

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.)

BILL: CS/SB 2034

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Clary

SUBJECT: Department of Health

DATE: March 22, 2000 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------|
| 1. | Munroe | Wilson | HC | Favorable/CS |
| 2. | | | FP | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |

I. Summary:

This bill amends various provisions relating to the jurisdiction of the Department of Health (DOH or department) to better reflect the department’s mission and functions. The bill takes care of a number of “glitches” identified by the department. The bill: consolidates certain planning functions into DOH’s agency strategic plan; revises provisions to correct glitches resulting from the transfer of the Brain and Spinal Cord Injury Program and clarify DOH’s authority over the program; updates provisions regarding the department’s oversight of primary care services; specifies that prevention should be a factor in the research conducted by the Biomedical Research Program; authorizes DOH to adopt rules for the programs which provide for a definition of income to be used to determine eligibility or sliding fees; grants authority to establish an immunization registry; gives DOH access to medical and related records for cases of reported diseases of public health significance; authorizes the use of preliminary HIV test results and revises the definition of “medical personnel” for HIV testing relating to a significant exposure; exempts persons who give group lectures from school health background screening requirements; revises continuing education requirements and other certification requirements for environmental health professionals; and makes numerous technical and conforming changes in the Florida Statutes.

This bill substantially amends sections 20.43, 39.303, 120.80, 154.011, 215.5602, 381.0011, 381.003, 381.0031, 381.004, 381.0059, 381.0101, 381.731, 381.734, 381.75, 381.76, 381.78, 381.79, 385.103, 385.207, 402.181, and 514.021, Florida Statutes.

This bill amends, transfers, and renumbers s. 381.7395 as (s. 413.46), Florida Statutes.

This bill creates sections 381.745, 381.755, 381.765, 381.775, and 381.785, Florida Statutes.

II. Present Situation:

Planning Functions for Public Health

The purpose and organizational structure of the Department of Health is provided in s. 20.43, F.S. This section establishes that the divisions of DOH include: Division of Administration; Division of Environmental Health; Division of Disease Control; Division of Family Health Services; Division of Children's Medical Services; Division of Local Health Planning, Education, and Workforce Development, and Division of Medical Quality Assurance, which is responsible for medical boards and professions.

Section 20.43, F.S., also requires DOH to biennially publish, and annually update, a state health plan that: assesses current health programs, systems, and costs; makes projections of future problems and opportunities; and recommends changes that are needed in the health care system to improve the public health. Section 381.0011(3), F.S., requires the DOH to develop a Healthy Communities, Healthy People plan every two years.

In conjunction with other internal planning requirements, s. 186.021, F.S., requires each state agency plan to be a statement of the priority directions that an agency will take to carry out its mission within the context of the state comprehensive plan and any other statutory mandates and authorizations given to the agency. Each agency strategic plan must specify those objectives against which the agency's achievement of its goals and the goals of the state comprehensive plan will be judged. A state agency strategic plan must be developed with a 5-year outlook and provide the strategic framework within which the agency's legislative budget request is developed.

Primary Care Services

Section 154.011, F.S., requires DOH to monitor and administer certain primary care programs within county health departments. During the early 1980s, staff positions which could support oversight functions of primary care services at county health departments were established at headquarters. In 1990, the staff responsible for providing oversight and monitoring of county health department primary care programs was eliminated due to budget reductions. County health department contracts for oversight of primary care programs are no longer negotiated because the DOH lacks resources to do so. Funds for primary care are now allocated to county health departments by formula and the department now reviews the quality of programs administered by county health departments, including primary care services.

Biomedical Research

Section 215.5602, F.S., authorizes funds from the Lawton Chiles Endowment Fund to be appropriated to DOH for the operation of the Florida Biomedical Research Program. The section allows the department to fund research grants only on the diagnosis and treatment of certain smoking-related diseases.

Immunization Registry

Immunization registries, supported by both federal and state funds, are being established in many states. These registries are computerized systems that will consolidate and record vaccination histories of numerous individuals and provide a clearinghouse to assist health care providers in evaluating the immunization status of their patients. Immunization registries facilitate the issuance

of vaccination reminders to patients by health care providers and public health officials and permit other entities, such as schools, to obtain proof a person's immunizations.

Section 381.003(1)(e), F.S., authorizes DOH to conduct a vaccine-preventable disease prevention program but does not provide specific authority for electronic transfer of immunization data through a centralized, computerized immunization registry. There is substantial need for such a system and the nation-wide initiative to establish immunization registries in each state has resulted in 21 states adopting laws or rules which authorize registries. The federal Centers for Disease Control and Prevention and other funding sources have assisted states in the establishment of immunization registries. Recent statistics provided by DOH indicate that, in Florida, over 60 percent of childhood immunizations are administered by private health care practitioners. Health care providers must rely on parental recall, parental records, or attempt to contact patient's previous health care providers in order to collect an immunization history. The establishment of a registry would facilitate the flow of immunization information between health care providers. The department has scheduled full implementation of an immunization registry by 2001.

Access to Medical Records

Section 381.0031, F.S., requires health care practitioners, hospitals and laboratories to report a diagnosis or suspicion of a disease of public health significance to DOH, and makes information submitted in such reports confidential and exempt from the requirements of the Public Records Law. The department is authorized to adopt rules for the reporting of diseases of public health significance which include who is required to report, the method and time for reporting, enforcement requirements, and any follow up activities required by the department. Section 395.3025 (5), F.S., gives DOH access to medical records in a licensed facility for the purpose of epidemiological investigations.

HIV/AIDS

Section 381.004(3)(d), F.S., prohibits the release of a preliminary HIV test result, without a confirmatory test, except in specified circumstances. One of those circumstances occurs when decisions about the care and treatment of the "person tested" cannot await the results of confirmatory testing. When a pregnant woman presents for childbirth without having had the HIV test as part of prenatal care, there is no authority to use the preliminary HIV test results of the mother in labor to make decisions on the care and treatment of the infant. Most women in Florida are receiving an HIV test as a standard practice of prenatal care. A pregnant woman who tests HIV positive is given the opportunity to begin drug treatment that will greatly decrease the chance of transmitting the virus to the fetus. Drug therapy can be initiated immediately to the newborn of an infected mother, thereby increasing the effectiveness of the drug therapy.

Section 381.004 (3)(h)10., F.S., provides a definition of "medical personnel" who have experienced a significant exposure to HIV in medical treatment situations. The department has adopted an administrative rule which defines "medical personnel," for purposes of describing a person who has had a significant exposure to the human immunodeficiency virus, to mean: an authorized agent or employee of a health care facility, health care provider, health care professional, blood bank or plasma center; a licensed or certified health care professional; a medical or other student receiving training as a health care professional at a health care facility; or

a paramedic or emergency medical technician certified by the department to perform life support procedures under s. 401.23, F.S. (64D-2.002(7), Florida Administrative Code).

Background Screening Requirements for School Health Services Personnel

Section 381.0059, F.S., provides for the background screening of all personnel who provide school health services. Every person who provides services under a school health services plan is required to complete a Level 2 screening under ch. 435, F.S. Person who provide services under a school health services plan must be on probationary status pending the results of the background screening. The individual being screened, or his or her employer, must pay the cost of the background screening to DOH. The department must establish a schedule of fees to cover the costs of the Level 2 screening and the abuse registry check. While health department and school district personnel are generally screened already, there are volunteers and speakers on school health topics who are not typically already screened.

Environmental Health Professionals

Section 381.0101, F.S., provides for the regulation of environmental health professionals by DOH. Paragraph (d) of subsection (1) of s. 381.0101, F.S., defines “environmental health professional” to mean a person who is employed or assigned the responsibility for assessing the environmental health or sanitary conditions, as defined by the department, within a building, on an individual’s property, or within the community at large, and who has the knowledge, skills, and abilities to carry out these duties. “Primary environmental health program” is defined to mean those programs determined by the DOH to be essential for providing basic environmental and sanitary protection to the public. At a minimum, these programs must include food protection program work and onsite sewage treatment and disposal system evaluations.

Section 381.0101(5), F.S., which provides certification standards for environmental health professionals, extends a grandfather provision which allows all persons who began employment in a primary environmental health program before September 21, 1994, to be considered certified while employed in that position and such persons must be required to adhere to any professional standards established by the department, complete any continuing education requirements, and pay the certification renewal fee. Any person who changes position or program areas and transfers into another primary environmental health program area on or after September 21, 1994, must be certified in that program within 6 months after such transfer, except such certification applicants will not be required to possess a college degree in public health, environmental health, environmental science, or a physical or biological science. Every 2 years, any person who is certified as an environmental health professional must complete at least 24 contact hours of continuing education for each program area in which the professional is certified.

Health Promotion and Chronic Disease

Under the Healthy Communities, Healthy People Act (ss. 381.731- 381.734, F.S.) DOH provides training to county health departments and their community partners in the “Planned Approach to Community Health” comprehensive planning process developed by the Centers for Disease Control and Prevention. The department also provides periodic statewide conferences for public health professionals and private health care providers to increase the knowledge of participants in

the area of chronic disease prevention which focuses on clinical preventive services to reduce clients' and patients' risk factors. Comprehensive Health Improvement Projects (CHIP), developed in county health departments to address chronic diseases, are included in the Healthy Communities, Healthy People program. These programs are increasingly focused on behavior change as a mode of stress prevention.

Brain and Spinal Cord Injury Program

Chapter 99-240, Laws of Florida, transferred the Brain and Spinal Cord Injury Program from the Department of Labor and Employment Security to the Department of Health by a type two transfer on January 1, 2000. Section 20.06, F.S., defines a type two transfer of an agency, department or a program to include all of its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, unless otherwise provided by law. A number of provisions which relate to DOH's administrative jurisdiction over the program were not expressly clarified in the Florida Statutes.

Claims

Under s. 402.181, F.S., the Department of Children and Families, the Department of Juvenile Justice, and the Department of Corrections are covered under the State Institutions Claims Program for property damage or medical injuries caused by children, inmates or escapees of their institutions. Claims for restitution may be filed with the Department of Legal Affairs which has the authority to hear, investigate, and determine all questions in respect to such claims and is authorized, within the limits of current appropriations, to pay individual claims up to \$1,000 or, with respect to children in foster care and their families, individual claims up to \$1,500. Any claims in excess of these amounts must have legislative approval.

III. Effect of Proposed Changes:

Section 1. Amends s. 20.43, F.S., relating to the Department of Health, to require the department to incorporate an assessment of current health programs, systems, and costs; projections of future problems and opportunities; and any recommended changes that are needed in the health care system to improve the public health in the department's strategic plan, instead of biennially publishing and updating this information in a state health plan.

Section 2. Amends s. 39.303, F.S., relating to requirements for the child protection teams, to clarify that the multidisciplinary child protection teams are under the jurisdiction of the Children's Medical Services (CMS) Program in DOH, which must develop, maintain, and coordinate the services of the child protection teams. The title of the director of the CMS program is changed to Deputy Secretary of CMS.

Section 3. Amends s. 120.80, F.S., relating to exceptions and special requirements of DOH, to allow the department to conduct administrative hearings in matters concerning the Brain and Spinal Cord Injury Program. The department is exempt from the requirements of a formal hearing under the Administrative Procedure Act for this program.

Section 4. Amends s. 154.011, F.S., relating to primary care services provided by DOH, to revise the department's responsibilities in overseeing the provision of primary care by the programs within the state. The department is required to monitor, measure, and evaluate the quality of care provided by each primary care program. In addition to the authority to adopt rules for primary care programs which relate to quality of care, case management, and Medicaid participation, DOH is also authorized to adopt rules for the programs which provide for a definition of income to be used to determine eligibility or sliding fees. This new rulemaking authority will permit DOH to determine eligibility for primary care services using the same methodology that is used for the Women, Infants and Children program.

Section 5. Amends s. 215.5602, F.S., relating to the Florida Biomedical Research Program, to revise the long-term research goals of the program to expand its focus beyond treatment to include prevention and diagnosis for cancer, cardiovascular disease, stroke, and pulmonary disease. In addition to the research for the diagnosis and treatment of diseases related to tobacco use, DOH is authorized to use funds for research relating to the prevention of tobacco use.

Section 6. Amends s. 381.011, F.S., relating to the duties and powers of DOH, to require the department to include all aspects of the public health mission and health status objectives to direct the use of public health resources with an emphasis on prevention in its strategic plan, instead of being required to develop a comprehensive public health plan.

Section 7. Amends s. 381.003, F.S., relating to communicable disease and AIDS prevention and control, to authorize DOH to develop an automated, electronic, and centralized database or registry of immunizations which may be electronically transferred to entities required by law to have such records, including schools, licensed child care facilities, and any other entity that is required by law to obtain proof of a child's immunizations. The department must ensure that all children in Florida are immunized against vaccine-preventable diseases. Requirements are provided for the immunization registry which include: the purpose of the immunization registry; the inclusion of all children born in Florida by the use of birth records; a mechanism providing for consent by a child's parent or guardian to participate in the immunization registry; authority to electronically transfer the records to entities that are required by law to have such records; an exception to the confidentiality of the records maintained by the department to give access to medical physicians, osteopathic physicians, physician assistants, and nurses to the immunization registry; and confidentiality of the information received by the department as medical information. The department is given authority to adopt rules to administer the immunization registry which include procedures for a health care practitioner to obtain access and to share electronic immunization records with other entities allowed by law to have access to the records.

Section 8. Amends s. 381.0031, F.S., relating to reports of diseases of public health significance, to authorize DOH to obtain and inspect medical records, records of laboratory tests, and other medical-related information for reported cases of diseases of public health significance. The department must examine the records of a person who has a disease of public health significance only for purposes of preventing and eliminating outbreaks of disease and making epidemiological investigations of reported cases of diseases of public health significance. Health care practitioners, licensed health care facilities, and laboratories must allow the department access to such records and release of such information to the department does not constitute a violation of the

confidentiality of patient records and will not result in civil or criminal liability to health care practitioners, licensed health care facilities, and laboratories for releasing such records.

Section 9. Amends s. 381.004, F.S., relating to human immunodeficiency virus (HIV) testing, informed consent, counseling, and confidentiality, to provide an exception to the prohibition on release of preliminary test results in those instances where decisions about medical care or treatment cannot await the results of confirmatory testing to allow the release of the preliminary test results based on recommendations to, the person tested, and in the case of an intrapartum or postpartum woman, when care, treatment, or recommendations regarding her newborn cannot await the results of confirmatory testing. Authority to have HIV testing performed without patient consent for medical personnel who experience a significant exposure is expanded to include: employees of a licensed clinical laboratory; personnel of a blood bank or plasma center; and a medical student or other student who is receiving training as a health care professional at a health care facility.

Section 10. Amends s. 381.0059, F.S., relating to background screening requirements for school health services personnel, to exclude unpaid volunteers who lecture students in group settings on health education topics from the background screening requirement.

Section 11. Amends s. 381.0101, F.S., relating to the certification standards for environmental health professionals, to narrow a grandfather clause for persons employed in a primary environmental health program before September 21, 1994, to clarify that the grandfather clause will only apply to those persons who were employed in the primary environmental health program of a food protection program or an onsite sewage treatment and disposal system prior to September 21, 1994. Continuing education requirements for certified environmental health professionals are revised to specify that a only a maximum of 48 contact hours of continuing education is required for those professionals who are renewing their certification in multiple program areas.

Section 12. Amends s. 381.731, F.S., relating to the Healthy Communities, Healthy People Plan, to require DOH to include population-based health promotion strategies in the department's strategic plan and deletes obsolete language relating to the Health Communities, Healthy People Plan which required the department to provide a framework: on proposals for public and private health insurance reforms needed to implement the state's health promotion initiative; the best health promotion practices of county health departments and other states; and proposed educational reforms needed to promote healthy behaviors among the state's school-age children.

Section 13. Amends s. 381.734, F.S., relating to the Healthy Communities, Healthy People Program, to revise DOH's planning responsibilities to reflect: the consolidation of planning functions; and reflect internal departmental priorities. An additional component is added to the Healthy Communities, Healthy People Program: an emphasis on the importance of a physically active lifestyle to build self-esteem, reduce morbidity and mortality associated with chronic disease, and reduce obesity.

Section 14. Transfers, amends, and renumbers s. 413.46, F.S., relating to legislative intent for the Brain and Spinal Cord Injury Program, as s. 381.7395, F.S., to transfer from the Department of Labor and Employment Security, the Brain and Spinal Cord Injury Program to the Department of

Health. Minor changes are made to reflect DOH's jurisdiction over the administration of the program.

Section 15. Creates s. 381.745, F.S., to provide definitions for the Brain and Spinal Cord Injury Program. The definition of the following terms are comparable to those codified in ch. 413, F.S., relating to the Department of Labor and Employment Security's authority over general vocational rehabilitation programs, except minor changes are made to reflect DOH's jurisdiction over the administration of the Brain and Spinal Cord Program: "activity of daily living;" "emergency medical evacuation system;" "personnel-assistance services;" "third-party coverage;" "third-party payment;" "transitional living facility;" and "trauma center." "Brain or spinal cord injury" is defined to mean a lesion to the spinal cord or cauda equina, resulting from external trauma, with evidence of significant involvement of two of the following deficits or dysfunctions: motor deficit; sensory deficit; or bowel and bladder dysfunction. "Funded services" is defined to mean services paid for through the brain and spinal cord injury program. "Designated facility" is defined to mean a facility approved by the brain and spinal cord injury program which meets the criteria and standards of care of the brain and spinal cord injury program for individuals who have sustained a brain or spinal cord injury.

Section 16. Amends s. 381.75, F.S., relating to the duties and responsibilities of DOH, to change a statutory reference and to change references to "persons" to "individuals."

Section 17. Creates s. 381.755, F.S., relating to benefits provided by the Brain and Spinal Cord Injury Program, to clarify that an eligible individual's right to such benefits is not transferable or assignable, and to provide that any benefits received as services under the program are exempt from all state, county, and municipal taxes and from sale under the process of any court, except for obligations contracted for the purchase of such property. A comparable provision exists in s. 413.31, F.S., which relates to the Department of Labor and Employment Security's general vocational rehabilitation programs.

Section 18. Amends s. 381.76, F.S., relating to eligibility for the Brain and Spinal Cord Injury Program, to change a statutory reference and to make minor technical changes to reflect DOH's jurisdiction over the program.

Section 19. Creates s. 381.765, F.S., relating to provisions for the retention of title to and the disposal of equipment under the Brain and Spinal Cord Injury Program, authorizing DOH to retain title to any property, tools, instruments, training supplies, equipment, or other items of value acquired for services provided under the program and to repossess or transfer such property, tools, instruments, supplies, equipment, or other items of value. The department is authorized to offer for sale any surplus items acquired in operating the program when they are no longer necessary or exchange them for necessary items that may be used to greater advantage. Accounting procedures are specified for any such exchanges and funds received by the program. The department is authorized to adopt rules relating to records and recordkeeping for department-owned property. A comparable provision exists in s. 413.32, F.S., which relates to the Department of Labor and Employment Security's general vocational rehabilitation programs.

Section 20. Creates s. 381.775, FS, relating to applicant and recipient records, to provide that all oral and written records, information, letters, and reports received, made, or maintained by DOH

relative to any applicant for or recipient of services under the Brain and Spinal Cord Injury program are privileged, confidential, and exempt from the Public Records Law. Any person who discloses or release such records, information or communications in violation of this section commits a second degree misdemeanor. Exceptions to the Public Records Law are provided. A comparable provision exists in s. 413.341, F.S., which relates to the Department of Labor and Employment Security's general vocational rehabilitation programs. A comparable provision exists in s. 413.341, F.S., which relates to the Department of Labor and Employment Security's general vocational rehabilitation programs.

Section 21. Amends s. 381.78, F.S., relating to the advisory council on brain and spinal cord injuries, to delete obsolete language which relates to the staggering of the terms of the advisory council members. References to "person" are changed to "individual." Members of the advisory council are authorized to be reimbursed for per diem and travel expenses required for attendance at council meetings. A member of the advisory council is prohibited from casting a vote on a matter that creates a conflict of interest or provides a direct financial benefit. Circumstances under which a member may be removed from office by the Secretary of Health for malfeasance, neglect of duty, incompetence, or permanent inability to perform official duties, or for pleading nolo contendere to, or being found guilty of a crime are specified.

Section 22. Creates s. 381.785, F.S., relating to recovery of third-party payments for funded services, to provide that third-party coverage for funded services under the Brain and Spinal Cord Injury Program constitute primary coverage. An applicant or recipient of services funded under the program must submit information on third party payments for services under the program and the department may recover from any third party, the recipient, or provider as specified. Enforcement procedures for DOH, including the imposition of a lien, to obtain recovery against a third party for services under the program are provided. The department is authorized to adopt rules to implement the provisions relating to the recovery of third party payments. A comparable provision exists in s. 413.445, F.S., which relates to the Department of Labor and Employment Security's general vocational rehabilitation programs.

Section 23. Amends s. 381.79, F.S., relating to the Brain and Spinal Cord Injury Program Trust Fund, to authorize the department to provide matching funds for public or private assistance provided under the brain and spinal cord injury program and to provide funds for any approved expansion of services for treating individuals who have sustained a brain or spinal cord injury. Any moneys that DOH receives in recovery of third-party payments for funded services must be deposited into the trust fund and used for the purposes authorized by this section. The department is authorized to accept, deposit into the trust fund and use gifts made unconditionally by will and any gift that in the department's judgment is proper and consistent with this section. Such gifts may be held, invested, reinvested, and used in accordance with the conditions of the gift. Technical and conforming revisions are made.

Section 24. Amends s. 385.103, F.S., relating to DOH's Chronic Disease Control Program, to redesignate the section as Community Intervention Programs and to expand the topics to be addressed as part of the department's counseling and service capabilities. The Comprehensive Health Improvement Project is redesignated as the Community Intervention Program. Technical and conforming revisions are made.

Section 25. Amends s. 385.207, F.S., relating to Epilepsy Program revenue, to correct a cross-reference to s. 318.21(6), F.S., relating to the collection of fines for failure to comply with child restraint requirements, to conform to changes made to ch. 318, F.S. Section 318.18(12), F.S., was transferred to s. 318.21(6), F.S., in 1996.

Section 26. Amends s. 402.181, F.S., relating to the State Institutions Claims Program, to add hospitals administered by DOH so that the patients of the department's institutions may pursue claims of restitution under the program.

Section 27. Amends s. 514.021, F.S., relating to DOH's authority to adopt and enforce rules for public swimming pools and bathing places, to require the department to review and revise such rules every two years instead of twice each year.

Section 28. Provides that the bill will take effect July 1, 2000.

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:

The Department of Health will incur minimal costs to implement the provisions of the bill and anticipates no significant fiscal impact to do so.

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.
