

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB RORS 14-07 Ratification of Administrative Rules of the Department of Juvenile Justice

**SPONSOR(S):** Rulemaking Oversight & Repeal Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee		Rubottom	Rubottom

### SUMMARY ANALYSIS

The Department of Juvenile Justice (DJJ) has adopted Chapters 63M-2 and 63N-1, implementing a legislative mandate to adopt rules to ensure effective provision of ordinary medical care, mental health services, substance abuse treatment services and services to youth with developmental disabilities.

The Statement of Estimated Regulatory Costs (SERC) showed Rules 63M-2.0052, 63M-2.006, 63N-1.0076, 63N-1.0084, and 63N-1.0085, F.A.C., each impose regulatory costs, exceeding \$1 million over the first 5 years the rule is in effect. Accordingly, these rules must be ratified by the Legislature before they may go into effect.

The rules were adopted on February 24, 2014.

The proposed bill authorizes the rule to go into effect. The scope of the bill is limited to this rulemaking condition and does not adopt the substance of any rule into the statutes.

The bill is effective upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.<sup>1</sup> Rulemaking authority is delegated by the Legislature<sup>2</sup> through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”<sup>3</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>4</sup> To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.<sup>5</sup> The grant of rulemaking authority itself need not be detailed.<sup>6</sup> The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>7</sup>

An agency begins the formal rulemaking process by giving notice of the proposed rule.<sup>8</sup> The notice is published by the Department of State in the Florida Administrative Register<sup>9</sup> and must provide certain information, including the text of the proposed rule, a summary of the agency’s statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule. The SERC must include an economic analysis projecting a proposed rule’s adverse effect on specified aspects of the state’s economy or increase in regulatory costs.<sup>10</sup>

The economic analysis mandated for each SERC must analyze a rule’s potential impact over the 5 year period from when the rule goes into effect. First is the rule’s likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.<sup>11</sup> Next is the likely adverse impact on business competitiveness,<sup>12</sup> productivity, or innovation.<sup>13</sup> Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.<sup>14</sup> If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed \$1 million in the aggregate for the 5 year period, the rule cannot go into effect until ratified by the Legislature pursuant to s. 120.541(3), F.S.

Present law distinguishes between a rule being “adopted” and becoming enforceable or “effective.”<sup>15</sup> A rule must be filed for adoption before it may go into effect<sup>16</sup> and cannot be filed for adoption until completion of the rulemaking process.<sup>17</sup> A rule projected to have a specific economic impact exceeding

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<sup>1</sup> Section 120.52(16); *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1<sup>st</sup> DCA 2007).

<sup>2</sup> *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1<sup>st</sup> DCA 2000).

<sup>3</sup> Section 120.52(17).

<sup>4</sup> Section 120.54(1)(a), F.S.

<sup>5</sup> Section 120.52(8) & s. 120.536(1), F.S.

<sup>6</sup> *Save the Manatee Club, Inc.*, supra at 599.

<sup>7</sup> *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1<sup>st</sup> DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1<sup>st</sup> DCA 2001).

<sup>8</sup> Section 120.54(3)(a)1, F.S..

<sup>9</sup> Sections 120.54(3)(a)2., 120.55(1)(b)2, F.S.

<sup>10</sup> Section 120.541(2)(a), F.S.

<sup>11</sup> Section 120.541(2)(a)1., F.S.

<sup>12</sup> Including the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

<sup>13</sup> Section 120.541(2)(a) 2., F.S.

<sup>14</sup> Section 120.541(2)(a) 3., F.S.

<sup>15</sup> Section 120.54(3)(e)6. Before a rule becomes enforceable, thus “effective,” the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.

<sup>16</sup> Section 120.54(3)(e)6, F.S.

<sup>17</sup> Section 120.54(3)(e), F.S.

\$1 million in the aggregate over 5 years<sup>18</sup> must be ratified by the Legislature before going into effect.<sup>19</sup> As a rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification.

#### Health Care Services to Youth Served by DJJ

In 2012, the Legislature amended ss. 985.03 and 985.64, F.S., defining "ordinary medical care" and requiring the Department to adopt rules to ensure effective provision of ordinary medical care, mental health services, substance abuse treatment services and services to youth with developmental disabilities. On February 24, 2014, the department filed for adoption its rule chapters implementing this mandate. The rules reflect existing policies, practices and procedures of the Department. Therefore, they are not expected to change the procedures used in providing the affected services or change the cost of providing those services. However, the Department's SERC states that the adopted preparation, review and signature requirements for forms do impose transactional costs on affected entities. As a consequence, 5 of the rules appear to have a regulatory impact exceeding the threshold requiring legislative ratification under s. 120.541, F.S. The SERC for Chapter 63M-2, F.A.C., appears to estimate a total annual impact of \$1,396,514.70. The SERC for Chapter 63N-1, F.A.C., appears to estimate a total annual impact of \$1,465,423.18.<sup>20</sup>

#### Impact of Rules

Chapter 63M-2, F.A.C., regulates Health Services in the Medical Division of the Department.

- Rule 63M-2.0052, F.A.C., entitled "Special Consent", sets forth the circumstances in which parental consent and informed consent is and is not required.
- Rule 63M-2.006, F.A.C., entitled "Sick Call", .mandates the procedures used in DJJ facilities to ensure that youth with a medical concern will have access to care.

Chapter 63N-1, F.A.C., regulates Service Delivery with respect to Mental Health/Substance Abuse/Developmental Disability Services.

- Rule 63N-1.0076, F.A.C., entitled "Review and Updating of Individualized Mental Health Treatment Plans, Individualized Substance Abuse Treatment Plans and Integrated Mental Health and Substance Abuse Treatment Plans", .regulates the review and updating of the affected plans including the frequency and nature of the review.
- Rule 63N-1.0084, F.A.C., entitled "Documentation of Mental Health and Substance Abuse Treatment Services", .regulates the documentation of progress and treatment with respect to such services.
- Rule 63N-1.0085, F.A.C., entitled "Psychiatric Services", regulates the provision of psychiatric services for treatment of serious mental disorders in detention centers and residential commitment programs.

#### Effect of Proposed Change

The bill ratifies Rules 63M-2.0052, 63M-2.006, 63N-1.0076, 63N-1.0084, and 63N-1.0085, F.A.C., allowing the rules to go into effect.

#### B. SECTION DIRECTORY:

Section 1: Ratifies Rules 63M-2.0052, 63M-2.006, 63N-1.0076, 63N-1.0084, and 63N-1.0085, F.A.C., solely to meet the condition for effectiveness imposed by s. 120.541(3), F.S. Expressly limits ratification to the effectiveness of the rules. Directs the act shall not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

Section 2: Provides the bill is effective upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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<sup>18</sup> Section 120.541(2)(a), F.S.

<sup>19</sup> Section 120.541(3), F.S.

<sup>20</sup> Copies of the 2 SERCs are available in the offices of the Rulemaking Oversight & Repeal Subcommittee.

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: The bill creates no additional source of state revenues.
2. Expenditures: The bill ratifies rules that impose regulatory costs, but the Department of Juvenile Justice asserts that the costs are already imposed through present manuals and contracts. The Department's SERCs estimate the regulatory impacts of the rules to be (numbers appear to reflect annual costs):

The SERC for Chapter 63M-2, F.A.C., estimates total impacts of \$665,692.23 for detention centers and \$730,822.47 for residential commitment programs. The SERC estimates a total impact of \$1,396,514.70. These costs include the private sector impacts discussed below.

The SERC for Chapter 63N-1, F.A.C., estimates impacts of \$16,809.00 for each of the 21 detention centers, \$12,895.34 for each of the 69 residential commitment programs and \$7,951.99 for each of the 28 day treatment programs affected by the rules. The SERC estimates a total impact of \$1,465,423.18. These costs include the private sector impacts discussed below.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: The bill itself has no impact on local government revenues.
2. Expenditures: The bill does not impose additional expenditures on local governments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill itself does not impact the private sector. The Department's SERC estimates the rules to have impacts on private sector providers as follows:

There are 11 providers contracted to operate residential commitment programs and 6 providers contracted to operate day treatment programs. In addition, there are 22 providers contracted to provide mental health and substance abuse services or psychiatric services in state operated detention centers and 6 contract providers providing medical services in state operated detention centers.

The SERC for Chapter 63M-2, F.A.C., estimates impacts of \$10,591.63 for each of 11 contract providers of residential commitment programs and \$31,699.63 for each of 6 contractors providing medical services in state operated detention centers.

The SERC for Chapter 63N-1, F.A.C., estimates impacts of \$12,895.34 for each of the 11 contract providers of residential commitment programs and \$7,951.99 for each of the 6 contract providers of day treatment programs affected by the rules. In addition, the SERC estimates impacts totaling \$148,490.00 for 15 small business providers out of the 22 contractors providing services in the state operated detention centers.

These impacts, however, do not represent new economic impacts because the rules impose substantially the same requirements as Department's current manuals and contracts.

**D. FISCAL COMMENTS:**

The Department asserts that the rules impose no new impact on its budget.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The legislation does not appear to require counties or municipalities to take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

No other constitutional issues are presented by the bill.

B. RULE-MAKING AUTHORITY:

The bill meets the final statutory requirement for the agency to exercise its rulemaking authority concerning the verification of trauma centers based on national guidelines. No additional rulemaking authority is required.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**