

Committee Substitute for
Committee Substitute for Senate Bill No. 2598

An act relating to treatment programs for impaired medical practitioners; amending s. 456.076, F.S.; revising requirements for consultants retained by the Department of Health; providing that a consultant may contract for services to be provided to students enrolled in schools for licensure as allopathic and osteopathic physicians or physician assistants, nurses, or pharmacists who are alleged to be impaired, if requested by the school; exempting the department from paying the costs for services provided by treatment providers or consultants; indemnifying certain schools from liability in civil actions under certain circumstances; providing limited sovereign immunity for certain program consultants under specified contractual conditions; requiring that the Department of Financial Services defend legal actions against program consultants; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 456.076, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

456.076 Treatment programs for impaired practitioners.—

(1) For professions that do not have impaired practitioner programs provided for in their practice acts, the department shall, by rule, designate approved impaired practitioner programs under this section. The department may adopt rules setting forth appropriate criteria for approval of treatment providers. The rules may specify the manner in which the consultant, retained as set forth in subsection (2), works with the department in intervention, requirements for evaluating and treating a professional, requirements for continued care of impaired professionals by approved treatment providers, continued monitoring by the consultant of the care provided by approved treatment providers regarding the professionals under their care, and requirements related to the consultant's expulsion of professionals from the program and requirements for the continued care and monitoring of a professional by the consultant by an approved treatment provider.

(2) The department shall retain one or more impaired practitioner consultants. ~~The A~~ consultant shall be a licensee under the jurisdiction of the Division of Medical Quality Assurance within the department ~~who, and at least one consultant~~ must be a practitioner or recovered practitioner licensed under chapter 458, chapter 459, or part I of chapter 464, or an entity employing a medical director who must be a practitioner or recovered practitioner licensed under chapter 458, chapter 459, or part I of chapter 464. The consultant shall assist the probable cause panel and department in carrying out the responsibilities of this section. This shall include working with department investigators to determine whether a practitioner is, in fact, im-

paired. The consultant may contract for services to be provided, for appropriate compensation, if requested by the school, for students enrolled in schools for licensure as allopathic physicians or physician assistants under chapter 458, osteopathic physicians or physician assistants under chapter 459, nurses under chapter 464, or pharmacists under chapter 465 who are alleged to be impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition. The department is not responsible under any circumstances for paying the costs of care provided by approved treatment providers, and the department is not responsible for paying the costs of consultants' services provided for students. A medical school accredited by the Liaison Committee on Medical Education of the Commission on Osteopathic College Accreditation, or other school providing for the education of students enrolled in preparation for licensure as allopathic physicians under chapter 458 or osteopathic physicians under chapter 459, which is governed by accreditation standards requiring notice and the provision of due process procedures to students, is not liable in any civil action for referring a student to the consultant retained by the department or for disciplinary actions that adversely affect the status of a student when the disciplinary actions are instituted in reasonable reliance on the recommendations, reports, or conclusions provided by such consultant, if the school, in referring the student or taking disciplinary action, adheres to the due process procedures adopted by the applicable accreditation entities and if the school committed no intentional fraud in carrying out the provisions of this section.

(7)(a) A consultant retained pursuant to subsection (2), a consultant's officers and employees, and those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention shall be considered agents of the department for purposes of s. 768.28 while acting within the scope of the consultant's duties under the contract with the department if the contract complies with the requirements of this section. The contract must require that:

1. The consultant indemnify the state for any liabilities incurred up to the limits set out in chapter 768.

2. The consultant establish a quality assurance program to monitor services delivered under the contract.

3. The consultant's quality assurance program, treatment, and monitoring records be evaluated quarterly.

4. The consultant's quality assurance program be subject to review and approval by the department.

5. The consultant operate under policies and procedures approved by the department.

6. The consultant provide to the department for approval a policy and procedure manual that comports with all statutes, rules, and contract provisions approved by the department.

7. The department be entitled to review the records relating to the consultant's performance under the contract for the purpose of management audits, financial audits, or program evaluation.

8. All performance measures and standards be subject to verification and approval by the department.

9. The department be entitled to terminate the contract with the consultant for noncompliance with the contract.

(b) In accordance with s. 284.385, the Department of Financial Services shall defend any claim, suit, action, or proceeding against the consultant, the consultant's officers or employees, or those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention which is brought as a result of any act or omission by any of the consultant's officers and employees and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention when such act or omission arises out of and in the scope of the consultant's duties under its contract with the department.

(c) If the consultant retained pursuant to subsection (2) is retained by any other state agency, and if the contract between such state agency and the consultant complies with the requirements of this section, the consultant, the consultant's officers and employees, and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention shall be considered agents of the state for the purposes of this section while acting within the scope of and pursuant to guidelines established in the contract between such state agency and the consultant.

Section 2. This act shall take effect July 1, 2008.

Approved by the Governor May 28, 2008.

Filed in Office Secretary of State May 28, 2008.