

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: CS/SB 1868

SPONSOR: Health Care Committee and Senator Atwater

SUBJECT: Health Care

DATE: April 1, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HE</u>	<u>Fav/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill extends the moratorium on the authorization of hospital off-site emergency departments to July 1, 2006.

The bill amends provisions relating to poison control centers to require the three regional poison control centers to be “certified” rather than “accredited.” The bill requires a licensed hospital, ambulatory surgical center, mobile surgical facility, or health care practitioner to release to a regional poison control center any patient information that is relevant to the episode under evaluation for purposes of treatment or that is necessary for case management of poison cases and other patient information that is necessary to comply with the data-collection and reporting requirements of s. 395.1027, F.S., and the professional organization that certifies poison control centers in accordance with federal law.

The bill amends provisions relating to the confidentiality of hospital patient records and records created by specified health care practitioners to authorize the release of otherwise confidential hospital patient records, without the patient’s written authorization, to a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data-collection and reporting requirements of s. 395.1027, F.S., and the professional organization that certifies poison control centers in accordance with federal law.

This bill amends ss. 395.003, 395.1027, 395.3025, and 456.057, Florida Statutes.

II. Present Situation:

Freestanding Emergency Departments

Chapter 395, F.S., provides for the regulation of hospitals by the Agency for Health Care Administration (AHCA). According to AHCA:

Acute care hospitals have diversified their services in recent decades, particularly in the 1990s. The expansion of managed care in the 1990s led hospitals to eliminate unnecessary inpatient stays in favor of greater use of outpatient services. The overnight inpatient stay has become shorter and hospitals have increased their involvement with outpatient surgery, outpatient diagnostic imaging, outpatient clinical laboratories, freestanding urgent care centers, outpatient rehabilitation centers and outpatient clinic services... The development of freestanding emergency departments is part of this trend toward more hospital-based outpatient services.¹

Emergency room patients are considered outpatients and are billed as such. The Centers for Medicare and Medicaid Services (CMS), which establishes federal payment policies for the reimbursement of hospital services, pays for emergency department patients as “outpatients”.

CMS recognizes both onsite and freestanding emergency departments. With respect to Medicare participating hospitals’ treatment of individuals with emergency medical conditions, on September 9, 2003, CMS published 42 CFR Parts 413, 482, and 489 Medicare program; Clarifying Policies Related to the Responsibilities of Medicare-Participating Hospitals in Treating Individuals with Emergency Medical Conditions; Final Rule. This rule defines “dedicated emergency department” at 489.24(b) as: “any department or facility of the hospital regardless of whether it is located on or off the main hospital campus, that meets at least one of the following requirements:

- (1) It is licensed by the state in which it is located under applicable state law as an emergency department;
- (2) It is held out to the public (by name, posted signs, advertising or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment...”

Section 395.003(2)(d), F.S., specifies that “the agency shall, at the request of a licensee, issue a single license to a licensee for facilities located on separate premises. Such a license shall specifically state the location of the facilities, and the licensed beds available on each separate premises...” Rule 59A-3.203(f), F.A.C., related to hospital licensure, allows for the “addition of beds or offsite facilities to a hospital’s license...” According to AHCA, approximately 70 of Florida’s 270 licensed hospitals list offsite outpatient facilities on their licenses. The Legislature removed the review of hospital proposals for new outpatient services from Florida’s Certificate-of-Need (CON) program in 1987. AHCA does not regulate the establishment of outpatient services or the mix of outpatient services a hospital can provide.

¹ *Freestanding Emergency Departments*. Florida Agency for Health Care Administration. December 2004.

In April 2002, AHCA approved the addition of an offsite, freestanding emergency department to the license of Munroe Regional Medical Center (MRMC) in Ocala. The freestanding emergency department is located approximately 12 miles to the southwest of the MRMC inpatient facility. The inpatient facility also includes a traditional, onsite emergency department.

In October 2003, AHCA approved the state's second freestanding emergency department for Ft. Walton Beach Medical Center. The offsite emergency department is located in Destin, approximately 12 miles to the east of the main inpatient facility.

AHCA published a proposed administrative rule in September 2003. The proposed rule was challenged and later withdrawn by the agency.

The 2004 Legislature required AHCA to submit a report to the President of the Senate and the Speaker of the House of Representatives by December 31, 2004, recommending whether it is in the public interest to allow a hospital to license or operate an emergency department located off the premises of the hospital. The legislature imposed a moratorium on the authorization of additional emergency departments located off the premises of licensed hospitals until July 1, 2005.

The report², issued in December, 2004, concluded that:

- It is in the public interest to allow hospitals in certain unique communities to develop freestanding emergency departments and to have them listed separately on their license.
- As long as the hospital understands that the freestanding emergency department will be regulated identically to the onsite emergency department, there is no reason to have a concern about quality of care.
- The Legislature should add freestanding emergency departments as a project subject to CON review by AHCA.

The report made two recommendations:

- Allow the development of freestanding emergency departments, adding them to projects subject to CON pursuant to s. 408.036(1), Florida Statutes.
- Direct AHCA to promulgate rules designating that the regulatory criteria for onsite emergency departments also apply to offsite freestanding emergency departments.

Poison Control Centers

Pursuant to Section 18, Chapter 89-283, Laws of Florida, codified at s. 395.1027, F.S., the Legislature created the Florida Poison Information Center Network. The law provided for the creation of three accredited³ regional poison control centers, one each in the north, central, and southern regions of Florida. Each regional poison control center must be affiliated with and physically located in a certified Level I trauma center. Each regional poison control center must

² Ibid.

³ Although the law refers to *accreditation* the centers are *certified* by a professional organization in the field of poison control.

be affiliated with an accredited medical school or college of pharmacy. The regional poison control centers must be coordinated under the aegis of the Division of Children's Medical Services Prevention and Intervention in the Department of Health.⁴ Section 395.1027, F.S., requires each regional poison control center to provide the following services:

- Toll-free access by the public for poison information;⁵
- Case management of poison cases;
- Professional consultation to health care practitioners;
- Prevention education to the public; and
- Data collection and reporting.

Poison control centers must be certified or have a waiver from certification to obtain federal funding under the Poison Control Center Enhancement and Awareness Act (Act).⁶ Under the Act, a poison control center may seek a waiver of the certification requirements if the center can reasonably demonstrate that the center will obtain certification within a reasonable period of time. The American Association of Poison Control Centers (AAPCC) is a nationwide organization of poison centers and interested individuals.⁷ AAPCC certifies regional poison centers and poison center personnel. The AAPCC requires certified poison control centers to maintain a data-collection system that contains data and sufficient narrative to allow for peer review and medical or legal audit.⁸ The AAPCC requires certified poison control centers to submit all their human exposure data to AAPCC's Toxic Exposure Surveillance System with all required data elements.⁹

Each poison control center plays a significant role in assessing, triaging, managing, and monitoring known or suspected poisonings in Florida and has a public health function to perform epidemiologic surveillance. To do so, the centers require access to patient information.

Sections 261-264 of the "Administrative Simplification" provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA)¹⁰, enacted August 21, 1996, relate to health information privacy. The United States Department of Health and Human Services issued Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) which took

⁴ Each poison control center is, as a creation of Florida law, an agency for purposes of the Florida Public Records Law and s. 24 of Art I of the State Constitution.

⁵ In 2000, the toll-free number 1-800-222-1222 was launched nationwide as part of the Poison Control Center Enhancement and Awareness Act of 2000 (P.L. 106-174). Funding for the program is administered by the United States Health Resources and Services Administration, which works in collaboration with the Centers for Disease Control and Prevention. In December 2003, President Bush signed into law P.L. 108-194, the Poison Control Center Enhancement and Awareness Act Amendments of 2003, reauthorizing P.L. 106-174.

⁶ The law (Section 4 of P.L. 108-194) requires the Secretary to award grants to only certified regional poison control centers for specified purposes which include improving and expanding poison control data collection systems, including, at the Secretary's discretion, by assisting poison control centers to improve data collection activities, and improving national toxic exposure surveillance by enhancing activities at the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

⁷ See the website for the American Association of Poison Control Centers at <<http://www.aapcc.org/aapcc.htm>>.

⁸ See "Criteria for Certification of Poison Centers and Poison Center Systems," Revised September 14, 1998, American Association of Poison Control Centers.

⁹ *Id.*

¹⁰ See Public Law 104-191.

effect on April 14, 2003. On October 2, 2003, the Florida Secretary of Health sent a letter to health care providers, which noted that poison control centers met significant resistance from health care providers within Florida to share protected health information. In 2004, the Legislature amended Section 395.1027, F.S., to require a licensed hospital, ambulatory surgical center, or mobile surgical facility, upon request, to release to a regional poison control center any patient information that is necessary for case management of poison cases.

The regional poison control centers are exempt from the requirements of the Privacy Rule when performing public health functions required under s. 395.1027, F.S.¹¹ The Privacy Rule allows disclosure of protected health information to a health care provider involved in the treatment of any patient.¹² Florida law requires the disclosure without the patient's authorization to relate to care provided to the particular patient under the care of the disclosing entity. Both Florida law and the Privacy Rule when interpreted would authorize health care providers to share protected health information with a regional poison control center for the treatment of a particular patient and to share protected health information with a poison control center so that the center may complete its required public health activities outlined in s. 395.1027, F.S.

Section 456.057, F.S., deals with the confidentiality of medical records created by specified health care practitioners, including medical physicians. Section 457.057(5), F.S., allows patient records, which are otherwise confidential, to be furnished without written authorization to other health care practitioners and providers involved in the care or treatment of the patient. Section 395.3025, F.S., provides requirements for the confidentiality of patient records held by hospitals in Florida and outlines uses and disclosures of such records. Under s. 395.3025, F.S., patient records that are otherwise confidential may be disclosed to licensed facility personnel and attending physicians for use in connection with the treatment of the patient without the consent of the person to whom they pertain. Section 395.3025(7)(a), F.S., provides that if the content of any record of patient treatment is provided under s. 395.3025, F.S., to a recipient other than the patient or the patient's representative, the recipient may use such information only for the purpose provided and may not further disclose any information to any other person or entity, unless expressly permitted by the written consent of the patient. A general authorization for the release of medical information is not sufficient for this purpose. The content of such patient treatment record is confidential and exempt from the Public Records Law. Section 395.3025(8), F.S., also provides that patient records at hospitals and ambulatory surgical centers are exempt from the disclosure requirements of the Public Records Law, with specified exceptions. To the extent that poison control centers must be affiliated with and physically located in a certified Level I trauma center and are subject to the Public Records Law, ss. 395.3025(7)(a) and 456.057(5), F.S., would apply to the centers to exempt treatment records from the Public Records Law and keep such records confidential when provided to the centers from hospitals or other health care providers.

¹¹ The applicable provisions of 45 C.F.R. § 164.512 specify uses and disclosures under HIPAA: required by law; for public health activities; for health oversight activities; for judicial and administrative proceedings; and for research purposes.

¹² The provisions of 45 C.F.R. § 164.501 define treatment to mean the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

III. Effect of Proposed Changes:

Section 1. Amends s. 395.003, F.S., to extend the moratorium on the authorization of hospital off-site emergency departments to July 1, 2006, and to repeal obsolete language regarding a report that was completed on December 31, 2004.

Section 2. Amends s. 395.1027, F.S., relating to regional poison control centers, to require the three regional poison control centers to be “certified” rather than “accredited.” The bill requires a licensed hospital, ambulatory surgical center, mobile surgical facility, or health care practitioner to release to a regional poison control center any patient information that is relevant to the episode under evaluation for purposes of treatment or that is necessary for case management of poison cases and other patient information that is necessary to comply with the data-collection and reporting requirements of s. 395.1027, F.S., and the professional organization that certifies poison control centers in accordance with federal law.

Section 3. Amends s. 395.3025, F.S., relating to the confidentiality of hospital patient records, to authorize the release of otherwise confidential hospital patient records, without the patient’s written authorization, to a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data-collection and reporting requirements of s. 395.1027, F.S., and the professional organization that certifies poison control centers in accordance with federal law.

Section 4. Amends s. 456.057, F.S., relating to the confidentiality of medical records created by specified health care practitioners, to authorize the release of otherwise confidential medical records, without the patient’s written consent, to a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data-collection and reporting requirements of s. 395.1027, F.S., and the professional organization that certifies poison control centers in accordance with federal law.

Section 5. Provides an effective date of upon becoming a law.

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, Section 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.

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

VIII. Summary of Amendments:

None.

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