable cause panel of the appropriate board, if any,
6 find reasonable cause to believe that a health care
7 practitioner has excessively or inappropriately prescribed any
8 controlled substance specified in chapter 893 in violation of
9 this rule chapter or any professional practice act or that a
10 health care practitioner has practiced his profession below
11 that level of care, skill, and treatment required as defined
12 by this rule chapter or any professional practice act;

13 provided, however, the patient record obtained by the
14 department or the agency pursuant to this subsection shall be
15 used solely for the purpose of the department or the agency
16 and the appropriate regulatory board in disciplinary
17 proceedings. The records record shall otherwise be
18 confidential and exempt from s. 119.07(1). This section does
19 not limit the assertion of the psychotherapist-patient
20 privilege under s. 90.503 in regard to records of treatment
21 for mental or nervous disorders by a medical practitioner
22 licensed pursuant to chapter 458 or chapter 459 who has
23 primarily diagnosed and treated mental and nervous disorders
24 for a period of not less than 3 years, inclusive of
25 psychiatric residency. However, the health care practitioner
26 shall release records of treatment for medical conditions even
27 if the health care practitioner has also treated the patient
28 for mental or nervous disorders. If the department or the
29 agency has found reasonable cause under this section and the
30 psychotherapist-patient privilege is asserted, the department
31 or the agency may petition the circuit court for an in camera

1 review of the records by expert medical practitioners
2 appointed by the court to determine if the records or any part
3 thereof are protected under the psychotherapist-patient
4 privilege.

5 (B)(3) All patient records obtained by the department
6 or the Agency for Health-Care-Administration and any other
7 documents maintained by the department or the agency which
8 identify the patient by name are confidential and exempt from
9 s. 119.07(1) and shall be used solely for the purpose of the
10 department or the Agency for Health-Care-Administration and
11 the appropriate regulatory board in its investigation,
12 prosecution, and appeal of disciplinary proceedings. The
13 records shall not be available to the public as part of the
14 record of investigation for and prosecution in disciplinary
15 proceedings made available to the public by the department or
16 the Agency for Health-Care-Administration or the appropriate
17 board.

18 (9) All records owners shall develop and implement
19 policies, standards, and procedures to protect the
20 confidentiality and security of the medical record. Employees
21 of records owners shall be trained in these policies,
22 standards, and procedures.

23 (10) Records owners are responsible for maintaining a
24 record of all disclosures of information contained in the
25 medical record to a third party, including the purpose of the
26 disclosure request. The record of disclosure may be
27 maintained in the medical record. The third party to whom
28 information is disclosed is prohibited from further disclosing
29 any information in the medical record without the expressed
30 written consent of the patient or the patient's legal
31 representative.

31 (11) Notwithstanding the provisions of s. 455.457,
32 records owners shall place an advertisement in the local
33 newspaper or notify patients, in writing, when they are
34 terminating practice, retiring, or relocating, and no longer
35 available to patients, and offer patients the opportunity to
36 obtain a copy of their medical record.

37 (12) Notwithstanding the provisions of s. 455.457,
38 records owners shall notify the appropriate board office when
39 they are terminating practice, retiring, or relocating, and no
40 longer available to patients, specifying who the new records
41 owner is and where medical records can be found.

42 (13) Whenever a records owner has turned records over
43 to a new records owner, the new records owner shall be
44 responsible for providing a copy of the complete medical
45 record, upon written request, of the patient or the patient's
46 legal representative.

47 (14) Licensees in violation of the provisions of this
48 section shall be disciplined by the appropriate licensing
49 authority.

50 (15) The Attorney General is authorized to enforce the
51 provisions of this section for records owners not otherwise
52 licensed by the state, through injunctive relief and fines not
53 to exceed \$5,000 per violation.

54 (16)(a) A health care practitioner furnishing copies
55 of reports or records pursuant to this section shall charge no
56 more than the actual cost of copying, including reasonable
57 staff time, or the amount specified in administrative rule by
58 the appropriate board, or the department when there is no
59 board.

60 (17) Nothing in this section shall be construed to
61 limit health care practitioner consultations, as necessary.

1 (18) A records owner shall release to a health care
 2 practitioner who, as an employee of the records owner,
 3 previously provided treatment to a patient, those records that
 4 the health care practitioner actually created or generated
 5 when the health care practitioner treated the patient.
 6 Records released pursuant to this subsection shall be released
 7 only upon written request of the health care practitioner and
 8 shall be limited to the notes, plans of care, and orders and
 9 summaries that were actually generated by the health care
 10 practitioner requesting the record.

11 Section 50. Section 455.2415, Florida Statutes, 1996
 12 Supplement, is renumbered as section 455.455, Florida
 13 Statutes, and amended to read:

14 455.455 455:2415 Communications confidential;
 15 exceptions.--Communications between a patient and a
 16 psychiatrist, as defined in s. 394.455(24)(23), shall be held
 17 confidential and shall not be disclosed except upon the
 18 request of the patient or the patient's legal representative.
 19 Provision of psychiatric records and reports shall be governed
 20 by s. 455.454 455:244. Notwithstanding any other provisions of
 21 this section or s. 90.503, where:

- 22 (1) A patient is engaged in a treatment relationship
- 23 with a psychiatrist;
- 24 (2) Such patient has made an actual threat to
- 25 physically harm an identifiable victim or victims; and
- 26 (3) The treating psychiatrist makes a clinical
- 27 judgment that the patient has the apparent capability to
- 28 commit such an act and that it is more likely than not that in
- 29 the near future the patient will carry out that threat,

CODING: Deletions are ~~stricken~~; additions are underlined.

1 the psychiatrist may disclose patient communications to the
 2 extent necessary to warn any potential victim or to
 3 communicate the threat to a law enforcement agency. No civil
 4 or criminal action shall be instituted, and there shall be no
 5 liability on account of disclosure of otherwise confidential
 6 communications by a psychiatrist in disclosing a threat
 7 pursuant to this section.

8 Section 51. Section 455.2416, Florida Statutes, is
 9 renumbered as section 455.456, Florida Statutes, and amended
 10 to read:

11 455.456 455:2416 Health care practitioner disclosure
 12 of confidential information; immunity from civil or criminal
 13 liability.--

14 (1) A health care practitioner regulated through the
 15 Division of Medical Quality Assurance of the department shall
 16 not be civilly or criminally liable for the disclosure of
 17 otherwise confidential information to a sexual partner or a
 18 needle-sharing partner under the following circumstances:

19 (a) If a patient of the health care practitioner who
 20 has tested positive for human immunodeficiency virus discloses
 21 to the health care practitioner the identity of a sexual
 22 partner or a needle-sharing partner;

23 (b) The health care practitioner recommends that the
 24 patient notify the sexual partner or the needle-sharing
 25 partner of the positive test and refrain from engaging in
 26 sexual or drug activity in a manner likely to transmit the
 27 virus and the patient refuses, and the health care
 28 practitioner informs the patient of his intent to inform the
 29 sexual partner or needle-sharing partner; and

30 (c) If pursuant to a perceived civil duty or the
 31 ethical guidelines of the profession, the practitioner

CODING: Deletions are ~~stricken~~; additions are underlined.

1 of conducting background investigations, verifying information
2 submitted, and processing applications.

3 Section 261. Subsection (2) of section 408.20, Florida
4 Statutes, 1996 Supplement, is amended to read:

5 408.20 Assessments; Health Care Trust Fund.--

6 (2) All moneys collected are to be deposited into the
7 Health Care Trust Fund created pursuant to s. 20.425 455:2205-
8 The-Health-Care-Trust-Fund-shall-be-subject-to-the-service
9 charge-imposed-pursuant-to-chapter-245.

10 Section 262. This act shall take effect July 1, 1997.

11 *****

12 HOUSE SUMMARY

13
14
15 Creates part II of chapter 455, F.S., to provide
16 regulatory provisions applicable to the Department of
17 Health that are separate from those applicable to the
18 Department of Business and Professional Regulation.
19 Transfers, amends, and repeals various existing
20 provisions of chapter 455, F.S., and creates part I of
21 the remaining provisions of the chapter, as amended, to
22 conform. Corrects cross references and terminology in
23 other statutory provisions, to conform. Provides
24 legislative intent. Provides for a procedure for
25 updating boards on major public health policy. Provides
26 for appointment of a task force to develop uniform
27 procedures to standardize the validation of health care
28 practitioner credentials. Provides requirements with
29 respect to examinations, including requirements for
30 national, contracted, and shared examinations and
31 translations of examinations. Restricts board meetings
to those determined to be in the public interest.
Provides for appointment of nonboard members to board
committees under certain circumstances. Requires
applicants for initial licensure to submit a full set of
fingerprints. Provides additional grounds for
disciplinary action relating to keeping legible records,
payments on federally or state guaranteed educational
loans or service-conditional scholarships, providing
proper identification to patients, and reporting of
disciplinary actions of another jurisdiction. Revises
provisions relating to ownership and control of patient
records. See bill for details.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 10, 1997

Revised

Subject: Regulation of Professions

Analyst	Staff Director	Reference	Action
Munroe	Wilson	HC	Favorable/CS
Lombardi	Wilson	GO	Fav/8 amendments
		WM	Withdrawn

I. Summary:

Committee Substitute for Senate Bill 1632 amends section 11 of chapter 96-403, Laws of Florida, which, effective July 1, 1997, transfers the regulation of the health care professions from the Agency for Health Care Administration to the Department of Health, so that all functions relating to the regulation of health care professions, including consumer complaint, investigative, and prosecutorial services are transferred. The bill requires the Department of Health to contract with the Agency for Health Care Administration until July 1, 1999, for consumer complaint, investigative, and prosecutorial services for professions within the Division of Medical Quality Assurance. The bill divides chapter 455, Florida Statutes, relating to the regulation of professions and occupations, into two parts. Part I, ch 455, F S, is applicable to the professions under the regulatory jurisdiction of the Department of Business and Professional Regulation and part II, ch 455, F S, is applicable to the health care professions under the regulatory jurisdiction of the Department of Health. The bill makes technical and conforming changes to chapter 455, F S and other relevant provisions of law. The bill revises procedures for the ownership and control of medical records and procedures used by the Department of Health for licensure tests. The bill requires the Secretary of the Department of Health to appoint a task force of representatives from various health care associations to develop procedures for validating professional credentials of health care practitioners.

The bill amends section 11 of chapter 96-403, Laws of Florida.

The bill amends the following sections of the Florida Statutes 20 43 (1996 Supp.), 455 01 (1996 Supp.), 455 203 (1996 Supp.), 455 205, 455 207, 455 208, 455 209, 455 211 (1996 Supp.), 455 213 (1996 Supp.), 455.214, 455 217 (1996 Supp.), 455 2175, 455 218, 455 2185, 455 221, 455 2226, 455 2228, 455 223 (1996 Supp.), 455 224, 455 225 (1996 Supp.), 455 227, 455 2273

(1996 Supp.), 455 2275, 455 228 (1996 Supp), 455.2285, 455.229 (1996 Supp.), 455.232, 455 24, 455 242, 455.243, and 455 245

The bill creates the following sections of the Florida Statutes: 455 501, 455 504, 455 507, 455 511, 455 514, 455 517, 455 521, 455 524, 455.527, 455.534, 455.537, 455 541, 455 544, 455 547, 455 551, 455 554, 455 561, 455 571, 455 577, 455 581, 455 584, 455 594, 455 604, 455 607, 455 611, 455 614, 455 617, 455 621, 455 624, 455.627, 455 631, 455 634, 455.637, 455 641, 455 644, 455.647, 455 651, 455.664, 455.677, 455 681, 455 687, 455 711, 455.714, and 455 717.

The bill transfers and renumbers the following sections of the Florida Statutes 455 206 (455 531), 455.2141 (455 564), 455 2142 (455 567), 455 2173 (455 574), 455 220 (455 587), 455.2205 (408 16), 455 222 (455 597), 455 2224 (455 601), 455 236 (455 654), 455.237 (455.657), 455 239 (455 661), 455 241 (455 667), 455 2415 (455 671), 455 2416 (455 674), 455 244 (455 684), 455 2455 (455.691), 455 2456 (455 694), 455.247 (455 697), 455 25 (455.701), 455 26 (455.704), 455 261 (455 707), 455.277 (408 18), and 455 2775 (408 185)

The bill repeals section 455 2055, Florida Statutes

II. Present Situation:

Chapter 455, F.S., provides for the general powers and duties of the Department of Business and Professional Regulation (DBPR) and the Agency for Health Care Administration (AHCA or agency) to implement and enforce professional regulation On July 1, 1994, the health care professions in the Division of Medical Quality Assurance within DBPR were transferred to the Division of Health Quality Assurance within AHCA In addition to the general regulatory provisions in chapter 455, F.S., each profession has its own practice act setting forth provisions applicable to the practice standards and requirements for that profession

The agency is administratively placed within DBPR Chapter 92-33, Laws of Florida, as amended by Chapter 93-129, L O F, created the agency and amended provisions of chapter 455, F.S During the 1992 legislative session and subsequent sessions, some of the provisions relating to DBPR's authority to implement and enforce professional regulation were substantially amended. The health care professions were transferred from DBPR to AHCA by type one transfer, as defined in s 20 06(1), F.S.(1992), which transferred the statutory authority that DBPR had to implement and enforce professional regulation to the agency

¹ A Type One Transfer means the transferring, intact, of an existing agency including the exercise of its powers, duties, and functions, as prescribed by law

Chapter 96-403, L.O.F., transfers the regulation of various health care professions from the Agency for Health Care Administration to the Department of Health by a type two transfer, effective July 1, 1997. Section 20 06, F.S., defines a type two transfer to include all of the statutory powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds Chapter 96-403, L.O.F., imposes limitations on the transfer of specified regulatory functions. The law expressly transfers to the Department of Health specific regulatory functions relating to the health professions including all licensing, examination, publication, administrative, and management information services, but requires the Department of Health to contract with the Agency for Health Care Administration for the provision of consumer complaint, investigative, and prosecutorial services, which are not transferred.

Although chapter 455, F.S., expressly provides for regulatory powers and duties of the Department of Business and Professional Regulation and the Agency for Health Care Administration and the regulatory boards within each department there is no mention of the role of the Department of Health in view of the regulatory framework established in chapter 96-403, L.O.F. Section 26, ch 96-403, L.O.F., requires the Division of Statutory Revision to make certain revisions in specified chapters of the Florida Statutes as it relates to the transfer of certain regulatory functions from the Department of Health and Rehabilitative Services to the Department of Health Chapter 96-403, L.O.F., does not direct the Division of Statutory Revision to make changes in chapter 455, F.S. Changes to chapter 455, F.S., will require substantive policy decisions to reflect the transfer of regulatory functions relating to the licensing and discipline of health care professions as provided in ch 96-403, L.O.F.

Section 12, chapter 96-403, L.O.F., transfers by a type two transfer the regulation of athletic trainers, the Board of Massage, and the Board of Hearing Aid Specialists from the Department of Business and Professional Regulation to the newly created Department of Health, effective July 1, 1997

Effective July 1, 1997, the professions regulated within the Division of Medical Quality Assurance within the Department of Health will include nursing assistants, health care service pools, acupuncture, medicine, osteopathic medicine, chiropractic, podiatric medicine, naturopathy, optometry, nursing, pharmacy, dentistry, midwifery, speech-language pathology and audiology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition, athletic trainers, electrolysis, massage, clinical laboratory personnel, medical physicists, optician, hearing aid specialists, physical therapy, psychology, clinical social work, marriage and family therapy, and mental health counseling

² A Type Two Transfer means the merging into another agency or department of an existing agency or department or a program, activity, or function thereof. If certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished

III. Effect of Proposed Changes:

Section 1. Amends s 11, chapter 96-403, Laws of Florida, removing limitations relating to the regulation and transfer of health care professions, effective July 1, 1997, from the Agency for Health Care Administration to the newly created Department of Health, by a type two transfer.

Section 2. Amends s. 20.43, F.S., requiring the Department of Health to contract with the Agency for Health Care Administration until July 1, 1999, for the consumer complaint, investigation, and prosecutorial services required by the Division of Medical Quality Assurance. Transfers language currently in s 455 2055, F S, relating to the Department of Health board appointments and requirements for the department to establish uniform application forms and certificates of licensure for use by the boards within the department

Sections 3 - 32. Amend ss 455 01 (1996 Supp), 455 203 (1996 Supp), 455 205, 455 207, 455 208, 455.209, 455 211 (1996 Supp), 455 213 (1996 Supp), 455 214, 455 217 (1996 Supp), 455 2175, 455 218, 455 2185, 455.221, 455 2226, 455.2228, 455 223 (1996 Supp), 455 224, 455 225 (1996 Supp), 455 227, 455 2273 (1996 Supp), 455 2275, 455 228 (1996 Supp), 455 2285, 455 229 (1996 Supp), 455 232, 455 24, 455 242, 455 243, and 455 245, F S, relating to the regulation of professions by the Department of Business and Professional Regulation, to make technical and conforming changes

Section 33. Creates s. 455 501, F S, within part II of ch. 455, F S, relating to definitions used in the general regulatory provisions for health care professions under the jurisdiction of the Division of Medical Quality Assurance within the Department of Health. It is identical to s 455 01, F S, relating to definitions used in the general regulatory provisions for professions under the jurisdiction of the Department of Business and Professional Regulation or the Agency for Health Care Administration, except that it corrects references to the agency and makes other minor technical changes

Section 34. Creates s 455 504, F S, within part II of ch 455, F S, relating to the applicability of the newly created part to provide the general regulatory provisions for health care professions under the jurisdiction of the Department of Health. It is identical to s 455.017, F S, relating to the applicability of the chapter for general regulatory provisions for professions under the Department of Business and Professional Regulation or the Agency for Health Care Administration's jurisdiction, except for minor technical changes

Section 35. Creates s 455 507, F S, within part II of ch 455, F.S, relating to provisions specifying licensing procedures to be used by the Department of Health and appropriate regulatory boards for members of the armed forces in good standing. It is identical to s 455.02, F.S relating to licensing procedures used by the Agency for Health Care Administration and the Department of Business and Professional Regulation for members of the armed forces, except for minor technical changes

Section 36. Creates s 455 511, F S , within part II of ch 455, F S , relating to restrictions on citizenship requirements to practice a profession. It is identical to s 455 10, F S , relating to restrictions on citizenship requirements to practice a profession. It also makes other minor technical changes.

Section 37. Creates s. 455 514, F S , within part II of ch. 455, F S , relating to qualifications of certain immigrants for examination to practice a licensed profession or occupation. It is identical to s 455 11, F S , relating to qualifications of certain immigrants for examination to practice a licensed profession, except for minor technical changes

Section 38. Creates s 455 517, F S , within part II of ch 455, F S , relating to legislative intent regarding the regulation of professions or occupations. It is identical to s 455 201, F S , relating to legislative intent regarding the regulation of professions and occupations, except for minor technical changes

Section 39. Creates s 455 521, F S , within part II of ch 455, F S , relating to the powers and duties of the Department of Health to enforce and implement professional regulation. It is identical to s 455 203, F S , relating to the powers and duties of the Department of Business and Professional Regulation and the Agency for Health Care Administration to enforce and implement professional regulation, except for minor technical changes.

Section 40. Creates s 455 524, F S , within part II of ch 455, F S , relating to requirements for the Department of Health to implement long-range policy planning and to provide regulatory boards under its jurisdiction with management reports specifying performance statistics and other information. It is identical to s 455 204, F S , relating to the Department of Business and Professional Regulation's duties to implement long-range policy planning and to provide regulatory boards under its jurisdiction with management reports

Section 41. Creates s 455 527, F S , within part II of ch 455, F S , relating to contacting the regulatory boards through the Department of Health. It is identical to s 455 205, F S , relating to contacting the regulatory boards through the Agency for Health Care Administration or the Department of Business and Professional Regulation, except for minor technical changes, including references to the agency

Section 42. Transfers and rennumbers s 455 206, F S , as s. 455 531, F S , within part II of ch 455, F S , relating to conditions for membership on a profession's regulatory board

Section 43. Creates s 455 534, F S , within part II of ch 455, F S , relating to the organization of boards, board meetings, and the compensation and travel procedures applicable to each regulatory board within the Department of Health. It is identical to s 455.207, F S , relating to the organization of boards, board meetings, and the compensation and travel procedures applicable to each regulatory board within the Department of Business and Professional Regulation and the Agency for Health Care Administration, except for minor technical changes, including references to the agency

Section 44. Creates s 455.537, F.S., within part II of ch 455, F.S., relating to the Department of Health's authority to publish a newsletter to provide information of interest to professions under the department's jurisdiction. It is identical to s 455 208, F.S., relating to the Department of Business and Professional Regulation's or the Agency for Health Care Administration's authority to provide certain information to professions under their respective jurisdiction, except for minor technical changes, including references to the agency.

Section 45. Creates s 455 541, F.S., within part II of ch 455, F.S., relating to the accountability and liability of board members. It is identical to s 455 209, F.S., relating to the accountability and liability of board members on boards within the Department of Business and Professional Regulation or the Agency for Health Care Administration, except for minor technical changes, including references to the agency.

Section 46. Creates s 455 544, F.S., within part II of ch 455, F.S., relating to the authority of the Secretary of the Department of Health to challenge any board rule based on specified criteria. It is identical to s 455 211, F.S., relating to the Department of Business and Professional Regulation's or the Agency for Health Care Administration's authority to challenge any board rule based on specified criteria, except for minor technical changes, including references to the agency.

Section 47. Creates s 455.547, F.S., within part II of ch 455, F.S., relating to provisions which allow licensure applicants to demonstrate competency in lieu of the completion of specific clock-hour instructional requirements. It is identical to s 455 212, F.S., relating to provisions which allow licensure applicants to demonstrate competency instead of completing specific clock-hour instructional requirements.

Section 48. Creates s 455.551, F.S., within part II of ch 455, F.S., relating to requirements for accreditation of educational programs to meet licensure requirements for professions under the Department of Health, to provide for continued accreditation when an accrediting entity terminates until a successor accrediting entity takes over the accrediting function. It is identical to s 455 2121, F.S., relating to requirements for accreditation of educational programs to meet licensure requirements for professions under the Department of Business and Professional Regulation.

Section 49. Creates s 455 554, F.S., within part II of ch 455, F.S., relating to requirements for any state agency or board having jurisdiction over the regulation of a profession or occupation to consult with the specified postsecondary education boards before adopting any changes to training requirements relating to entry into the profession or occupation. It is identical to s 455 2125, F.S., relating to requirements for any state agency or board having jurisdiction over the regulation of a profession or occupation to consult with the specified postsecondary education boards before adopting any changes to training requirements relating to entry into the profession or occupation.

Section 50. Creates s 455.561, F S, within part II of ch 455, F S, relating to the Department of Health's or appropriate board's authority to issue limited licenses to retired professionals to serve indigent, underserved, or critical need populations. It is identical to s 455 214, F S, relating to the Department of Business and Professional Regulation's or appropriate board's authority to issue limited licenses to retired professionals

Section 51. Transfers and renumbers s 455 2141, F S. (1996 Supp), as s. 455 564, F.S., within part II of ch 455, F.S., relating to the general licensing provisions of the Department of Health Amends s. 455 564, F.S., to clarify the Department of Health's authority to regulate the health care professions with the existing powers, duties, and functions maintained by the Agency for Health Care Administration and the Department of Business and Professional Regulation, effective July 1, 1997 In addition to technical changes, including references to the agency, s 455.564, F S, is amended to conform to existing provisions in s 455 213, F S, relating to the general licensing provisions for the Department of Business and Professional Regulation.

Section 52. Transfers and renumbers s 455 2142, F S, as s 455 567, F.S., within part II of ch 455, F S, relating to authority for boards within the Agency for Health Care Administration to deny licensure to applicants for acts based on sexual misconduct Amends s 455 567, F S, to make technical changes

Section 53. Creates s 455 571, F S, within part II of ch 455, F S, to provide that the Department of Health may use a professional testing service to prepare, administer, grade, and evaluate any board-approved computerized examination It is identical to s 455 2171, F S, relating to the Department of Business and Professional Regulation's use of professional testing services

Section 54. Transfers and renumbers s 455 2173, F S (1996 Supp), as s 455 574, F S, within part II of ch. 455, F.S., relating to the Department of Health's authority to provide examination services to the regulatory boards Amends s 455 574, F.S., to clarify the Department of Health's authority to regulate the health care professions with the existing powers, duties, and functions maintained by the Agency for Health Care Administration and the Department of Business and Professional Regulation, pursuant to the type two transfer of the professions from the Department of Business and Professional Regulation and the Agency for Health Care Administration In addition, to minor technical changes, including references to the agency, s 455 574, F S, is amended to authorize the Department of Health and the appropriate regulatory board to offer computer-based testing to licensure applicants by allowing applicants to apply directly to a nationally-certified testing service for the appropriate licensure examination

Section 55. Creates s 455 577, F S, within part II of ch 455, F S, relating to penalties for the theft or reproduction of examinations administered by the Department of Health It is identical to s 455 2175, F S, relating to the theft or reproduction of examinations administered by the Department of Business and Professional Regulation and the Agency for Health Care Administration, except for minor technical changes, including references to the agency and statutory cross-references

Section 56. Creates s 455 581, F S, within part II of ch 455, F S, relating to special examination and license provisions for foreign-trained professionals for health care professionals under the Department of Health's jurisdiction. It is identical to s 455 2185, F S, relating to licensure exemptions for certain out-of-state or foreign-trained professionals under the Agency for Health Care Administration's or the Department of Business and Professional Regulation's jurisdiction, except for minor technical changes, including references to the agency

Section 57. Creates s 455.584, F.S., within part II of ch 455, F S, relating to licensure exemptions for certain out-of-state or foreign professionals visiting Florida for a specific sporting event. It is identical to s. 455.2185, F.S., relating to licensure exemptions for certain out-of-state or foreign professionals visiting Florida for a specific sporting event, except for minor changes

Section 58. Transfers and rennumbers s 455 220, F S, as s 455 587, F S, within part II of ch 455, F S, relating to the Agency for Health Care Administration's duties regarding the receipt and disposition of fees for regulatory boards within the agency. Amends s 455 587, F S, to clarify the Department of Health's authority to regulate the health care professions with the existing powers, duties, and functions maintained by the Agency for Health Care Administration and the Department of Business and Professional Regulation pursuant to the type two transfer of the professions from the Department of Business and Professional Regulation and the Agency for Health Care Administration. In addition to minor technical changes, including statutory cross-references and references to the agency, s 455 587, F S, is amended to conform to existing provisions in s 455 219, F S, relating to the Department of Business and Professional Regulation's duties to receive and dispose of licensing fees and the requirements that each regulatory board maintain a positive cash balance

Section 59. Transfers and rennumbers s 455 2205, F S (1996 Supp.), as s 408 16, F S, within part II of ch 455, F S, relating to the Health Care Trust Fund within the Agency for Health Care Administration. Amends s 408 16, F S, to delete references to the agency's maintenance of separate revenue accounts for professions and makes other minor technical changes

Section 60. Creates s 455 594, F S, within part II of ch 455, F S, relating to the authority of the boards or the Department of Health to retain legal and investigative services. It is identical to s 455 221, F S, relating to the Department of Business and Professional Regulation's or the Agency for Health Care Administration's authority to retain legal and investigative services, except for minor technical changes

Section 61. Transfers and rennumbers s 455 222, F S, as s 455 597, F S, within part II of ch 455, F S, relating to domestic violence continuing education requirements. Amends s. 455.597, F S, to make minor technical changes, including corrections to statutory cross-references.

Section 62. Transfers and rennumbers s 455 2224, F S, as s 455 601, F S, within part II of ch 455, F S, relating to procedures used by the Department of Health and the appropriate

regulatory board, to handle, counsel, and provide other services to health care professionals who are infected with hepatitis B or the human immunodeficiency virus.

Section 63. Creates s 455.604, F S , within part II of ch 455, F S , relating to human immunodeficiency virus continuing education requirements for certain health care professions. It is identical to s 455 2226, F S , relating to HIV continuing education requirements, except it deletes funeral practitioners licensed under ch 470, F S , from the requirement under the new part II of chapter 455, F S A similar provision applicable to practitioners regulated under the Department of Business and Professional Regulation for funeral practitioners remains in the existing s 455 2226, F S , as amended in section 17 of this bill.

Section 64. Creates s 455 607, F S , within part II of ch 455, F S , relating to HIV continuing education requirements for massage therapists and athletic trainers. It is identical to s 455 2228, F S , relating to HIV continuing education for barbers, cosmetologists, and massage therapists and athletic trainers, except that it deletes barbers and cosmetologists from the section in the new part II of chapter 455, F S A similar provision applicable to practitioners regulated under the Department of Business and Professional Regulation for barbers and cosmetologists remains in the existing s 455 2228, F S , as amended in section 18 of this bill

Section 65. Creates s 455 611, F S , within part II of ch 455, F S , relating to the authority for the Department of Health to administer oaths, take depositions, and issue subpoenas. It is identical to s 455 223, F S , relating to the authority of the Department of Business and Professional Regulation and the Agency for Health Care Administration to administer oaths, take depositions, and issue subpoenas, except for minor technical changes to delete references to the agency.

Section 66. Creates s 455 614, F S , within part II of ch 455, F S , requiring each board, or the Department of Health when there is no board, to adopt rules designating which violations of the applicable practice act are appropriate for mediation. It is identical to s 455 2235, F S , requiring each board, or the Department of Business and Professional Regulation when there is no board, to adopt rules designating which violations of the applicable practice act are appropriate for mediation, except for minor technical changes, including mediation, except for minor technical changes, including statutory cross-references.

Section 67. Creates s 455 617, F S , within part II of ch 455, F S , relating to the Department of Health's or the appropriate board's duty to adopt rules to permit the issuance of citations. It is identical to s 455 224, F S , relating to the Agency for Health Care Administration's or the Department of Business and Professional Regulation's or the appropriate regulatory board's duty to adopt rules to permit the issuance of citations except for minor technical changes, including statutory cross-references and the deletion of references to the agency.

Section 68. Creates s 455 621, F S , within part II of ch 455, F S , relating to procedures used by the Department of Health and the appropriate regulatory boards under its jurisdiction to discipline professions. It is identical to s 455 225, F S , relating to procedures used by the Department of Business and Professional Regulation or the Agency for Health Care

Administration and the appropriate boards under their respective jurisdictions to discipline professions, except it establishes legislative intent that the term "expeditiously" means that the Department of Health must complete the report of its initial investigative findings and

recommendations concerning the existence of probable cause for a disciplinary complaint within 6 months of its receipt of the complaint. It requires the department to establish a uniform reporting mechanism for "year-old disciplinary cases" that have not yet been referred to the Division of

Administrative Hearings or otherwise completed within one year after the disciplinary complaint was filed, to be reported to each regulatory board on a quarterly basis during each year. It also requires the department, for any disciplinary case under its jurisdiction for which probable cause has been found, to provide to the person who filed the complaint a copy of the administrative

complaint and a written explanation of how an administrative complaint is resolved by the disciplinary process, a written explanation of how and when the person may participate in the disciplinary process, and a written notice of any hearing before the Division of Administrative Hearings or the regulatory board for which final agency action is taken. In any case for which probable cause has not been found, the department must so inform the person who filed the complaint and notify that person that he or she may, within 60 days, provide any additional information to the probable cause panel which may be relevant to the decision. In any

administrative proceeding, the person who filed the disciplinary complaint must have the right to present oral or written communication relating to the alleged disciplinary violations or to the appropriate penalty. The department is required to issue an emergency order suspending the license of any medical physician or osteopathic physician who the agency has reasonable cause to believe has violated the financial responsibility requirements applicable to the physicians. It provides that the Director of the Agency for Health Care Administration shall issue the final summary order in any proceeding for the purpose of summary suspension of license or for restriction of the license, of any licensed health care practitioner under the jurisdiction of the Department of Health

Section 69. Creates s. 455 624, F S , within part II of ch 455, F S , relating to grounds for disciplinary action and penalties applicable to licensees and license applicants used by the Department of Health and the appropriate board under its jurisdiction. It is identical to s 455 227, F S , relating to grounds for disciplinary action and penalties applicable to licensees and license applicants used by the Department of Business and Professional Regulation or the Agency for Health Care Administration and the appropriate boards under their respective jurisdiction, except for minor technical changes, including the deletion of references to the agency.

Section 70. Creates s 455 627, F S , within part II of ch 455, F S , to require that each regulatory board within the Department of Health, and the department, when there is no board, adopt rules and establish disciplinary guidelines. It is identical to s 455 2273, F S , which requires the Department of Business and Professional Regulation and each regulatory board within the department to adopt rules and establish disciplinary guidelines, except for minor technical changes, including the deletion of references to agency

Section 71. Creates s 455 631, F S , within part II of ch 455, F S , relating to penalties for the giving of false information in applying for licensure with the Department of Health. It is identical

to s 455 2275, F.S., relating to penalties for the giving of false information in applying for licensure with the Department of Business and Professional Regulation or Agency for Health Care Administration, except for minor technical changes, including the correction of statutory cross-references and the deletion of references to the agency

Section 72. Creates s 455 634, F.S., within part II of ch 455, F.S., relating to requirements for the Department of Health or the appropriate boards to report criminal violations of statutes relating to the practice of a profession to the proper prosecuting authority. It is identical to s 455.2277, F.S., relating to requirements for the Department of Business and Professional Regulation, the Agency for Health Care Administration, or the appropriate boards to report criminal violations of the statutes relating to the practice of a profession to the proper prosecuting authority

Section 73. Creates s. 455 637, F.S., within part II of ch 455, F.S., relating to procedures used by the Department of Health to enforce cease and desist notices and civil penalties, to deter the unlicensed practice of a profession. It is identical to s 455 228, F.S., relating to procedures used by the Agency for Health Care Administration or the Department of Business and Professional Regulation to deter the unlicensed practice of a profession, except for minor technical changes, including the correction of statutory cross-references and the deletion of references to the agency

Section 74. Creates s 455 641, F.S., within part II of ch 455, F.S., relating to requirements for the Department of Health to assess an unlicensed activity fee from professions under its jurisdiction. It is identical to s 455 2281, F.S., relating to requirements for the Department of Business and Professional Regulation to assess an unlicensed activity fee from professions under its jurisdiction, except for minor technical changes, including the correction of statutory cross-references

Section 75. Creates s 455 644, F.S., within part II of ch 455, F.S., relating to a requirement that the Department of Health complete an annual report concerning finances, administrative complaints, disciplinary actions, and recommendations for each profession regulated within the Department of Health to describe in addition to minor technical changes, it requires the Department of Health to describe in the required annual report any effort to reduce or otherwise close any disciplinary cases that have not yet been referred to the Division of Administrative Hearings or otherwise completed within one year after the disciplinary complaint was filed

Section 76. Creates s 455.647, F.S., within part II of ch 455, F.S., relating to provisions applicable to public inspection of information maintained by the Department of Health pursuant to its regulation of health care professions. It is identical to s 455.229, F.S., relating to provisions applicable to public inspection of information maintained by the Agency for Health Care Administration or the Department of Business and Professional Regulation pursuant to their

regulation of professions, except for minor technical changes, including the deletion of references to the agency

Section 77. Creates s 455 651, F S, within part II of ch. 455, F S, relating to prohibitions on the disclosure of confidential information maintained by the Department of Health regarding its regulation of professions. It is identical to s 455 232, F S., relating to prohibitions on the disclosure of confidential information maintained by the Agency for Health Care Administration or the Department of Business and Professional Regulation pursuant to their regulation of professions, except for minor technical changes, including the deletion of references to the agency

Section 78. Transfers and rennumbers s 455 236, F S (1996 Supp), as s 455 654, F S, within part II of ch 455, F S, relating to financial arrangements between referring health care providers and providers of health care services. Makes other minor technical changes

Section 79. Transfers and rennumbers s 455 237, F S (1996 Supp), as s. 455 657, F S, within part II of ch 455, F S, relating to prohibited kickbacks.

Section 80. Transfers and rennumbers s 455 239, F S, as s 455 661, F S, within part II of ch 455, F S, relating to licensure requirements for designated health care services. Makes other minor technical changes, including corrections to statutory cross-references

Section 81. Creates s 455 664, F S, within part II of ch 455, F S, relating to requirements for certain advertisements of reduced fees by health care providers and deletes veterinarians licensed under ch 474, F S, from this requirement under the new part II of chapter 455, F S. A similar provision applicable to veterinarians exists in s 455 24, F S, as amended in section 29 of this bill.

Section 82. Transfers and rennumbers s 455 241, F S (1996 Supp), as s 455 667, F S, within part II of ch 455, F S, relating to patient records. Substantially revises existing requirements relating to patient records and requires record owners to be responsible for maintaining the confidentiality of medical records. Requires any record owner that is a health maintenance organization or group practice of health care practitioners to be responsible for giving patients or their legal representatives access to a copy of the patient's medical records and specifies procedures for the recording of any authorized disclosures of such records. Requires record owners to provide a health care practitioner a copy of any medical record that is generated by the practitioner when the health care practitioner terminates his employment or affiliation with the health maintenance organization or group practice. Authorizes the Attorney General to enforce the requirements imposed on record owners who are not otherwise licensed by the state, through injunctive relief and the imposition of a fine no greater than \$5,000 per violation. Makes other minor technical changes

Section 83. Transfers and rennumbers s 455 2415, F S (1996 Supp), as s 455 671, F S, within part II of ch 455, F S, relating to confidential communication between psychiatrists and their patients. Makes other minor technical changes

Section 84. Transfers and renunbers s 455 2416, F S., as s. 455 674, F S , within part II of ch. 455, F.S , relating to protocols for the disclosure of confidential information regarding patients to the patient's sexual partners or needle-sharing partners by health care professionals regulated by the Department of Health.

Section 85. Creates s. 455 677, F S., within part II of ch 455, F S., relating to requirements for the disposition of medical records of deceased health care practitioners or health care practitioners relocating or terminating their practice. It is identical to s 455.242, F S , relating to requirements for the disposition of medical records of deceased health care practitioners or health care practitioners relocating or terminating their practice. It is identical to s 455.243, F S , relating to the Department of Business and Professional Regulation's or the Agency for Health Care Administration's authority to inspect pharmacies or any establishment at which services of a licensee authorized to prescribe controlled substances are offered. It is identical to s 455.243, F S , relating to the Department of Business and Professional Regulation's or the Agency for Health Care Administration's authority to inspect pharmacies or any establishment at which services of a licensee authorized to prescribe controlled substances are offered, except for minor technical changes

Section 87. Transfers and renunbers s. 455 244, F S , as s 455 684, F.S , within part II of ch. 455, F S , relating to limitations on the denial of payment to podiatrists or chiropractic physicians

Section 88. Creates s 455 687, F S , within part II of ch 455, F S , relating to the Department of Health's authority to immediately suspend the license of specified health care professionals pursuant to an emergency order. It is identical to s 455 245, F S , relating to the Department of Business and Professional Regulation's or the Agency for Health Care Administration's authority under specified circumstances to immediately suspend the license of specified health care professionals pursuant to an emergency order, except in addition to minor technical changes, it requires the Director of the Agency for Health Care Administration rather than the Department of Health to issue an emergency order suspending the license of a physician, osteopath, chiropractor, podiatrist, optometrist, nurse, pharmacist or dentist who pleads guilty to, or enters a plea of nolo contendere to a felony enumerated under applicable law relating to the Medicaid or Medicare program, or the prescribing, dispensing, or distribution of controlled substances

Section 89. Transfers and renunbers s 455 2455, F S , as s 455 691, F S , within part II of ch 455, F.S , relating to limitations in the treatment of Medicare beneficiaries by licensed physicians

Section 90. Transfers and renunbers s. 455 2456, F S , as s 455.694, F S , within part II of ch. 455, F S , relating to requirements for certain health care practitioners to maintain medical

malpractice insurance or provide proof of financial responsibility in amounts their boards determine to be adequate to cover professional liabilities. Makes other minor technical changes

Section 91. Transfers and renumbers s 455 247, F S (1996 Supp), as s 455 697, F S, within part II of ch 455, F S, relating to requirements for certain health care practitioners to file with the Department of Health certain reports on professional liability claims and actions.

Section 92. Transfers and renumbers s 455 25, F S, as s 455 701, F S, within part II of ch 455, F S, relating to requirements for certain practitioners to disclose certain financial interests

Section 93. Transfers and renumbers s 455 26, F.S., as s 455 704, F S, within part II of ch. 455, F S, relating to the composition and duties of the Impaired Practitioners Committee. Makes other minor technical changes

Section 94. Transfers and renumbers s 455 261, F S (1996 Supp), as s 455 707, F S, within part II of ch 455, F S, relating to treatment programs for impaired practitioners under the jurisdiction of the Department of Health. Makes other minor technical changes

Section 95. Creates s 455 711, F S, within part II of ch 455, F S, relating to procedures for inactive and delinquent status of licenses for professions regulated by the Department of Health. It is identical to s 455 271, F S, relating to procedures for inactive and delinquent status of licenses for professions regulated by the Department of Business and Professional Regulation, except for minor technical changes, including the correction of statutory cross-references

Section 96. Creates s 455 714, F S, within part II of ch 455, F S, relating to procedures to provide licenses under the Department of Health with license renewal and cancellation notices. It is identical to s 455 273, F S, relating to procedures to provide licenses under the Department of Business and Professional Regulation with license renewal and cancellation notices

Section 97. Creates s 455 717, F S, within part II of ch 455, F S, providing requirements for licensees to maintain a current address with the Department of Business and Professional Regulation. F S, providing requirements for licensees to maintain a current address with the Department of

Section 98. Transfers and renumbers s 455 277, F S. (1996 Supp), as s 408 18, F.S, providing the Health Care Community Antitrust Guidance Act. Makes other minor technical changes

Section 99. Transfers and renumbers s 455 2775, F S (1996 Supp), as s. 408 185, F S, within part II of ch 455, F S, providing confidentiality to information relating to anti-trust matters submitted by a member of the health care community for review by the Office of the Attorney General

Section 100. Repeals s 455 2055, F S , relating to board appointments within the Department of Health Identical language is amended into s 20 43, F S , relating to the organization of the Department of Health in section 2 of the bill

Section 101. Directs statutory revision to designate part I of chapter 455, F S., for the Department of Business and Professional Regulation and part II, chapter 455, F.S. , for the Department of Health

Section 102. Creates a section not designated in the Florida Statutes, to require the Secretary of the Department of Health to appoint a task force of representatives from various health care associations to develop procedures to validate the professional credentials of health care practitioners

Section 103. Provides an effective date of July 1, 1997

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions.

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution

B. Public Records/Open Meetings Issues

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Section 24(a) of Article 1 of the Florida Constitution

C. Trust Funds Restrictions

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Section 19(f) of the Florida Constitution

D. Other Constitutional Issues

For contracts in existence on the effective date of this bill and to the extent that any affected contracts contain terms proscribed by the bill's provisions relating to ownership and control of medical records, the provisions of this bill may raise issues of impairment of contract which is prohibited under Article I, §10 of the *State Constitution* and Article I, §10 of the *United States Constitution*.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues.

None

B. Private Sector Impact

To the extent the bill's provisions relating to ownership and control of medical records require record owners to perform procedures they currently do not, such record owners will incur costs to comply with those requirements. Record owners who are not licensed by the state may be subject to injunctive remedies and a fine no greater than \$5,000 per violation of the bill's provisions relating to procedures for the ownership and control of medical records.

C. Government Sector Impact

The Department of Health will incur costs to implement the bill's requirement for the secretary of the department to appoint a task force to develop procedures to validate the professional credentials of health care practitioners

VI. Technical Deficiencies:

None

VII. Related Issues:

None

VIII. Amendments:

#1 by Governmental Reform and Oversight

Deletes language requiring the Department of Health to contract with the Agency for Health Care Administration to provide consumer complaint, investigative, and prosecutorial services.

#2 by Governmental Reform and Oversight

Adds massage practitioners to the definition of "Health Care Practitioner."

#3 by Governmental Reform and Oversight

Removes language requiring the Department of Health to issue an emergency order suspending the license of any physician or osteopathic physician who the Agency for Health Care Administration has reasonable cause to believe has committed a professional violation.

#4 by Governmental Reform and Oversight
Requires the Secretary of the Department of Health to conduct any proceeding for the purpose of professional licensure restriction or suspension

#5 by Governmental Reform and Oversight
Requires the Department of Health to issue an emergency order suspending the license of any person who pleads guilty to, is convicted or found guilty of, or pleas nolo contendere to, regardless of adjudication, a felony under chapter 409 or chapter 893 of the Florida Statutes

#6 by Governmental Reform and Oversight:
Repeals s 455.25(2), F.S. requiring health care entities to disclose information regarding their financial relationship to the referring health care provider, prior to the entity providing a health care service to the patient (WITH TITLE AMENDMENT)

#7 by Governmental Reform and Oversight
Requires the Department of Health to issue an emergency order suspending the professional license of physicians, subsequent to a court ordered final judgment, and failure to satisfy a medical malpractice claim against them. In the event the licensee furnishes the department a copy of a timely filed notice of appeal, a copy of a supersedeas bond properly posted in the amount required by law, or an order from a court of competent jurisdiction staying execution on the final judgment pending disposition of the appeal, within 30 days after receipt of notice from the department, the suspension shall not take effect. In addition, the medical malpractice indemnity limits are lifted from \$10,000 to \$25,000

#8 by Governmental Reform and Oversight
Requires the Department of Health to issue an emergency order suspending the professional license of osteopathic physicians, subsequent to a court ordered final judgment, and failure to satisfy a medical malpractice claim against them. In the event the licensee furnishes the department a copy of a timely filed notice of appeal; a copy of a supersedeas bond properly posted in the amount required by law, or an order from a court of competent jurisdiction staying execution on the final judgment pending disposition of the appeal, within 30 days after receipt of notice from the department, the suspension shall not take effect

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate

HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE STANDARDS & REGULATORY REFORM
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL # HB 1925 (PCB HCR 97-01)

RELATING TO Creates Administrative Authority of Department of Health for Medical Practitioners
SPONSOR(S) Committee on Health Care Standards & Regulatory Reform and Representatives Jones, Lippman and others

STATUTE(S) AFFECTED Creates ss. 455.401 through 455.469, F.S., as Part II of Chapter 455, F.S. Sections 455.247, 455.2055, 455.2141, 455.2142, 455.2173, 455.222, 455.2224, 455.241, 455.2415, 455.2416, 455.244, 455.2455, and 455.2456, F.S. are transferred to Part II and renumbered. Transfers s. 455.2205, relating to Health Care, 455.24, 455.242, 455.243, and 455.245, F.S., relating to veterinary medicine. Sections 455.220 and 455.2226, F.S., are repealed. Amends s. 455.25, F.S., relating to disclosure of financial interest. Chapters 20, 120, 212, 215, 240, 310, 337, 381, 383, 395, 400, 402, 408, 415, 440, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 480, 481, 483, 484, 486, 489, 490, 491, 492, 627, 636, 641, 766, 937, F.S., are amended to correct cross references, terminology, and definitions.

COMPANION BILL(S) SB 1590(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) HEALTH CARE STANDARDS & REGULATORY REFORM YEAS 8 NAYS 0

(2)
(3)
(4)
(5)

1. SUMMARY

The major effect of the bill is to create the administrative authority necessary for the Department of Health (DOH) to administer the 36 medical professions that will be transferred effective 7/1/97 as provided in HB 555 (ch. 96-403, Laws of Florida). It creates ss. 455.401 through 455.469, F.S., as Part II of Chapter 455, F.S., and only applies to the DOH. Most of these sections (sections 1-63) are copied from existing law in chapter 455, F.S., that are applicable to the Department of Business and Professional Regulation and/or the Agency for Health Care Administration. Section 64 of the proposed bill designates existing sections 455.01 through 455.2775, F.S., as Part I of Chapter 455, F.S., and only applies to DBPR and the non-medical boards they have responsibility to administer.

It provides clear authority to DOH to adopt policies and rules for the administration of all health care practitioners. DOH is granted clear authority to provide for computerized testing if feasible. DOH is required to contract with the AHCA for the complaint, investigation, and discipline of health care practitioners. The Secretary of DOH is required to appoint a task force to develop uniform procedures for the validation of health care practitioner credentials in Florida.

DOH is authorized to do criminal background checks (including fingerprint checks), and default on federal or state guaranteed loans or service-conditional scholarships is added as grounds for disciplinary action.

The bill will have no fiscal impact on the state, local government, or private sector.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 20.165, F.S., created the Department of Business and Professional Regulation (DBPR), the various divisions, including the Division of Medical Quality Assurance with the various medical boards and professions. Chapter 92-33, L.O.F., transferred the various medical boards and professions from DBPR to the Agency for Health Care Administration (agency), Division of Health Quality Assurance, effective July 1, 1993. The July 1, 1993 date was delayed by the 1993 Legislature for one year (7/1/94). The actual transfer of most functions did not take place until approximately January 1, 1996. Some of the functions such as testing, license renewals, etc., still have not been transferred.

Section 20.42, F.S., created the Agency for Health Care Administration (AHCA) and the various divisions. The Division of Health Quality Assurance is responsible for health facility licensure and inspection and the various medical boards and professions listed in s 20.42(2). F.S. However, AHCA has divided the medical professions into the Division of Medical Quality Assurance (MQA). Naturopathy and medical physicians were not originally included. Medical physicians regulated under part V of ch 483, F.S., were first regulated by the Legislature in 1995, and naturopathy was not included due to an oversight because ch. 462, F.S., does not permit the state to license additional licensees under this chapter. Presently, there are approximately 13 active licensees

In 1996, HB 555 (ch 96-403, Laws of Florida), created the Department of Health and transferred a number of functions to this new agency. Among the functions transferred were all of the medical boards in the Division of Medical Quality Assurance of AHCA, and four other professions from the Department of Business and Professional Regulation. All transfers were by a type two transfer, and effective 7/1/97. The four professions were the Board of Massage, Athletic Trainers, the Board of Hearing Aid Specialists, and Health Care Service Pools. Effective 7/1/97, there will be 36 professions in the Division of Medical Quality Assurance of the Dept of Health (DOH). The law transferring all of the various medical boards from AHCA provided that DOH would contract with AHCA to perform the function of receiving complaints, investigations, and prosecutions.

GENERAL BPR/AHCA/DOH ADMINISTRATION - CHAPTER 455, Florida Statutes

No provision was made in chapter 455, F.S., for certain functions necessary for the administration of the various medical boards by DOH. Functions relating to rulemaking authority and emergency suspension of medical professionals determined to be a danger to the general public if allowed to continue practicing Chapter 455, F.S., currently provides administrative authority for most functions to either the DBPR, the AHCA or both. In many instances however, authority granted to the DBPR is either not granted the AHCA or it is unclear as to whether the AHCA has the authority. Chapter 455, F.S., must be amended to clarify that these areas relate to the medical boards and grant the necessary authority to the new DOH to administer the medical boards

Section 381.81(2), F.S., of the Minority Health Improvement Act provides the definition of "health profession." All of the medical professions are included in the definition with the exception of naturopathy and medical physicians and the four professions (Board of Massage, Athletic Trainers, the Board of Hearing Aid Specialists, and Health Care Services Pools) being transferred effective 7/1/97

"Health care practitioner" is defined in the definitions included in s 455.01(4), F.S. All of the medical professions currently located in MQA are include in the definition with the exception of

midwifery (ch. 467), nursing home administrator (part II of ch. 468), clinical laboratory personnel, and medical physicists (parts IV and V of ch. 483, F.S., respectively). Also, the four professions being transferred to MQA effective 7/1/97 are not included. The four professions are the Board of Massage (ch. 480), Athletic Trainers (part XIV of ch. 468), the Board of Hearing Aid Specialists (part II of ch. 484), and Health Care Service Pools (ch. 402.48).

Section 455.02, F.S., provides for licensees that are spouses of members of the armed forces in good standing with the boards listed in s. 20 165, F.S., to be exempt from licensure renewal. This only lists non-medical boards at the present time. Because of the transfer, all medical boards are listed in 20 42, F.S.

Currently, all committees appointed by any board must be composed of serving board members except as otherwise provided in this chapter (455 207, F.S.) or applicable practice act.

Section 455 214, F.S., provides that a recipient of a limited license may practice only in the employ of public institutions or agencies which meet the requirements of s. 501(c)(3) of the Internal Revenue Code and which provides professional liability coverage for acts of omissions of the limited licensee. The services are to be provided to the indigent, underserved, or critical need populations of the state. To receive a limited license, an applicant must be retired from the applicable profession.

It is not currently clear that ss. 455 219 and 455.2281, F.S., relating to finances, long-range planning, disposition of funds and unlicensed activity fees, applies to both medical and non-medical boards.

The department and each appropriate board within the Division of Medical Quality Assurance (agency) have the authority to establish procedures to handle, counsel, and provide other services to licensees with hepatitis B or AIDS within their respective boards (455 2224, F.S.). There is no specific recommendation to be followed by the boards in developing such procedures.

Section 455.24, F.S., provides guidelines for the advertisement by a health care provider of free or discounted services. It allows the public 72 hours to request a refund or refuse payment for any additional services provided as a result of accepting the free or discounted services. It lists the covered health care providers but does not list all of the professions. It applies to written advertisements and does not cover audio or video advertisements.

Section 455.25, F.S., provides for disclosure of a financial interest by entities and physicians who refer a patient to an entity in which the physician or other health care provider is an investor. The financial interest must be disclosed, and the names and addresses of alternative sources of such items or services must be provided.

Chapter 455, F.S., currently includes provision for health care practitioners to give copies of records to patients, but is unclear about ownership of records, especially for group practices and staff-model health maintenance organizations (HMOs).

B. EFFECT OF PROPOSED CHANGES:

The major effect of the bill is to create the administration authority necessary for the Department of Health (DOH) to administer the 36 medical professions that will be transferred effective 7/1/97 as provided in HB 555 (ch 96-403, Laws of Florida).

It creates ss. 455.401 through 455.469, F.S., as Part II of Chapter 455, F.S., and only applies to the DOH (Sections 1-64). Most of these sections are copied from existing law in chapter 455, F.S., that is applicable to the Department of Business and Professional Regulation and/or the Agency for Health Care Administration.

However, ss. 455.247, 455.2055, 455.2141, 455.2142, 455.2173, 455.222, 455.2224, 455.241, 455.2415, 455.2416, 455.244, 455.2455, and 455.2456, F.S., are transferred to Part II and simply renumbered. Sections 455.2205, relating to Health Care Trust Fund, 455.24, 455.242, 455.243, and 455.245, F.S., relating to veterinary medicine, are amended and transferred. Sections 455.220 and 455.2226, F.S., are repealed.

Section 64 of the bill designates existing sections 455.01 through 455.275, F.S., as Part I of Chapter 455, F.S., and only applies to DBPR and the non-medical boards they have responsibility to administer. Section 97 of the bill amends s 455.25, F.S., relating to disclosure of a financial interest by entities and physicians who refer a patient to an entity in which the physician or other health care provider is an investor. The change deletes the requirement that entities must disclose ownership interests of physicians and other health care providers to the patients. It does not change the requirement for physicians and health care providers to provide the required financial information. Also, they must provide the names and addresses of alternative sources of such items or services.

Sections 65-261 of the bill contain numerous chapters that are amended to correct cross references, terminology, and definitions. Chapters included are: chapters 20, 120, 212, 215, 240, 310, 337, 381, 383, 395, 400, 402, 408, 415, 440, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 480, 481, 483, 484, 486, 489, 490, 491, 492, 627, 636, 641, 766, 937, F.S.

A few of the issues either added by the PCB or changes made are:

Provides clear authority to DOH to adopt policies and rules for the administration of the Division of Medical Quality Assurance (all health care practitioners). The Secretary of DOH is granted the authority for emergency suspension of health care practitioners deemed a threat to public safety. DOH is granted clear authority to provide for computerized testing whenever feasible.

Requires DOH to contract with AHCA for the complaint, investigation, and discipline of health care practitioners.

Ownership of records and responsibility for transferring custody of medical records to a different health care practitioner is clearly defined in the newly created s 455.454, F.S.

The Secretary of DOH is required to appoint a task force to develop uniform procedures to standardize the validation of health care practitioner credentials. Once credentials are validated, they would be accepted by all health care providers and facilities. The task force is composed of representatives from various health care practitioners and providers located in Florida.

It clarifies that DOH is required to do long-range planning (minimum of 5 years) and provide such reports and any updates to the Legislature and Governor each year.

To enhance criminal background investigations, DOH is authorized to do fingerprint checks through various law enforcement agencies

Default on a federal or state guaranteed loan or service-conditional scholarship is added as grounds for disciplinary action

C APPLICATION OF PRINCIPLES

1. Less Government.

a Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No.

b If an agency or program is eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not Applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not Applicable

(3) how is the new agency accountable to the people governed?

Not Applicable.

2 Lower Taxes:

a Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3 Personal Responsibility.

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

Not Applicable.

b Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not Applicable.

4 Individual Freedom.

5. Family Empowerment
- a Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?
Not Applicable.
- b Does the bill prohibit, or create new government interference with, any presently lawful activity?
Not Applicable.

a If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?
Not Applicable.

(2) Who makes the decisions?
Not Applicable.

(3) Are private alternatives permitted?
Not Applicable.

(4) Are families required to participate in a program?
Not Applicable.

Not Applicable

(5) Are families penalized for not participating in a program?
Not Applicable.

b. Does the bill directly affect the legal rights and obligations between family members?
Not Applicable.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not Applicable.

(2) service providers?

Not Applicable

(3) government employees/agencies?

Not Applicable

D. SECTION-BY-SECTION ANALYSIS

Note - The bill creates ss 455 401 through 455.469, F.S., as Part II of Chapter 455, F.S., which only applies to the DOH (Sections 1-64) Most of these sections are copied from existing law in chapter 455, F.S., that is applicable to the Department of Business and Professional Regulation and/or the Agency for Health Care Administration. However, ss. 455.247, 455.2055, 455.2141, 455.2142, 455.2173, 455.222, 455.2224, 455.241, 455.2416, 455.2416, 455.244, 455.2455, and 455.2456, F.S. are transferred to Part II and simply renumbered Sections 455.2205, relating to the Health Care Trust Fund, and 455.24, 455.242, 455.243, 455.245, F.S., relating to veterinary medicine, are transferred. Sections 455.220 and 455.2226, F.S., are repealed

Section 1. Designates ss 455 401 through 455.469, F.S., as Part II of chapter 455, F.S., and entitled "Department of Health Regulation of Health Care Practitioners "

Section 2. Creates s. 455 401, F.S., and states it is the intent of the Legislature that all policy making and rulemaking authority relating to the regulation of health care practitioners and the Division of Medical Quality Assurance belongs to the Department of Health (DOH), including consumer complaint, investigative, and prosecutorial services. Based on existing law, the DOH contracts with the AHCA for consumer complaint, investigative, and prosecutorial services.

Section 3. Creates s. 455 402, F.S., to provide for definitions for regulation of health care practitioners

Section 4. Creates s. 455.403, F.S., and provides that all provisions of Part II, apply to the regulation of health care practitioners under the jurisdiction of DOH

Section 5. Creates s. 455.404, F.S., relating to members or spouses of members of the armed forces in good standing with their respective licensing board.

Section 6. Creates s. 455.405, F.S., providing a person may not be disqualified from licensure solely for lack of citizenship.

Section 7. Creates s. 455 406, F S , providing qualification of immigrants for examination to practice a licensed profession

Section 8. Creates s. 455 407, F S , providing for sale of services and information by the department

Section 9. Creates s. 455.408, F S., to provide it is legislative intent that professions be regulated only for the preservation the health, safety, and welfare of the public and not to unreasonably restrict competition. Policies adopted by the department shall ensure expenditures are made in the most cost-effective manner to maximize competition and public access to meetings.

Section 10. Creates s. 455 409, F S , to provide the powers and duties of the DOH. In addition, it provides for the Secretary of DOH to appoint a task force to develop uniform procedures to standardize the validation of health care practitioner credentials. Once credentials are validated, they would be accepted by all health care providers and facilities. The task force is composed of representatives from various health care practitioners and providers located in Florida

Section 11. Creates s. 455 511, F.S , to require long-range policy planning with reports to the Governor and Legislature by DOH

Section 12. Creates s. 455 412, F S , to provide for contacting the boards through the department

Section 13 Renumbers s. 455.2055, F S., as s. 455.413, F S. It relates to board membership appointments. It provides for consumer membership on the various boards.

Section 14 Creates s. 455 414, F.S., relating to board members who are physicians required by 458.307(2)(a), F S , to be on the faculty of a medical school or staff of a teaching hospital in this state.

Section 15 Creates s. 455 415, F S , providing for board organization, meetings, compensation, and travel expenses.

Section 16 Creates s. 455 416, F S., provides authority for publication of a newsletter relative to actions of the department or boards or any other information of interest to the public.

Section 17 Creates s. 455 417, F S , relative to accountability and liability of board members.

Section 18 Creates s. 455 418, F.S., relative to board rules, final agency action, and challenges by the Secretary of any rule or proposed rule of a board.

Section 19 Creates s. 455 419, F S , relative to demonstration of competency in lieu of a specific number of clock-hour requirements for initial licensure

- Section 20 Creates s. 455.421, F.S., relative to educational programs and institutions accredited by an agency that no longer performs an accrediting function.
- Section 21 Creates s. 455.422, F.S., relative to consultation with postsecondary education boards prior to adoption of changes to training requirements
- Section 22 Renumbers s. 455.2141, F.S., as s. 455.423, F.S., dealing with general licensing provisions. Provides for a criminal background check (including fingerprinting) by a law enforcement agency of an initial applicant for licensure. Provides for an extension of the due date if it falls on a Saturday, Sunday, or a legal holiday.
- Section 23 Creates s. 455.424, F.S., relative to the issuance of limited licenses to health care practitioners to serve the indigent when they are planning to retire. This section does not apply to chapter 458 and 459 licenses.
- Section 24 Renumbers s. 455.2142, F.S., as s. 455.425, F.S., dealing with sexual misconduct
- Section 25 Renumbers s. 455.2173, F.S., as s. 455.426, F.S., dealing with examinations and makes a number changes relative to security, national examinations, and contract vendors.
- Section 26 Creates s. 455.427, F.S., authorizing the DOH to use a professional testing service to prepare, administer, grade, and evaluate any computerized examination when the service is approved by the board, or the department when there is no board
- Section 27 Creates s. 455.428, F.S., providing a penalty for theft or reproduction of an examination.
- Section 28 Creates s. 455.429, F.S., providing special conditions for licensure and examination of certain foreign-trained professionals who successfully completed prior to 1980, certain courses of study.
- Section 29 Creates s. 455.431, F.S., providing an exemption from Florida licensure for certain out-of-state/foreign professionals who are employed or designated in a professional capacity by a sports entity visiting the state for a specific sporting event.
- Section 30 Creates s. 455.432, F.S., relating to fees, receipts, disposition, and periodic management reports. It states that it is legislative intent that no profession operate with a negative cash balance. Each profession shall ensure that fees are adequate to cover all costs and maintain a reasonable cash balance.
- Section 31 Creates s. 455.433, F.S., relating to legal and investigative services. A board shall contract through the DOH contract through the Department of Legal Affairs from the Department of Legal Affairs.

Section 32. Renumbers s 455 222, F S , as 455 434, F.S , dealing with the requirement for instruction on domestic violence.

Section 33 Renumbers s 455,2224, F S , as 455 435, F.S., dealing with hepatitis B or human immunodeficiency carriers.

Section 34. Creates s. 455 436, F S , providing for licensees of certain chapters to complete a continuing education course on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure.

Section 35 Creates s. 455,438, F.S., providing for power t administer oaths, take depositions, and issue subpoenas

Section 36 Creates s 455 439, providing for mediation of certain designated offenses where harm is economic in nature or can be remedied by the licensee

Section 37 Creates s 455 441, F S , providing authority to issue citations for certain minor violations If the licensee objects, the procedures established in s 455,442, F.S , must be used.

Section 38 Creates s. 455 442, F S , providing for disciplinary proceedings to be followed for receiving , investigating and prosecuting potential violations

Section 39. Creates s. 455 443, F S , providing grounds for discipline, penalties, and enforcement of these provisions Default on a federally or state guaranteed educational loan or service-conditional scholarship is added as grounds for disciplinary action.

Section 40. Creates s 455 444, F S , providing for disciplinary guidelines.

Section 41. Creates s. 455 445, F S., providing a penalty for giving false information

Section 42 Creates s. 455 446, F.S , providing for the reporting of criminal violations to the proper prosecuting authority

Section 43 Creates s. 455 447, F.S., relating to the unlicensed practice of a profession. Provides for cease and desist notices; civil penalties; enforcement; citations, and allocation of moneys collected

Section 44. Creates s. 455 448, F.S., providing for an unlicensed activity fee to be collected from each licensee and used to combat unlicensed activity.

Section 45 Creates s 455,449, F S., providing for an annual report concern finances, administrative complaints, disciplinary actions, and recommendations to be provided the Legislature.

Section 46 Creates s 455,451, F S , providing for public inspection of information required from applicants, with certain exceptions

Section 47 Creates s 455 452, F S , prohibiting disclosure of confidential information.

Section 48 Creates s 455 453, F.S., relating to advertisement by a health care practitioner of free or discounted services. Such advertisements must contain a specified statement relating to other services provided

Section 49 Renumbers s 455.241, F.S., as s 455.454, F.S., relating to patient records. Ownership, control, and transfer of such records are changed to clarify definitions and who may or may not access or own medical records as herein defined. All record owners are required to develop and implement policies, standards, and procedures to protect the confidentiality and security of medical records (patient records).

Section 50 Renumbers s. 455.2415, F.S., as s 455 455, F.S., relating to exceptions to confidential communications between a patient and a psychiatrist

Section 51 Renumbers s. 455.2416, as s 455.456, F.S., relating to disclosure by a health care practitioner of certain otherwise confidential information relating to a patient who tested HIV positive. The practitioner has immunity from civil or criminal liability for disclosure of such information to a sexual partner or needle-sharing partner of the patient

Section 52 Creates s 455 457, F.S., providing for disposition of records of deceased health care practitioners, or practitioners relocating or terminating practice

Section 53 Creates s. 455 458, F.S., providing authority (in addition to 465 017), to inspect any pharmacy or establishment where a licensee is authorized to prescribe controlled substances as specified in chapter 893 F.S

Section 54 Renumbers s 455 244, F.S., as 455.459, F.S., prohibiting denial of payment for services provided by a chiropractic or podiatrist solely on the basis that they are not a member of a particular organization

Section 55 Creates s. 455.461, F.S., providing the DOH with the power to issue an emergency order suspending the license of any health care practitioner under certain conditions or when the Secretary believes such licensee poses an eminent danger to the public.

Section 56 Renumbers s 455 2455, F.S., as s 455.462, F.S., relating to treatment of Medicare beneficiaries

Section 57 Renumbers s 455 2456, F.S., as 455.463, F.S., relating to malpractice insurance requirements for the following boards: Acupuncture, Chiropractic, Podiatric Medicine, and Dentistry.

Section 58 Renumbers s 455.247, F.S., as 455 464, F.S., relating to reports on professional liability claims and actions for any practitioner licensed by the following boards: Medicine, Osteopathic Medicine, Podiatric Medicine, and Dentistry.

Section 59 Creates s. 455 465, F.S., providing for an Impaired Health Care Practitioners Committee and lists its membership and duties

Section 60. Creates s. 455.466, F.S., providing for impaired health care practitioners in programs for those professions which do not provide for such programs in their practice acts. The department, by rule, is authorized to designate approved treatment programs

Section 61. Creates s. 455.467, F.S., providing for inactive, delinquent status, and reactivation procedures to be followed for all health care practitioners

Section 62. Creates s. 455.468, F.S., providing for renewal and cancellation notices.

Section 63. Creates s. 455.469, F.S., providing for address of record and requirement that it is each practitioners responsibility to notify the department in writing of their current mailing address and primary place of practice.

Section 64. Sections 455.01 through 455.2775, F.S., are designated as Part I of chapter 455, F.S., and entitled the "Department of Business and Professional Regulation. Regulation of Professions."

Sections 65-96 and 98-261. Pages 95 through 220.
These sections of the bill contain numerous chapters that are **only** amended to correct cross references, terminology, definitions, or to conform. Chapters included are: chapters 20, 120, 212, 215, 240, 310, 337, 381, 383, 395, 400, 402, 408, 415, 440, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 480, 481, 483, 484, 486, 489, 490, 491, 492, 627, 636, 641, 766, 937, F.S.

Section 97. Amends s. 455.25, F.S., relating to disclosure of a financial interest by entities and physicians who refer a patient to an entity in which the physician or other health care provider is an investor. The change deletes the requirement that entities must disclose ownership interests of physicians or other health care providers to the patients. It does not change the requirement for physicians and health care providers to provide the required financial information. Also, they must provide the names and addresses of alternative sources of such items or services.

Section 262. Provides an effective date of July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT.

A FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS.

B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE.

1. Non-recurring Effects:
None.
2. Recurring Effects:
None.
3. Long Run Effects Other Than Normal Growth
None.
4. Total Revenues and Expenditures
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR.

1. Non-recurring Effects
None.
2. Recurring Effects:
None.
3. Long Run Effects Other Than Normal Growth
None.

D FISCAL COMMENTS.

1. Direct Private Sector Costs.
None.
2. Direct Private Sector Benefits.
None. However, certain provisions are included that should enable DOH to eliminate or penalize unqualified potential health care licensees
3. Effects on Competition, Private Enterprise and Employment Markets
None

The bill requires new applicants to provide a full set of fingerprints to be used in a criminal background check. Per DOH, this costs approximately \$29 per applicant.

IV CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION

A APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds

B. REDUCTION OF REVENUE RAISING AUTHORITY

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate

C REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES.

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V COMMENTS:

None

VI AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES

None.

VII SIGNATURES

COMMITTEE ON HEALTH CARE STANDARDS & REGULATORY REFORM.
Prepared by
Legislative Research Director.

Robert W. Coggins

Robert W. Coggins

HOUSE OF REPRESENTATIVES

COMMITTEE ON HEALTH CARE STANDARDS & REGULATORY REFORM
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL # : HB 1925

RELATING TO: Administrative Authority of Department of Health for Medical Practitioners
SPONSOR(S): Committee on Health Care Standards & Regulatory Reform and Representatives Jones, Lippman and others

STATUTE(S) AFFECTED: Creates ss. 455.501 through 455.724, F.S., as Part II of Chapter 455, F.S. Sections 455.206, 455.2141, 455.2142, 455.2173, 455.220, 455.2205, 455.222, 455.2224, 455.236, 455.237, 455.239, 455.241, 455.2415, 455.2416, 455.244, 455.245, 455.2456, 455.247, 455.25, 455.26, 455.261, 455.277, and 455.2775, F.S. are transferred to Part II, renumbered and amended. Section 455.2055, F.S. is repealed. Sections 20.43, 408.18, 408.185, 458.3115, 458.3124, 458.320, 458.331, 459.0085, 459.015, 627.912, 468.1645, F.S., are amended to correct cross references, terminology, definitions, and make substantive changes.

COMPANION BILL(S): SB 1632(s), HB 609(c), CS/HB 1643(c), HB 1993(c), HB 2013(c), SB 100(c), CS/SB 948(c), SB 1590(s), CS/CS/SB 1814(c), CS/CS/SB 2142(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE: (1) HEALTH CARE STANDARDS & REGULATORY REFORM YEAS 8 NAYS 0
(2) SENATE HEALTH CARE (W/D)
(3) SENATE WAYS AND MEANS (W/D)

I. SUMMARY:

The major effect of the bill is to create the administrative authority necessary for the Department of Health (DOH) to administer the 36 medical professions that will be transferred effective 7/1/97 as provided in HB 555 (ch. 96-403, Laws of Florida). It creates ss. 455.501 through 455.724, F.S., as Part II of Chapter 455, F.S., and only applies to the DOH. Most of these sections are copied from existing law in chapter 455, F.S., that are applicable to the Department of Business and Professional Regulation and/or the Agency for Health Care Administration. Section 101 of the bill designates existing sections 455.01 through 455.275, F.S., as Part I of Chapter 455, F.S., and only applies to DBPR and the non-medical boards they have responsibility to administer.

It provides clear authority to DOH to adopt policies and rules for the administration of all health care practitioners. DOH is granted clear authority to provide for computerized testing if feasible. DOH is required to contract with the AHCA for the complaint, investigation, and discipline of health care practitioners. The Secretary of DOH is required to appoint a task force to develop uniform procedures for the validation of health care practitioner credentials in Florida.

The financial responsibility sections of both chs. 458 and 459 are modified and DOH is authorized to suspend the license of any licensee who fails to comply with the revised requirements. Provisions are added for foreign-licensed physicians who meet certain conditions to take either a department-developed examination or the USMLE examination. The bill will have a significant fiscal impact on the state, and none on local government, or the private sector.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 20.165, F.S., created the Department of Business and Professional Regulation (DBPR), the various divisions, including the Division of Medical Quality Assurance with the various medical boards and professions. Chapter 92-33, L.O.F., transferred the various medical boards and professions from DBPR to the Agency for Health Care Administration (agency), Division of Health Quality Assurance, effective July 1, 1993. The July 1, 1993 date was delayed by the 1993 Legislature for one year (7/1/94). The actual transfer of most functions did not take place until approximately January 1, 1996. Some of the functions such as testing, license renewals, etc., still have not been transferred.

Section 20.42, F.S., created the Agency for Health Care Administration (AHCA) and the various divisions. The Division of Health Quality Assurance is responsible for health facility licensure and inspection and the various medical boards and professions listed in s. 20.42(2), F.S. However, AHCA has divided the medical professions into the Division of Medical Quality Assurance (MQA). Naturopathy and medical physicians were not originally included. Medical physicians regulated under part V of ch. 483, F.S., were first regulated by the Legislature in 1995, and naturopathy was not included due to an oversight because ch. 462, F.S., does not permit the state to license additional licensees under this chapter. Presently, there are approximately 13 active licensees.

In 1996, HB 555 (ch. 96-403, Laws of Florida), created the Department of Health and transferred a number of functions to this new agency. Among the functions transferred were all of the medical boards in the Division of Medical Quality Assurance of AHCA, and four other professions from the Department of Business and Professional Regulation. All transfers were by a type two transfer, and effective 7/1/97. The four professions were the Board of Massage, Athletic Trainers, the Board of Hearing Aid Specialists, and Health Care Service Pools. Effective 7/1/97, there will be 36 professions in the Division of Medical Quality Assurance of the Dept of Health (DOH). The law transferring all of the various medical boards from AHCA provided that DOH would contract with AHCA to perform the function of receiving complaints, investigations, and prosecutions.

GENERAL BPR/AHCA/DOH ADMINISTRATION - CHAPTER 455, Florida Statutes

No provision was made in chapter 455, F.S., for certain functions necessary for the administration of the various medical boards by DOH. Functions relating to rulemaking authority and emergency suspension of medical professionals determined to be a danger to the general public if allowed to continue practicing. Chapter 455, F.S., currently provides administrative authority for most functions to either the DBPR, the AHCA or both. In many instances however, authority granted to the DBPR is either not granted the AHCA or it is unclear as to whether the AHCA has the authority. Chapter 455, F.S., must be amended to clarify that these areas relate to the medical boards and grant the necessary authority to the new DOH to administer the medical boards.

Section 381.81(2), F.S., of the Minority Health Improvement Act provides the definition of "health profession." All of the medical professions are included in the definition with the exception of naturopathy and medical physicists and the four professions (Board of Massage, Athletic Trainers, the Board of Hearing Aid Specialists, and Health Care Services Pools) being transferred effective 7/1/97.

"Health care practitioner" is defined in the definitions included in s. 455.01(4), F.S. All of the medical professions currently located in MQA are included in the definition with the exception of midwifery (ch. 467), nursing home administrator (part II of ch. 468), clinical laboratory

personnel, and medical physicians (parts IV and V of ch. 483, F.S., respectively). Also, the four professions being transferred to MQA effective 7/1/97 are not included. The four professions are the Board of Massage (ch. 480), Athletic Trainers (part XIV of ch. 468), the Board of Hearing Aid Specialists (part II of ch. 484), and Health Care Service Pools (ch. 402.48).

Section 455.02, F.S., provides for licensees that are spouses of members of the armed forces in good standing with the boards listed in s. 20.165, F.S., to be exempt from licensure renewal. This only lists non-medical boards at the present time. Because of the transfer, all medical boards are listed in 20.42, F.S.

Currently, all committees appointed by any board must be composed of serving board members except as otherwise provided in this chapter (455.207, F.S.) or applicable practice act.

Section 455.214, F.S., provides that a recipient of a limited license may practice only in the employ of public institutions or agencies which meet the requirements of s. 501(c)(3) of the Internal Revenue Code and which provides professional liability coverage for acts or omissions of the limited licensee. The services are to be provided to the indigent, underserved, or critical need populations of the state. To receive a limited license, an applicant must be retired from the applicable profession.

It is not currently clear that ss. 455.219 and 455.2281, F.S., relating to finances, long-range planning, disposition of funds and unlicensed activity fees, applies to both medical and non-medical boards.

The department and each appropriate board within the Division of Medical Quality Assurance (agency) have the authority to establish procedures to handle, counsel, and provide other services to licensees with hepatitis B or AIDS within their respective boards (455.2224, F.S.). There is no specific recommendation to be followed by the boards in developing such procedures.

Section 455.24, F.S., provides guidelines for the advertisement by a health care provider of free or discounted services. It allows the public 72 hours to request a refund or refuse payment for any additional services provided as a result of accepting the free or discounted services. It lists the covered health care providers but does not list all of the professions. It applies to written advertisements and does not cover audio or video advertisements.

Section 455.25, F.S., provides for disclosure of a financial interest by entities and physicians who refer a patient to an entity in which the physician or other health care provider is an investor. The financial interest must be disclosed, and the names and addresses of alternative sources of such items or services must be provided.

Section 455.225, F.S., provides for the Agency to investigate all complaints filed and to report to the appropriate board if a complaint is not resolved within one (1) year after filing of the complaint.

Chapter 455, F.S., currently includes provision for health care practitioners to give copies of records to patients, but is unclear about ownership of records, especially for group practices and staff-model health maintenance organizations (HMOs).

FINANCIAL RESPONSIBILITY - CHAPTERS 458 & 459, Florida Statutes

Currently chapters 458 and 459, F.S., exempts medical and osteopathic physicians from the mandated financial responsibility requirements if they have had no more than two medical malpractice claims resulting in an indemnity within the prior 5 years if the claims do not exceed \$10,000. "Repeated malpractice" includes, but is not limited to, three or more claims for medical malpractice within the prior 5 year period if claims were paid in excess of \$10,000 each.

There is currently no provision for an emergency suspension of a medical or osteopathic physician's license for failure to comply with the financial requirements of the respective chapters. Provision is provided for an emergency suspension of a license by the Secretary if continued practice would place the health, safety, or welfare of the general public in jeopardy.

FOREIGN LICENSED PHYSICIANS - CHAPTER 458, Florida Statutes

Chapter 458, F.S., relating to medical physicians contains several provisions relating to certain qualified individuals licensed in foreign countries. One provision provides for Miami either in 1990 or 1992, and were approved by the Board of Medicine, to take the examination for Florida licensure. In 1992, the university used a Stanley Kaplan course as one of the courses because of the large number of approved applicants. However, there were a number of individuals who took the Stanley Kaplan course that had not received prior approval by the Board of Medicine. Since that time, these individuals have been denied the opportunity to take the board-approved medical examinations.

Last year, the Legislature created s. 458.3115, F.S., which provided for the Board of Medicine to allow the approved applicants from 1990 and 1992, who met certain other conditions, to take either the USMLE examination or a state-developed examination. There was no set date for the Board of Medicine to have the state-developed examination ready to be administered. The board staff has stated that it would take a minimum of two years to develop a quality examination. This section did not apply to the foreign physicians who took the Stanley Kaplan course without prior approval of the Board of Medicine.

In addition, s. 458, F.S., currently requires all graduates of a foreign medical school to serve a minimum of three years in a residency (training) program. Graduates of an American medical school are required to serve only a one year residency program. Foreign licensed physicians must pass parts I and II of the USMLE examination and also take the three year residency program. Because of the limited number of slots, it has been difficult if not impossible for foreign licensed physicians to obtain any of the limited number of slots.

Consideration has been given to allowing certain of the foreign licensed physicians who meet certain conditions, to serve their residency in the prison system, areas of critical concern, or such other areas as approved by the Board of Medicine. However, this would take a change in the law. An attempt was made last year, but it did not succeed.

B. EFFECT OF PROPOSED CHANGES:

The major effect of the bill is to create the administration authority necessary for the Department of Health (DOH) to administer the 36 medical professions that will be transferred effective 7/1/97 as provided in HB 555 (ch. 96-403, Laws of Florida).

It creates ss. 455.501 through 455.724, F.S., as Part II of Chapter 455, F.S., which only applies to the DOH (Sections 33-97). Most of these sections are copied from existing law in chapter 455, F.S., that is applicable to the Department of Business and Professional Regulation and/or the Agency for Health Care Administration.

However, ss. 455.206, 455.2141, 455.2142, 455.2173, 455.220, 455.2205, 455.222, 455.2224, 455.236, 455.237, 455.239, 455.241, 455.2415, 455.2416, 455.244, 455.2455, 455.2456, 455.247, 455.25, 455.26, 455.261, 455.277, and 455.2775, F.S., are transferred to Part II, renumbered and amended. Section 455.2055, F.S., is repealed.

Section 101 of the bill designates existing sections 455.01 through 455.275, F.S., as Part I of Chapter 455, F.S., and only applies to DBPR and the non-medical boards they have responsibility to administer.

A few of the issues either added by the bill or changes made are:

Provides clear authority to DOH to adopt policies and rules for the administration of the Division of Medical Quality Assurance (all health care practitioners). The Secretary of DOH is granted the authority for emergency suspension of health care practitioners deemed a threat to public safety. DOH is granted clear authority to provide for computerized testing whenever feasible.

Requires DOH to contract with AHCA for the complaint, investigation, and discipline of health care practitioners.

Ownership of records and responsibility for transferring custody of medical records to a different health care practitioner is clearly defined in the newly created s. 455.667, F.S. (section 82).

The department must complete the report of its initial investigative findings and recommendations concerning the existence of probable cause within 6 months after receipt of the complaint.

The Secretary of DOH is required to appoint a task force to develop uniform procedures to standardize the validation of health care practitioner credentials. Once credentials are validated, they would be accepted by all health care providers and facilities. The task force is composed of representatives from various health care practitioners and providers located in Florida.

It clarifies that DOH is required to do long-range planning (minimum of 5 years) and provide such reports and any updates to the Legislature and Governor each year. The financial responsibility sections of both chs. 458 and 459 are modified and DOH is authorized to issue an emergency suspension of the license of any licensee who fails to comply with the revised requirements. The minimum medical malpractice total of two claims within the previous five year period is raised from exceeding \$10,000 to exceeding \$25,000.

Professional liability claims and actions reported pursuant to s. 627.912, F.S., is amended to require all reports to be filed within 30 days (from 60 days) of a final judgement in any amount. If the insured party is licensed under chs. 458, 459, 461, or 466, F.S., reports shall be filed with the Agency for Health Care Administration as well as with the Department of Insurance. For purposes of safety management, the department shall annually provide the Department of Health with copies of the reports in cases resulting in an indemnity being paid to the claimants. In addition, the department may impose a fine of \$250 per day per case, not to exceed \$1,000 per case, against an insurer that violates the requirements of this section. The penalties applies to claims accruing on or after October 1, 1997.

Non-related amendments: Nursing home administrators employed by nursing homes who rely exclusively upon treatment by spiritual means through prayer, in accordance with the creed or tenets of any organized church or religious denomination, are exempt from licensure.

Foreign-licensed physicians - Creates 3 additional provisions for certain qualified individuals:

1) Amends s. 458.3115, F.S., to require the state-developed examination to be made available no later than September 1, 1998, to foreign physicians qualifying for licensure under this section.

2) Amends s. 458.3115, F.S., to authorize additional persons to take the department developed examination authorized by this section, if such persons can document that he or she took and successfully completed the Stanley H. Kaplan course that was supervised by the University of Miami. At a minimum, the documentation must include class attendance records and the test score on the final course examination.

3) Creates s. 458.3124, F.S., which provides for a substitute for the two year residency program (it was changed from three to two years in HB 2013). It authorizes certain foreign licensed physicians who legally practiced medicine for at least 5 years in a foreign country, and who have passed Steps I and II of the USMLE examination and meet certain other requirements, to apply to take Step III of the examination. The restricted licensee must practice under the direct supervision of a licensee approved by the Board of Medicine for the first year, for the second year, under indirect supervision in community service, including public health units, prisons, organizations that serve indigent populations, or other organizations approved by the Board. Upon passage of Step III of the USMLE examination and completion of the two years of supervised service, the restricted licensee is eligible for full licensure as a physician.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not Applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not Applicable.

(3) how is the new agency accountable to the people governed?

Not Applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?
No.
- d. Does the bill reduce total fees, both rates and revenues?
No.
- e. Does the bill authorize any fee or tax increase by any local government?
No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?
Not Applicable.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?
Not Applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?
Not Applicable.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?
Not Applicable.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?
Not Applicable.

(2) Who makes the decisions?
Not Applicable.

(3) Are private alternatives permitted?
Not Applicable.

(4) Are families required to participate in a program?
Not Applicable.

(5) Are families penalized for not participating in a program?
Not Applicable.

b. Does the bill directly affect the legal rights and obligations between family members?
Not Applicable.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:
Not Applicable.

(1) parents and guardians?
Not Applicable.

(2) service providers?
Not Applicable.

(3) government employees/agencies?
Not Applicable.

D. SECTION-BY-SECTION ANALYSIS:

Note - The bill creates ss. 455.501 through 455.724, F.S., as Part II of Chapter 455, F.S., which only applies to the DOH (Sections 33-97). Most of these sections are copied from existing law in chapter 455, F.S., that is applicable to the Department of Business and Professional Regulation and/or the Agency for Health Care Administration.

However, ss. 455.206, 455.2141, 455.2142, 455.2173, 455.220, 455.2205, 455.222, 455.2224, 455.236, 455.237, 455.239, 455.241, 455.2415, 455.2416, 455.244, 455.2455, 455.2456, 455.247, 455.25, 455.26, 455.261, 455.277, and 455.2775, F.S., are transferred to Part II, renumbered and amended. Section 455.2055, F.S., is repealed.

Section 1. Amends s. 11 of chapter 96-403, L.O.F., to clarify that all functions, but personnel, property, and unexpended balances of appropriations related to consumer complaints, investigative and prosecutorial services, are transferred by a type two transfer, as defined in s. 20.06(2), F.S., and assigned to the Division of Medical Quality Assurance within the Department of Health, as created by this act. This was to clarify that all care practitioners and the Division of Medical Quality Assurance belongs to the Department of Health (DOH), including consumer complaint, investigative, and prosecutorial services. However, based on existing law, the DOH may contract with the AHCA for consumer complaint, investigative, and prosecutorial services.

Section 2. Amends s. 20.43, F.S., relating to the DOH, Division of Medical Quality Assurance to add the various functions applicable to appointment and terms of board members for the various professional boards. The requirement is changed to "may" from "shall" for the department to contract with AHCA for consumer complaint, investigative, and prosecutorial services.

Sections 3-32. Technical. Amends ss. 455.01 through 455.245, F.S., to correct cross references, terminology, definitions, and to make non-substantive changes. This will become Part I of chapter 455, relating to the Department of Business and Professional Regulation.

Section 33. Creates s. 455.501, F.S., relating to definitions for the boards within the Division of Medical Quality Assurance of the DOH. This is the first section of the new Part II of chapter 455, relating to Department of Health.

Section 34. Creates s. 455.504, F.S., relating to the applicability of part II. This part applies only to the regulation by the Department of Health of the medical professions.

Section 35. Creates s. 455.507, F.S., relating to members or spouses of members of the armed forces in good standing with their respective licensing board.

Section 36. Creates s. 455.511, F.S., providing a person may not be disqualified from licensure solely for lack of citizenship.

Section 37. Creates s. 455.514, F.S., providing qualification of immigrants for examination to practice a licensed profession.

Section 38. Creates s. 455.517, F.S., to provide it is legislative intent that professions be regulated only for the preservation the health, safety, and welfare of the public and not to unreasonably restrict competition. Policies adopted by the department shall ensure expenditures are made in the most cost-effective manner to maximize competition and public access to meetings.

Section 39. Creates s. 455.521, F.S., to provide the powers and duties of the DOH.

Section 40. Creates s. 455.524, F.S., to require long-range policy planning with reports to the Governor and Legislature by DOH.

Section 41. Creates s. 455.527, F.S., to provide for contacting the boards through the department.

Section 42. Renumbers s. 455.206, F.S., as s. 455.531, F.S. It relates to board membership appointments and allows members to be connected with medical or dental schools under certain conditions. It also provides for board members who are physicians required by 458.307(2)(a), F.S., to be on the faculty of a medical school or staff of a teaching hospital in this state.

Section 43. Creates s. 455.534, F.S., providing for board organization, meetings, compensation, and travel expenses.

Section 44. Creates s. 455.537, F.S., providing authority for publication of a newsletter relative to actions of the department or boards or any other information of interest to the public.

Section 45. Creates s. 455.541, F.S., relative to accountability and liability of board members.

Section 46. Creates s. 455.544, F.S., relative to board rules, final agency action, and challenges by the Secretary of any rule or proposed rule of a board.

Section 47. Creates s. 455.547, F.S., relative to demonstration of competency in lieu of a specific number of clock-hour requirements for initial licensure.

Section 48. Creates s. 455.551, F.S., relative to educational programs and institutions accredited by an agency that no longer performs an accrediting function.

Section 49. Creates s. 455.554, F.S., relative to consultation with postsecondary education boards prior to adoption of changes to training requirements.

Section 50. Creates s. 455.561, F.S., relative to the issuance of limited licenses to health care practitioners to serve the indigent when they are planning to retire. This section does not apply to chapter 458 and 459 licenses.

Section 51. Renumbers s. 455.2141, F.S., as s. 455.564, F.S., dealing with general licensing provisions. Provides for an extension of the due date if it falls on a Saturday, Sunday, or a legal holiday.

Section 52. Renumbers s. 455.2142, F.S., as s. 455.567, F.S., dealing with sexual misconduct.

Section 53. Creates s. 455.571, F.S., authorizing the DOH to use a professional testing service to prepare, administer, grade, and evaluate any computerized examination when the service is approved by the board, or the department when there is no board.

- Section 54. Renumbers s. 455.2173, F.S., as s. 455.574, F.S., dealing with examinations and makes a number changes relative to security, national examinations, and contract vendors.
- Section 55. Creates s. 455.577, F.S., providing a penalty for theft or reproduction of an examination.
- Section 56. Creates s. 455.581, F.S., providing special conditions for licensure and examination of certain foreign-trained professionals who successfully completed prior to 1980, certain courses of study.
- Section 57. Creates s. 455.584, F.S., providing an exemption from Florida licensure for certain out-of-state/foreign professionals who are employed or designated in a professional capacity by a sports entity visiting the state for a specific sporting event.
- Section 58. Renumbers s. 455.220, F.S., as s. 455.587, F.S., relating to fees, receipts, disposition, and periodic management reports. It states that it is legislative intent that no profession operate with a negative cash balance. Each profession shall ensure that fees are adequate to cover all costs and maintain a reasonable cash balance.
- Section 59. Renumbers and transfers s. 455.2205, F.S., as s. 408.16, F.S., relating to the Health Care Trust Fund used by the Agency for Health Care Administration.
- Section 60. Creates s. 455.594, F.S., relating to legal and investigative services. A board shall contract through the DOH contract procedures for board counsel from the Department of Legal Affairs.
- Section 61. Renumbers s. 455.222, F.S., as 455.597, F.S., dealing with the requirement for instruction on domestic violence.
- Section 62. Renumbers s. 455.2224, F.S., as 455.601, F.S., dealing with hepatitis B or human immunodeficiency carriers.
- Section 63. Creates s. 455.604, F.S., providing for licensure of certain chapters (457, 458, 459, 460, 461, 463, 464, 465, 466, part II, III, or V of 468, or 486) to complete a continuing education course on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial licensure.
- Section 64. Creates s. 455.607, F.S., providing for licensure of chapters 480 or part XIV of 468 to complete a continuing education course on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial licensure.
- Section 65. Creates s. 455.611, F.S., providing for power to administer oaths, take depositions, and issue subpoenas.
- Section 66. Creates s. 455.614, providing for mediation of certain designated offenses where harm is economic in nature or can be remedied by the licensee.

Section 67. Creates s. 455.617, F.S., providing authority to issue citations for certain minor violations. If the licensee objects, the procedures established in s. 455.621, F.S., must be used.

Section 68. Creates s. 455.621, F.S., providing for disciplinary proceedings to be followed for receiving, investigating, and prosecuting potential violations. For purposes of this section, the department must complete the report of its initial investigative findings and recommendations concerning the existence of probable cause within 6 months after receipt of the complaint. If the complaint is not before the Division of Administrative Hearings, the department must report to the boards those complaints not completed within one year after its receipt.

Section 69. Creates s. 455.624, F.S., providing grounds for discipline, penalties, and enforcement of these provisions.

Section 70. Creates s. 455.627, F.S., providing for disciplinary guidelines.

Section 71. Creates s. 455.631, F.S., providing a penalty for giving false information.

Section 72. Creates s. 455.634, F.S., providing for the reporting of criminal violations to the proper prosecuting authority.

Section 73. Creates s. 455.637, F.S., relating to the unlicensed practice of a profession. Provides for cease and desist notices; civil penalties; enforcement; citations; and allocation of moneys collected.

Section 74. Creates s. 455.641, F.S., providing for an unlicensed activity fee to be collected from each licensee and used to combat unlicensed activity.

Section 75. Creates s. 455.644, F.S., providing for an annual report concern finances, administrative complaints, disciplinary actions, and recommendations to be provided the Legislature.

Section 76. Creates s. 455.547, F.S., providing for public inspection of information required from applicants, with certain exceptions.

Section 77. Creates s. 455.651, F.S., prohibiting disclosure of confidential information.

Section 78. Renumbers s. 455.236, F.S., as s. 455.654, F.S., relating to financial arrangements between referring health care providers and providers of health care services.

Section 79. Renumbers s. 455.237, F.S., as s. 455.657, F.S., relating to prohibition of kickbacks.

Section 80. Renumbers s. 455.239, F.S., as s. 455.661, F.S., relating to designated health care services; licensure required. Makes technical changes.

Section 81. Creates s. 455.664, F.S., relating to advertisement by a health care practitioner of free or discounted services. Such advertisements must contain a specified statement relating to other services provided.

Section 82. Renumbers s. 455.241, F.S., as s. 455.667, F.S., relating to patient records, ownership, control, and transfer of such records are changed to clarify definitions and who may or may not access or own medical records as herein defined. All record owners are required to develop and implement policies, standards, and procedures to protect the confidentiality and security of medical records (patient records).

Section 83. Renumbers s. 455.2415, F.S., as s. 455.671, F.S., relating to exceptions to confidential communications between a patient and a psychiatrist.

Section 84. Renumbers s. 455.2416, as s. 455.674, F.S., relating to disclosure by a health care practitioner of certain otherwise confidential information relating to a patient who tested HIV positive. The practitioner has immunity from civil or criminal liability for disclosure of such information to a sexual partner or needle-sharing partner of the patient.

Section 85. Creates s. 455.677, F.S., providing for disposition of records of deceased health care practitioners, or practitioners relocating or terminating practice. Creates s. 455.681, F.S., providing authority (in addition to 465.017), to inspect any pharmacy or establishment where a licensee is authorized to prescribe controlled substances as specified in chapter 893 F.S.

Section 87. Renumbers s. 455.244, F.S., as 455.684, F.S., prohibiting denial of payment for services provided by a chiropractic or podiatrist solely on the basis that they are not a member of a particular organization.

Section 88. Creates s. 455.687, F.S., providing the DOH with the power to issue an emergency order suspending the license of any health care practitioner under certain conditions or when the Secretary believes such licensee poses an eminent danger to the public.

Section 89. Renumbers s. 455.2455, F.S., as s. 455.691, F.S., relating to treatment of Medicare beneficiaries.

Section 90. Renumbers s. 455.2456, F.S., as 455.694, F.S., relating to malpractice insurance requirements for the following boards: Acupuncture; Chiropractic; Podiatric Medicine, and Dentistry.

Section 91. Renumbers s. 455.247, F.S., as 455.697, F.S., relating to reports on professional liability claims and actions for any practitioner licensed by the following boards: Medicine, Osteopathic Medicine, Podiatric Medicine, and Dentistry.

Section 92. Renumbers and amends s. 455.25, F.S., as 455.701, F.S., relating to disclosure of a financial interest by entities and physicians who refer a patient to an entity in which the physician or other health care provider is an investor. The change deletes the requirement that entities must disclose ownership interests of physicians or other health care providers to the patients. It does not change the requirement for physicians and health care providers to provide the required financial information. Also, they must provide the names and addresses of alternative sources of such items or services.

Section 93. Renumbers and makes technical changes to s. 455.26, F.S., as s. 455.704, F.S., relating to an Impaired Health Care Practitioners Committee and lists its membership and duties.

Section 94. Renumbers s. 455.261, F.S., as 455.707, F.S., relating to impaired health care practitioners programs for those professions which do not provide for such programs in their practice acts. The department, by rule, is authorized to designate approved treatment programs.

Section 95. Creates s. 455.711, F.S., providing for inactive, delinquent status, and reactivation procedures to be followed for all health care practitioners.

Section 96. Creates s. 455.714, F.S., providing for renewal and cancellation notices.

Section 97. Creates s. 455.717, F.S., providing for address of record and requirement that it is each practitioners responsibility to notify the department in writing of their current mailing address and primary place of practice.

Section 98. Renumbers and amends s. 455.277, F.S., as s. 408.18, F.S., relating to

Health Care Community Antitrust Guidance Act; antitrust no-action letter; market-information collection and education. Subsection (10) is deleted which provided an appropriation to the Agency for Health Care Administration of \$142,407, to be transferred to the Department of Legal Affairs to implement the provisions of this act. This is obsolete language.

Section 99. Renumbers s. 455.275, F.S., as s. 408.185, F.S., relating to information submitted for review of antitrust issues; confidentially.

Section 100. Section 455.2055, F.S. as created by s. 13 of ch. 96-403, Laws of Florida, is repealed. It relates to the membership of each board within the new Department of Health. Membership appointments are covered in s. 20.43, F.S., relating to the new department.

Section 101. Sections 455.01-455.275, F.S., are designated as Part I of the chapter and titled: "Department of Business and Professional Regulation." Sections 455.501-455.724, F.S., are designated as Part II of the chapter and titled: "Department of Health."

Section 102. Amends s. 459.0085, F.S., relating to financial responsibility for osteopathic physicians to authorize the DOH to issue an emergency suspension of the license of any licensee who fails to comply with the revised requirements. The minimum medical malpractice total of two claims within the previous five year period is raised from exceeding \$10,000 to exceeding \$25,000.

Section 103. It provides for the Secretary of DOH to appoint a task force to develop uniform procedures to standardize the validation of health care practitioner credentials. Once credentials are validated, they would be accepted by all

health care providers and facilities. The task force is composed of representatives from various health care practitioners and providers located in Florida.

Section 104.

Amends s. 458.320, F.S., relating to financial responsibility for medical physicians to authorize the DOH to issue an emergency suspension of the license of any licensee who fails to comply with the revised requirements. The minimum medical malpractice total of two claims within the previous five year period is raised from exceeding \$10,000 to exceeding \$25,000.

Section 105.

Amends s. 627.912, F.S., relating to professional liability claims and actions reported to require all reports to be filed within 30 days (from 60 days) of a final judgement in any amount. If the insured party is licensed under chs. 458, 459, 461, or 466, F.S., reports shall be filed with the Agency for Health Care Administration as well as with the Department of Insurance. For purposes of safety management, the department shall annually provide the Department of Health with copies of the reports in cases resulting in an indemnity being paid to the claimants. In addition, the department may impose a fine of \$250 per day per case, not to exceed \$1,000 per case, against an insurer that violates the requirements of this section. The penalties applies to claims accruing on or after October 1, 1997. In addition, other technical changes and conforming changes are made.

Section 106.

Amends s. 458.331, F.S., relating to grounds for disciplinary action by the Board of Medicine and department to include as grounds for discipline changing the minimum medical malpractice total of three or more claims within the previous five year period from exceeding \$10,000 to exceeding \$25,000 per claim.

Section 107.

Amends 459.015, F.S., relating to grounds for disciplinary action by the Board of Osteopathic Medicine and department to include as grounds for discipline changing the minimum medical malpractice total of three or more claims within the previous five year period from exceeding \$10,000 to exceeding \$25,000 per claim.

Section 108.

Amends s. 468.1645, F.S., relating to nursing home administrators to provide that nursing home administrators employed by nursing homes who rely exclusively upon treatment by spiritual means through prayer, in accordance with the creed or tenets of any organized church or religious denomination, are exempt from licensure.

Section 109.

Amends s. 458.3115, F.S., relating to restricted licenses for certain foreign-licensed physicians to: 1) require the state-developed examination to be made available no later than September 1, 1998, to foreign physicians

qualifying for licensure under this section; and 2) authorize additional persons to take the department developed examination authorized by this section, if such persons can document that he or she took and successfully completed the Stanley H. Kaplan course that was supervised by the University of Miami. At a minimum, the documentation must include class attendance records and the test score on the final course examination.

Section 110.

Creates s. 458.3124, F.S., which provides for a substitute for the two year residency program (it was changed from three to two years in HB 2013). It authorizes certain foreign licensed physicians who legally practiced medicine for at least 5 years in a foreign country, and who have passed Steps I and II of the USMLE examination and meet certain other requirements, to apply to take Step III of the examination. The restricted licensee must practice under the direct supervision of a licensee approved by the Board of Medicine for the first year; for the second year, under indirect supervision in community service, including public health units, prisons, organizations that serve indigent populations, or other organizations approved by the Board. Upon passage of Step III of the USMLE examination and completion of the two years of supervised service, the restricted licensee is eligible for full licensure as a physician.

Section 111. Except as otherwise provided herein, this act shall take effect July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

- 2. Recurring Effects:
None.
- 3. Long Run Effects Other Than Normal Growth:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

- 1. Direct Private Sector Costs:

None.

- 2. Direct Private Sector Benefits:

None. However, certain provisions are included that should enable DOH to eliminate or penalize unqualified potential health care licensees.

- 3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

According to the Department of Health, the only section that results in a fiscal impact is s. 110 of the bill dealing with foreign licensed physicians. However, s. 68 which requires completion of investigations by the Agency for Health Care Administration (AHCA) within 6 months of receipt of the complaint will have a significant fiscal impact (\$5.1 million) on AHCA. For details, see the bill research on CS/SB 948 dealing with physician profiles.

Expenditures: The non-recurring costs for fiscal year 1997-98 is a total cost of \$34,600. Recurring costs for the required 5 FTEs, with expenses, etc., are \$146,309 and \$195,080 for fiscal 1997-98 and 1998-99, respectively.

Revenues: The department estimates that there will be an additional 1,000 applicants for fiscal 1997-98 and 1998-99. Revenues will be \$1,065,000 for each of the two fiscal years. It is based on the following: (application fee of \$410; examination fee of \$300; and license fee of \$355) \$1,065 X 1000 applicants = \$1,065,000.

The department states that the amount of time and the costs to properly supervise resident trainees cannot be estimated without an assessment of their medical knowledge, skills, and abilities.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The Department of Health maintains that completion of the department-developed examination required in s. 458.3115, F.S., by September 1, 1998, is unreasonable and can not be met. Every effort will be made to comply with the mandated deadline; however, the department wants to make sure the Legislature is aware of the likelihood that the date will not be met.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill as passed contains substantially the same issues as the original bill. There are a number of changes made in the numbering of the new sections contained in Section II relating to the Department of Health.

Amendments modified the financial responsibility sections of both chs. 458 and 459, F.S., and DOH was authorized to issue an emergency suspension of the license of any licensee who fails to comply with the revised requirements. In addition, the minimum medical malpractice total of two claims within the previous five year period was raised from \$10,000 to \$25,000.

Professional liability claims and actions reported pursuant to s. 627.912, F.S., was amended to require all reports to be filed within 30 days (from 60 days) of a final judgement in any amount. If the insured party is licensed under chs. 458, 459, 461, or 466, F.S., reports shall be filed with the Agency for Health Care Administration as well as with the Department of Insurance. For purposes of safety management, the department shall annually provide the Department of Health with copies of the reports in cases resulting in an indemnity being paid to the claimants. In addition, the department is authorized to impose a fine of \$250 per day per case, not to exceed \$1,000 per case, against an insurer that violates the requirements of this section. The penalties applies to claims accruing on or after October 1, 1997.

Other changes included: Nursing home administrators employed by nursing homes who rely exclusively upon treatment by spiritual means through prayer, in accordance with the creed or tenets of any organized church or religious denomination, are exempt from licensure.

Foreign-licensed physicians - Three additional provisions for certain qualified individuals were added:

1) Amends s. 458.3115, F.S., to require the state-developed examination to be made available no later than September 1, 1998, to foreign physicians qualifying for licensure under this section.

2) Amends s. 458.3115, F.S., to authorize additional persons to take the department developed examination authorized by this section, if such persons can document that he or she took and successfully completed the Stanley H. Kaplan course that was supervised by the University of Miami. At a minimum, the documentation must include class attendance records and the test score on the final course examination.

3) Creates s. 458.3124, F.S., which provides a substitute for the two year residency program. It authorizes certain foreign licensed physicians who legally practiced medicine for at least 5 years in a foreign country, and who have passed Steps I and II of the USMLE examination and meet certain other requirements, to apply to take Step III of the examination. The restricted licensee must practice under the direct supervision of a licensee approved by the Board of Medicine for the first year; for the second year, under indirect supervision in community service, including public health units, prisons, organizations that serve indigent populations, or other organizations approved by the Board. Upon passage of Step III of the USMLE examination and completion of the two years of supervised service, the restricted licensee is eligible for full licensure as a physician.

VI. SIGNATURES:

COMMITTEE ON HEALTH CARE STANDARDS & REGULATORY REFORM:
Prepared by: _____
Legislative Research Director: Robert W. Coggins

FINAL RESEARCH PREPARED BY COMMITTEE ON HEALTH CARE STANDARDS & REGULATORY REFORM:
Prepared by: _____
Legislative Research Director: Robert W. Coggins

Robert W. Coggins
Robert W. Coggins

Robert W. Coggins
Robert W. Coggins