

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7B Vaccinations During Public Health Emergencies

**SPONSOR(S):** Andrade

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 8-B

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Health & Human Services Committee		McElroy	Calamas

**SUMMARY ANALYSIS**

The Department of Health (DOH) is responsible for disease prevention, including controlling the spread of communicable diseases. This includes the duty and authority to declare, enforce, modify, and abolish the isolation and quarantine of persons and premises as necessary to control communicable diseases or provide protection from unsafe conditions that pose a threat to public health.

Under emergency conditions, the usual methods of disease prevention are inadequate and require short-term expansion of authority. Section 381.00315, F.S., grants the State Health Officer (rather than DOH in general) the authority to declare a public health emergency, and establishes requirements for such situations. Among various other powers, the State Health Officer is authorized to order an individual to be examined, tested, vaccinated, treated, isolated, or quarantined during a declared public health emergency. In particular, s. 381.00315, F.S., authorizes the State Health Officer to order an individual to isolate or quarantine, if the individual is unable or unwilling to be examined, tested, vaccinated or treated. If there is no practical method to isolate or quarantine, the State Health Officer may use any means necessary to vaccinate or treat an individual.

HB 7B removes the authority of the State Health Officer to order a person to be vaccinated.

The bill has no fiscal impact on state or local government.

The bill is effective upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Department of Health**

The Department of Health (DOH) is established under s. 20.43, F.S., to “protect and promote the health of all residents and visitors in the state through organized state and community efforts, including cooperative agreements with counties”. The head of the Department of Health is the Surgeon General, also designated the State Health Officer.<sup>1</sup>

DOH regulates over 200 health practitioner license types, including more than 1.4 million health care practitioners in 42 professions and 10 types of facilities.<sup>2</sup> DOH administers the Children’s Medical Services safety net health care program, provides health care services in county health departments, and regulates environmental activities that affect public health.<sup>3</sup> DOH also administers state epidemiology functions, and is required to identify, diagnose, and conduct surveillance of diseases and health conditions in the state and accumulate the health statistics necessary to establish trends. As part of those functions, DOH maintains vital statistics and other health data, including vaccination information.

Finally, current law requires DOH to coordinate preparedness for and responses to public health emergencies.<sup>4</sup>

#### Communicable Disease Prevention and Control

Current law requires DOH to conduct a communicable disease prevention and control program as part of fulfilling its public health mission.<sup>5</sup> The communicable disease program must include, but is not limited to, programs for the:<sup>6</sup>

- Prevention and control of tuberculosis;
- Prevention and control of HIV and AIDS;
- Prevention, control, and reporting of communicable diseases of public health significance<sup>7</sup>; and
- Prevention and control of vaccine-preventable diseases, including programs to immunize school children.

Current law authorizes DOH to declare, enforce, modify, and abolish the isolation and quarantine of persons and premises as necessary to control communicable diseases or provide protection from unsafe conditions that pose a threat to public health.<sup>8</sup> Any such order issued by DOH must be immediately enforceable by a law enforcement officer, including any sheriff, deputy or police officer.<sup>9</sup>

#### Public Health Emergencies

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<sup>1</sup> S. 20.43, F.S.

<sup>2</sup> Correspondence from DOH to the Florida House of Representatives’ Professions and Public Health Subcommittee, dated November 9, 2021, on file with the subcommittee.

<sup>3</sup> *County Health Departments*, Florida Department of Health, available at <http://www.floridahealth.gov/programs-and-services/county-health-departments/index.html> (last visited November 8, 2021).

<sup>4</sup> S. 20.43, F.S.

<sup>5</sup> S. 381.003, F.S. A communicable disease is any disease caused by transmission of a specific infectious agent, or its toxic products, from an infected person, an infected animal, or the environment to a susceptible host, either directly or indirectly.

<sup>6</sup> S. 381.003, F.S.

<sup>7</sup> S. 381.0031, F.S., authorizes DOH to conduct epidemiological studies of diseases of public health significance and requires health care practitioners and facilities to immediately report any known or suspected cases of such diseases to DOH.

<sup>8</sup> S. 381.00315, F.S. (2021)

<sup>9</sup> *Id.*

Under emergency conditions, the usual methods of disease prevention are inadequate and require short-term expansion of authority. Similar to the governor's authority to declare emergencies under chapter 252, emergency authority is available for emergencies of a public health nature. Current law makes the State Health Officer exclusively responsible for declaring public health emergencies, issuing public health advisories and ordering isolation and quarantines.<sup>10</sup> This responsibility, and the authority associated with it, has changed periodically in response to public health emergencies encountered on state and national levels.

Prior to 2002, the State Health Officer had broad discretion, with limited statutory guidance, for issuing public health advisories and declaring public health emergencies. No statutory guidance was provided for public health emergencies, thereby granting exceptionally broad discretion to the State Health Officer.

Prior to 2002, ordering an individual to quarantine was an ordinary duty of DOH. Florida law expressly authorized DOH to declare, enforce, modify and abolish quarantine of individuals.<sup>11</sup> The authority was not dependent upon a declared public health emergency; rather, this was a standard function of communicable disease control. At that time, Florida law did not expressly authorize DOH to order an individual to be vaccinated.

The events of 9/11 and a 2001 anthrax outbreak<sup>12</sup> in Florida prompted the legislature to evaluate its preparedness for public health emergencies. In response, Florida enacted omnibus public emergency legislation in 2002. The legislation empowered the State Health Officer to take additional steps to protect public health during a public health emergency and remains in place today.

Section 381.00315, F.S., grants the State Health Officer (rather than DOH in general) the authority to declare a public health emergency, and establishes requirements for such situations. The law limits public health emergencies to natural or manmade occurrences that result or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters.<sup>13</sup> Before declaring a public health emergency, the State Health Officer must, to the extent possible, consult with the Governor and notify the Chief of Domestic Security.<sup>14</sup> A public health emergency may not continue longer than 60 days unless the Governor concurs in the renewal of the declaration.<sup>15</sup>

Current law also authorizes the State Health Officer to take certain actions to protect public health during a declared public health emergency, including, but not limited to:<sup>16</sup>

- Directing manufacturers of prescription drugs or over-the-counter drugs to give priority shipping of specified drugs to certain pharmacies and hospitals;
- Directing pharmacies to compound bulk prescription drugs; and
- Temporarily reactivating inactive licenses of certain healthcare professionals.

For example, the Surgeon General has declared public health emergencies for statewide epidemics, hurricanes and localized outbreaks, among others. In 2017, the Surgeon General declared a public health emergency related to the statewide opioid epidemic. As part of that declaration, the Surgeon General issued a standing order for naloxone<sup>17</sup>, which allowed law enforcement and EMS personnel to

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<sup>10</sup> *Id.*

<sup>11</sup> S. 381.001, F.S. (2001).

<sup>12</sup> Letters containing anthrax were mailed to media personnel and congressional officials in several states, including Florida. This resulted in 22 people falling ill from exposure to anthrax, 5 of whom ultimately died. *Bioterrorism - Public Health Response to Anthrax Incidents of 2001*, United States General Accounting Office, October 2003, available at <https://www.gao.gov/assets/gao-04-152.pdf> (last visited November 5, 2021).

<sup>13</sup> S. 381.00315, F.S. (2021)

<sup>14</sup> *Id.* The Chief of Domestic Security is the executive director of the Department of Law Enforcement, or his designee. Section 943.0311, F.S.

<sup>15</sup> S. 381.00315, F.S. (2021)

<sup>16</sup> *Id.*

<sup>17</sup> Naloxone is an opioid antagonist that rapidly reverses an opioid overdose. *Naloxone Drug Facts*, National Institute of Drug Abuse, available at <https://www.drugabuse.gov/publications/drugfacts/naloxone> (last visited on November 9, 2021).

obtain this potentially life-saving drug without a prescription.<sup>18</sup> In 2018, in response to Hurricane Michael, the Surgeon General issued a declaration that waived licensure requirements to allow licensed out-of-state practitioners to provide health care services in Florida and waived certain regulations related to the dispensing of prescription medication.<sup>19</sup> In 2019, the Surgeon General declared a public health emergency related to a Hepatitis A outbreak in several counties.<sup>20</sup> The declaration sought assistance from the Centers for Disease Control and Prevention, provided guidance to health care practitioners for screening and vaccinating individuals at high risk of contracting Hepatitis A and provided advice for the cleaning and sanitizing of public restrooms.<sup>21</sup>

The State Health Officer is also authorized to order an individual to be examined, tested, vaccinated, treated, isolated, or quarantined during a declared public health emergency. In particular, current law authorizes the State Health Officer to order an individual to isolate or quarantine if the individual is unable or unwilling to be examined, tested, vaccinated or treated. If there is no practical method to isolate or quarantine, the State Health Officer may use any means necessary to vaccinate or treat an individual. Any such order issued by the State Health Officer is enforceable by a law enforcement officer, including any sheriff, deputy or police officer.<sup>22</sup>

DOH is required to adopt rules for the conditions and procedures for imposing and releasing an individual from an isolation or a quarantine, which must include provisions related to:<sup>23</sup>

- The movement of persons exposed to or infected with a communicable disease;
- The tests or treatment, including vaccination, for communicable disease required before employment or admission to the premises or to comply with an isolation or a quarantine;
- Access by the department to isolated or quarantined premises;
- The disinfection of isolated or quarantined persons; and
- Methods of isolation or quarantine.

In 2006, DOH adopted rules required by the statute which authorized the State Health Officer, the county health department director or their designee to:<sup>24</sup>

- Initiate or terminate conditions of quarantine.
- Order an individual to quarantine, including requiring immunization as part of preventative treatment;
- Allow an individual to quarantine in their domicile unless the domicile is not a practical method of quarantine; and
- Access any quarantined premises.

Since obtaining this authority to vaccinate in 2002, the State Health Officer has never ordered an individual to be vaccinated.<sup>25</sup>

## Effects of the Bill

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<sup>18</sup> Amended Department of Health Declaration of Public Health Emergency and Standing Order for Naloxone, available at <http://www.floridahealth.gov/documents/newsroom/press-releases/2017/05/050317-health-emergency-opioid-epidemic.pdf> (last visited November 9, 2021).

<sup>19</sup> Department of Health Emergency Order, available at <http://www.floridahealth.gov/documents/newsroom/press-releases/2018/10/100818-fdoh-emergency-order-michael.pdf> (last visited on November 9, 2021).

<sup>20</sup> Department of Health Declaration of Public Health Emergency, available at <http://www.floridahealth.gov/documents/newsroom/press-releases/2019/08/phe-hav-filed-08-01-2019.pdf> (last visited on November 9, 2021). The counties at issue were Brevard, Citrus, Glades, Hernando, Hillsborough, Lake, Liberty, Manatee, Marion, Martin, Okeechobee, Orange, Pasco, Pinellas, Sumter, Taylor and Volusia.

<sup>21</sup> Department of Health Declaration of Public Health Emergency, available at <http://www.floridahealth.gov/documents/newsroom/press-releases/2019/08/phe-hav-filed-08-01-2019.pdf> (last visited on November 9, 2021).

<sup>22</sup> S. 381.00315, F.S. (2021)

<sup>23</sup> *Id.*

<sup>24</sup> Rules 64D-3.037 and 64D-3.037 F.A.C.

<sup>25</sup> Correspondence from DOH to the Florida House of Representatives' Professions and Public Health Subcommittee, dated November 1, 2021, on file with the subcommittee. Note, however, that this authority does not relate to required vaccinations for school attendance, which is governed by s. 1003.22, F.S.

HB 7B removes the authority of the State Health Officer to order a person to be vaccinated. This appears to have little impact, as the authority has not been used since its creation in 2002. The bill has no effect on older authorities, such as examination, testing, and quarantine.

**B. SECTION DIRECTORY:**

**Section 1:** Amends S. 381.00315, F.S., relating to public health advisories, public health emergencies and isolation and quarantines.

**Section 2:** Provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES