

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 8, 1998 Revised: _____

Subject: Regulation of Professions

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill makes a number of minor substantive changes to chapter 455, F.S., and the various practice acts for professions under the Department of Health and the Department of Business and Professional Regulation to correct statutory cross-references, references to the appropriate department and inadvertent substantive glitches in the law resulting from the division of statutory provisions for the departments into part I and part II of chapter 455, F.S. The bill changes references to “podiatry” to “podiatric medicine” and references to “podiatrist” to “podiatric physician” throughout the Florida Statutes.

The bill authorizes the Department of Health to issue a physicist-in-training certificate to a person qualified to practice medical physics under direct supervision and to establish, by rule, requirements for initial certification and renewal of a physicist-in-training certificate. The bill grants rulemaking authority to the Department of Health or the appropriate board within the department to approve alternative methods of obtaining continuing education credits in risk management. The alternative methods may include attending a board meeting at which a licensee is disciplined, serving as a volunteer expert witness for the department in a disciplinary case, or serving as a member of a probable cause panel following the expiration of a board member’s term. The bill grants rulemaking authority to the Department of Health to adopt rules to administer and develop examinations for health care professions and for establishing requirements for a written protocol between athletic trainers and their supervising physicians. The bill extends exemptions to the fictitious name registration requirements to persons licensed by the Department of Health, for the purpose of practicing their licensed profession and the transaction of business ancillary to the practice of the profession. The bill revises health insurance coverage of massage services.

The bill authorizes the Board of Medicine and the Board of Osteopathic Medicine, respectively, to establish by rule, standards of practice and standards of care for particular practice settings. The bill adds dentists and dental hygienists, to the definition of health

care provider for purposes of extending sovereign immunity to their practice under certain circumstances. The bill allows physicians who hold limited licenses to practice medicine, to work for any approved employer in an area of critical need approved by the Board of Medicine. The physicians holding limited licenses must within 30 days after accepting employment, notify the Board of Medicine of all approved institutions in which the limited licenseholders practice and of all approved institutions where practice privileges have been denied. The bill allows an individual who is licensed to prescribe medicinal drugs in Florida to dispense up to a 24-hour supply of a medicinal drug to any patient of an emergency department of a hospital that operates a Class II institutional pharmacy, if the physician treating the patient in such hospital's emergency department determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise, to the patient. The bill deletes the requirement that the chiropractor member of the Council of Athletic Training be certified in the specialty of sports medicine by the Chiropractic Council on Sports Medicine. The bill requires any independent special hospital district with taxing authority which owns two or more hospitals to provide requested medical records within 20 days of the request for the records relevant to any litigation of medical negligence claim or defense, rather than 10 days of the request for the records.

This bill amends the following sections of the Florida Statutes: 455.209, 455.213, 455.218, 455.225, 455.2285, 455.667, 455.564, 455.565, 20.43, 120.80, 212.08, 215.37, 240.215, 310.102, 337.162, 381.0039, 383.32, 395.0193, 395.0197, 395.3025, 400.211, 400.491, 400.518, 408.061, 408.704, 409.2598, 415.1055, 415.5055, 415.51, 440.13, 455.565, 455.5651, 455.641, 455.651, 455.698, 455.717, 457.103, 458.307, 458.311, 458.3115, 458.3124, 458.319, 458.331, 458.343, 458.347, 459.004, 459.008, 459.015, 459.019, 459.022, 460.404, 460.4061, 460.407, 461.004, 461.007, 461.013, 462.01, 463.002, 463.003, 463.016, 464.004, 465.004, 465.006, 466.004, 466.007, 466.018, 466.022, 466.028, 467.003, 468.1135, 468.1145, 468.1185, 468.1295, 468.1665, 468.1755, 468.1756, 468.205, 468.219, 468.364, 468.365, 468.402, 468.4315, 468.453, 468.456, 468.4571, 468.506, 468.507, 468.513, 468.518, 468.523, 468.526, 468.532, 468.535, 468.701, 468.703, 468.707, 468.711, 468.719, 468.801, 468.811, 469.009, 470.003, 470.036, 471.008, 471.015, 471.033, 471.038, 472.015, 473.3035, 473.308, 473.311, 473.323, 474.204, 474.214, 474.2145, 475.021, 475.181, 475.25, 475.624, 476.204, 477.029, 480.044, 481.2055, 481.213, 481.225, 481.2251, 481.306, 481.311, 481.325, 483.805, 483.807, 483.901, 484.002, 484.003, 484.014, 484.042, 484.056, 486.023, 486.115, 486.172, 489.129, 489.533, 490.004, 490.00515, 490.009, 490.015, 491.004, 491.0047, 491.009, 491.015, 492.103, 492.113, 627.668, 627.912, 636.039, 641.27, 641.316, 641.55, 766.106, 766.305, 766.308, 766.314, 817.505, 937.031, 215.20, 391.208, 391.217, 400.5575, 408.20, 641.60, 39.01, 320.0848, 381.026, 381.0261, 381.0302, 395.0191, 395.1041, 395.301, 404.22, 409.906, 415.503, 440.106, 440.13, 440.134, 440.15, 455.684, 455.691, 455.697, 455.698, 456.31, 456.32, 461.001, 461.002, 461.003, 461.004, 461.006, 461.009, 461.012, 461.013, 461.0134, 461.014, 461.015, 461.018, 464.003, 468.301, 468.302, 468.304, 468.307, 468.314, 476.044, 477.0135, 483.901, 486.161, 621.03, 627.351, 627.357, 627.419, 627.6482, 627.912, 641.425,

725.01, 766.101, 766.102, 766.103, 766.105, 766.110, 766.1115, 893.02, 984.03, 409.908, 455.564, 455.574, 468.705, 865.09, 627.6407, 627.6619, 458.317, 465.019, 468.703, and 766.204. The bill creates a section that is not designated in the Florida Statutes.

II. Present Situation:

Chapter 455, F.S. (1996 Supplement), provided 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 ch. 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 ch. 93-129, L.O.F., created the agency and amended provisions of ch. 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. Section 20.06(1), F.S.(1992), defines a type one transfer to mean 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., transferred 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., imposed limitations on the transfer of specified regulatory functions. The law expressly transferred to the Department of Health specific regulatory functions relating to the health professions including all licensing, examination, publication, administrative, and management information services, but required the Department of Health to contract with the Agency for Health Care Administration for the provision of consumer complaint, investigative, and prosecutorial services, which were not transferred.

Section 12, ch. 96-403, L.O.F., transferred 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.

Chapters 97-261 and 97-273, L.O.F., amended section 11 of ch. 96-403, L.O.F., which, effective July 1, 1997, transferred 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 were transferred. Chapters 97-261 and 97-273, L.O.F., authorized the Department of Health to contract with the Agency for Health Care Administration for consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards. Pursuant to chs. 97-261 and 97-273, L.O.F., the Agency for Health Care Administration retained the personnel, property, and unexpended balances of appropriations related to consumer complaints, investigative, and prosecutorial services for the Division of Medical Quality Assurance.

Effective July 1, 1997, the professions regulated within the Division of Medical Quality Assurance within the Department of Health include: nursing assistants; health care services 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; prosthetics and orthotics; electrolysis; massage; clinical laboratory personnel; medical physicists; opticianry; hearing aid specialists; physical therapy; psychology; clinical social work; marriage and family therapy; and mental health counseling.

Chapter 120, F.S., is the Administrative Procedure Act. Section 120.80, F.S., prohibits the Secretary of Business and Professional Regulation, the Director of the Agency for Health Care Administration, or a board or member of a board within the Department of Business and Professional Regulation or the Agency for Health Care Administration from conducting formal administrative hearings for matters relating to the regulation of professions, as defined by ch. 455, F.S. Part I, ch. 455, F.S., defines "profession" to mean any activity, occupation, profession, or vocation regulated by the Department of Business and Professional Regulation in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation. Part II, ch. 455, F.S., defines "profession" to mean any activity, occupation, profession, or vocation regulated by the Department of Health in the Division of Medical Quality Assurance. Section 455.01, F.S., defines "health care practitioner" to mean any person licensed as an acupuncturist, medical physician, physician assistant, osteopathic physician, chiropractic physician, chiropractic physician assistant, podiatrist, naturopathic physician, optometrist, nurse, pharmacist, dentist, dental hygienist, speech-language pathologist, audiologist, speech-language pathology assistant, audiology assistant, occupational therapist, occupational therapy assistant, respiratory care practitioner, dietitian, nutritionist, nutrition counselor, massage therapist, optician, hearing aid specialist, physical therapist, physical therapist assistant, psychologist, provisional psychologist licensee, school psychologist, clinical social worker, marriage and family therapist, or mental health counselor.

Chapter 97-261, L.O.F., divided ch. 455, F.S., 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 pt. II, ch. 455, F.S., is applicable to the health care professions under the regulatory jurisdiction of the Department of Health. Chapter 97-261, L.O.F., revised disciplinary procedures for health care professionals under the Agency for Health Care Administration to speed up the resolution of complaints and to assist complainants to participate in the process. A number of minor substantive changes need to be made to ch. 455, F.S., and the various practice acts for professions under the Department of Health and the Department of Business and Professional Regulation to correct statutory cross-references, references to the appropriate department and inadvertent substantive glitches in the law. Chapter 97-273, L.O.F., revised the disciplinary procedures for the regulation of health care professions under the Department of Health. References to “agency” in ch. 97-273, L.O.F., inadvertently were construed so that the changes were codified in s. 455.225, F.S., to also apply to the disciplinary procedures used by the Department of Business and Professional Regulation in its regulation of nonmedical professions. Section 82, ch. 97-261, L.O.F., created s. 455.667, F.S., relating to ownership and control of patient records, and provides procedures for the confidentiality and disclosure of patient records. Section 455.667, F.S., inadvertently failed to require health care professionals identified in 455.667(2), F.S., to maintain the documents required by their practice act under the confidentiality and disclosure requirements outlined in the section.

III. Effect of Proposed Changes:

Sections 1-3. Amend ss. 455.209, 455.213, and 455.218, F.S., to make technical changes to references to agency in part I, ch. 455, F.S., relating to general regulatory provisions for the Department of Business and Professional Regulation.

Section 4. Amends s. 455.225, F.S., relating to disciplinary procedures used by the Department of Business and Professional Regulation to delete changes made by 97-273, Laws of Florida, to correct a glitch. Chapter 97-273, L.O.F., revised the disciplinary procedures for the regulation of health care professions under the Department of Health. References to “agency” in ch. 97-273, L.O.F., inadvertently were construed so that the changes were codified in s. 455.225, F.S., to also apply to the disciplinary procedures used by the Department of Business and Professional Regulation in its regulation of nonmedical professions.

Sections 5. Amends s. 455.2285, F.S., relating to requirements for annual reports for the Department of Business and Professional Regulation, to changes references to “agency” to “department.”

Section 6. Amends s. 455.667, F.S., relating to ownership of patient records, to correct a glitch in

the law by requiring health care professionals who are otherwise exempt from the section's requirements for patient records, to maintain the documents that they create in providing health care services to their patients or clients with the confidentiality and disclosure requirements specified in s. 455.667, F.S. Section 82, ch. 97-261, L.O.F., created s. 455.667, F.S., relating to ownership and control of patient records, and provides procedures for the confidentiality and disclosure of patient records. Section 455.667, F.S., inadvertently failed to require health care professionals identified in s. 455.667(2), F.S., to maintain the documents required by their practice act under the confidentiality and disclosure requirements outlined in the section.

Section 7. Amends s. 455.564, F.S., relating to the general licensing provisions for the Department of Health, to authorize the appropriate board or the department, if there is no board, to refuse to issue an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of pt. II, ch. 455, F.S., or the applicable professional practice act, until the investigation or prosecution is complete. Minor technical changes are made, including references to agency.

Section 8. Amends s. 455.565, F.S., relating to information and fingerprints required for licensure of specified physicians, to include applicants who apply under newly created alternate medical licensing pathways for certain foreign-trained physicians.

Section 9. Amends s. 20.43, F.S., relating to the organization of the Department of Health, to correct a statutory cross-reference.

Section 10. Amends s. 120.80, F.S., relating to exceptions and special requirements of agencies under the Administrative Procedures Act, to provide that the Secretary of the Department of Health, the director of the Agency for Health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration may not conduct formal hearings for matters relating to the regulation of health care practitioners defined under pt. II of ch. 455, F.S.

Sections 11-42. Amend ss. 212.08, 215.37, 240.215, 310.102, 337.162, 381.0039, 383.32, 395.0193, 395.0197, 395.3025, 400.211, 400.491, 400.518, 408.061, 408.704, 409.2598, 415.1055, 415.5055, 415.51, 440.13, 455.565, 455.5651, 455.641, 455.651, 455.698, 455.717, 457.103, 458.307, 458.311, 458.3115, 458.3124, and 458.319, F.S., to make technical changes to pt. I and pt. II of ch. 455, F.S., and the various practice acts for professions under the Department of Health and the Department of Business and Professional Regulation to correct statutory cross-references, references to the appropriate department and other minor conforming changes.

Section 43. Amends s. 458.331, F.S., relating to grounds for which a medical physician is subject to discipline, to authorize the Board of Medicine, to establish by rule, standards of practice and standards of care for particular practice settings and to correct statutory cross-references.

Sections 44-47. Amend ss. 458.343, 458.347, 459.004, and 459.008, F.S., to correct statutory cross-references.

Section 48. Amends s. 459.015, F.S., relating to grounds for which a osteopathic physician is subject to discipline, to authorize the Board of Osteopathic Medicine, to establish by rule, standards of practice and standards of care for particular practice settings and to correct statutory cross-references.

Sections 49-131. Amend ss. 459.019, 459.022, 460.404, 460.4061, 460.407, 461.004, 461.007, 461.013, 462.01, 463.002, 463.003, 463.016, 464.004, 465.004, 465.006, 466.004, 466.007, 466.018, 466.022, 466.028, 467.003, 468.1135, 468.1145, 468.1185, 468.1295, 468.1665, 468.1755, 468.1756, 468.205, 468.219, 468.364, 468.365, 468.402, 468.4315, 468.453, 468.456, 468.4571, 468.506, 468.507, 468.513, 468.518, 468.523, 468.526, 468.532, 468.535, 468.701, 468.703, 468.707, 468.711, 468.719, 468.801, 468.811, 469.009, 470.003, 470.036, 471.008, 471.015, 471.033, 471.038, 472.015, 473.3035, 473.308, 473.311, 473.323, 474.204, 474.214, 474.2145, 475.021, 475.181, 475.25, 475.624, 476.204, 477.029, 480.044, 481.2055, 481.213, 481.225, 481.2251, 481.306, 481.311, 481.325, 483.805, and 483.807, F.S., to make technical changes to the various practice acts for professions under the Department of Health and the Department of Business and Professional Regulation to correct statutory cross-references, references to the appropriate department and other minor conforming changes.

Section 132. Amends s. 483.901, F.S., relating to the licensure of medical physicists, to authorize the Department of Health to issue a physicist-in-training certificate to a person qualified to practice medical physics under direct supervision and to establish by rule requirements for initial certification and renewal of a physicist-in-training certificate.

Sections 133-170. Amends ss. 484.002, 484.003, 484.014, 484.042, 484.056, 486.023, 486.115, 486.172, 489.129, 489.533, 490.004, 490.00515, 490.009, 490.015, 491.004, 491.0047, 491.009, 491.015, 492.103, 492.113, 627.668, 627.912, 636.039, 641.27, 641.316, 641.55, 766.106, 766.305, 766.308, 766.314, 817.505, 937.031, 215.20, 391.208, 391.217, 400.5575, 408.20, and 641.60, F.S., to make technical changes to the various practice acts for professions under the Department of Health and the Department of Business and Professional Regulation to correct statutory cross-references, references to the appropriate department and other minor conforming changes.

Sections 171-227. Amend ss. 39.01, 320.0848, 381.026, 381.0261, 381.0302, 395.0191, 395.1041, 395.301, 404.22, 409.906, 415.503, 440.106, 440.13, 440.134, 440.15, 455.684, 455.691, 455.697, 455.698, 456.31, 456.32, 461.001, 461.002, 461.003, 461.004, 461.006, 461.009, 461.012, 461.013, 461.0134, 461.014, 461.015, 461.018, 464.003, 468.301, 468.302, 468.304, 468.307, 468.314, 476.044, 477.0135, 483.901, 486.161, 621.03, 627.351, 627.357, 627.419, 627.6482, 627.912, 641.425, 725.01, 766.101, 766.102, 766.103, 766.105, and 766.110, F.S., and create a section that has not been assigned a number in the Florida Statutes to

change references to “podiatry” to “podiatric medicine” and references to “podiatrist” to “podiatric physician”.

Section 228. Amends s. 766.1115, F.S., relating to the extension of sovereign immunity by the creation of an agency relationship with certain health providers as governmental contractors, to add dentists and dental hygienists to the definition of health care provider for purposes of extending sovereign immunity to their practice under certain circumstances. Changes references to “podiatry” to “podiatric medicine” and references to “podiatrist” to “podiatric physician”.

Sections 229-230. Amend ss. 893.02 and 984.03, F.S., to change references to “podiatry” to “podiatric medicine” and references to “podiatrist” to “podiatric physician”.

Section 231. Amends s. 409.908, F.S., relating to the reimbursement of Medicaid providers, to change references to “Agency for Health Care Administration” to “Department of Health” and other conforming changes to reflect the Department of Health’s jurisdiction over the regulation of midwifery.

Section 232. Amends s. 455.564, F.S., relating to the Department of Health’s general licensing provisions, to grant rulemaking authority to the Department of Health or the appropriate board within the department to approve alternative methods of obtaining continuing education credits in risk management. The alternative methods may include attending a board meeting at which a licensee is disciplined, serving as a volunteer expert witness for the department in a disciplinary case, or serving as a member of a probable cause panel following the expiration of a board member’s term.

Section 233. Amends s. 455.574, F.S., relating to the Department of Health’s authority to provide, contract for, or approve services for the development, preparation, evaluation, and administration of examinations, to grant rulemaking authority to the Department of Health to adopt rules to administer the section.

Section 234. Amends s. 468.705, F.S., relating to Department of Health’s rulemaking authority for the regulation of athletic trainers, to specifically grant the department the rulemaking authority for establishing requirements for a written protocol between athletic trainers and their supervising physicians.

Section 235. Amends s. 865.09, F.S., relating to fictitious name registration, to extend exemptions to the registration requirements to persons licensed by the Department of Health, for the purpose of practicing their licensed profession and the transaction of business ancillary to the practice of the profession. Exemptions to the fictitious name registration requirements are currently provided to businesses formed by an attorney licensed to practice law in Florida, and persons licensed by the Department of Business and Professional Regulation, for the purpose of practicing their licensed profession and the transaction of business ancillary to the practice of the profession.

Sections 236-237. Amend ss. 627.6407 and 627.6619, F.S., relating to the health insurance coverage of massage, to limit health insurance coverage for massage services by licensed massage therapists to massage as defined in ch. 480 F.S. Chapter 480, F.S., defines “massage” to mean the manipulation of the superficial tissues of the human body with the hand, foot, arm, or elbow, which may be aided by hydrotherapy, thermal therapy, any electrical or mechanical devices, or the application to the human body of a chemical or herbal preparation.

Section 238. Amends s. 458.317, F.S., relating to medical limited licensure, to allow physicians who hold limited licenses to work for any approved employer in an area of critical need approved by the Board of Medicine. The medical physicians holding limited licenses must within 30 days after accepting employment, notify the Board of Medicine of all approved institutions in which the limited licenseholder practices and of all approved institutions where practice privileges have been denied.

Section 239. Amends s. 465.019, F.S., relating to institutional pharmacies, to allow an individual who is licensed to prescribe medicinal drugs in Florida to dispense up to a 24-hour supply of a medicinal drug to any patient of an emergency department of a hospital that operates a Class II institutional pharmacy, if the physician treating the patient in such hospital’s emergency department determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise, to the patient. For any such patient for whom a medicinal drug is warranted for a period to exceed 24 hours, an individual licensed to prescribe such drug must dispense a 24-hour supply of such drug to the patient and must provide the patient with a prescription for such drug for use after the initial 24-hour period. The Board of Pharmacy may adopt rules to administer the dispensing of such drugs.

Section 240. Amends s. 468.703, F.S., relating to requirements for the Council of Athletic Training, to delete the requirement that the chiropractor member be certified in the specialty of sports medicine by the Chiropractic Council on Sports Medicine.

Section 241. Amends s. 766.204, F.S., relating to the availability of medical records for presuit investigation of medical negligence claims and defenses, to require any independent special hospital district with taxing authority which owns two or more hospitals to provide requested medical records within 20 days of the request for the records, rather than 10 days of the request for the records.

Section 242. Provides an effective date of July 1 of the year that the bill is enacted.

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 Article I, subsections 24(a) and (b) 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, subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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