



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill would require the Agency for Health Care Administration to establish criteria regarding off-premises emergency departments. The bill would require the Department of Health to develop and implement protocols for emergency medical services providers regarding transporting patients to off-premises emergency departments and any subsequent patient transfers from the site.

#### I. EFFECT OF PROPOSED CHANGES

House Bill 1361 provides criteria for hospitals to establish off-premises emergency departments. There are two state entities that are affected by this proposal: the Department of Health (DOH) and the Agency for Health Care Administration (AHCA). According to the Department of Health the new requirements in the proposal will effect minimal change—the department is required to develop and implement protocols for emergency medical services (EMS) providers to follow when transporting patients to an off-premises emergency department and when transporting patients from an off-premises emergency department to the most appropriate hospital.

The AHCA and the entities the AHCA regulates are affected in several significant ways. The AHCA establishes criteria for the location of the off-premises emergency department, to not be within a 15 mile radius of a licensed class 1 general hospital, if the location is within a county of a population of 200,000 or more; or within a 25 mile radius of a licensed class I general hospital, if the location is within a county of a population of less than 200,000. This would have an effect on the potential number of off-premises emergency departments which could be established. For example, in counties such as Pinellas, Pasco, Orange, and Miami-Dade, the distance requirements would make it unlikely that off-premises emergency departments would be established in rural counties where there are no hospitals or no hospitals within a 25 mile radius of an existing class 1 general hospital, it is also unlikely because of the distance requirements that off-premises emergency departments could exist. While the location criteria is not applicable to off-premises emergency departments licensed prior to July 1, 2007; it is unclear if it is the intent of the bill to require compliance of the remaining new criteria to these same, already licensed and operational, off-premises emergency departments.

Assuming the location of a proposed off-premises department were met, this bill adds criteria that exceed those of existing licensed on or off-premises emergency departments; setting different standards for emergency departments depending upon location. These standards include:

- The requirement to have a written agreement with emergency medical services providers to transfer patients needing emergency care,
- The requirement for the DOH to develop and implement protocols for emergency medical services providers to follow when transporting patients to or from an off-premises department,
- The requirement that the DOH develop and implement protocols for emergency medical services providers to ensure that patients experiencing ST segment elevation myocardial infarctions are transported to the nearest appropriate hospital,
- The requirement to have a written agreement with an acute care hospital located within one hour's drive time agreeing to accept transferring patients in need of emergency medical services not within the service capability of the main hospital or the off-premises emergency department,
- The requirement to be accredited by the Joint Commission on Accreditation of Healthcare Organizations, and
- The construction criteria for off-premises emergency departments, although it does not address architectural requirements or whether these architectural requirements must be met.

The bill provides clear authority for the inclusion of competitive economic considerations in the licensure process. Such considerations are usually the purview of the certificate of need process, and are rarely, if ever, found in the context of licensure. Licensure is usually concerned with quality of care. Such authority could provide a foundation for a competitor to participate in - and litigate the outcome of - the licensing process.<sup>1</sup>

### Present Situation

By law, Florida hospitals are not required to have emergency departments but they must provide emergency care and services for the medical services within their service capability. Hospital emergency departments must meet requirements for operation and construction as identified in statute and rule.

There are currently two hospitals with off-premises emergency departments within their licensed services and locations: Munroe Regional Medical Center (MRMC) and Ft. Walton Beach Medical Center (FWB). MRMC's off-premises emergency department, Emergency Center at Timber Ridge, is located approximately 12 miles to the southwest of the MRMC main hospital in Ocala. The building was newly constructed to meet hospital standards and was added to the license of MRMC in April of 2002. The FWB off-premises emergency department is housed in a building which was previously licensed as a hospital and is located in Destin, some 12 miles from the FWB main hospital. It was licensed in October of 2003.

In 2004, Section 23, Chapter 2004-350, Laws of Florida (CS/SB 2448) directed the Agency for Health Care Administration (AHCA) to submit a report recommending whether or not hospital off-premises emergency departments were in the best interests of the public; and if so, to recommend licensure criteria, including criteria related to quality of care and the service capability of off-premises emergency departments. That report<sup>2</sup> found 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. Such communities are likely to be high growth areas within a reasonable travel time to the main hospital to enable patient transport for surgery and inpatient services. This allows growing communities to gain quicker access to emergency care but avoids the premature development of a hospital in a community that cannot yet support it.
- It is reasonable to assume that interest in freestanding emergency departments will remain limited. Factors such as liability concerns and staffing problems will prevent many hospitals from pursuing this option.
- There is currently no indication of any quality of care concerns at either of the state's two freestanding emergency departments. The two existing freestanding emergency departments have served as pilot projects to allow the AHCA to gain information about any quality problems that might be associated with freestanding facilities. Since April 2002, there have been no reports of any problem in either facility.

While there are no separate standards for off-premises emergency departments, the AHCA currently applies all the regulatory standards applicable to on premises emergency departments to off-premises emergency departments. The following regulatory standards currently apply to offsite emergency departments:

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<sup>1</sup> See, Fla. Soc. of Ophthalmology v. St. Bd. of Optometry, 532 So.2d 1279 (Fla. 1st Dist. Ct. App. 1988); Shared Svcs., Inc., v. St. of Fla. Dept. of Health and Rehabilitative Svcs., 426 So.2d 56 (Fla. 1st Dist. Ct. App. 1983).

<sup>2</sup> <http://ahca.myflorida.com/freestanding/docs/report.pdf>

- The offsite emergency department must be inspected and meet the requirements of Rule 59A-3.255, Florida Administrative Code.
- If the hospital is accredited, the offsite location must also be accredited.
- The same services provided at the main emergency department must be provided at the freestanding emergency department, 24 hours per day, seven days per week.
- Since a freestanding emergency department is a department of the hospital, it must be able to provide emergency services and care for any emergency medical condition that is within the service capability of the hospital. Patients may be transported from one area of the hospital (offsite) to another (main) as long as emergency services and care are provided within the service capability of the hospital. Transportation from one area of the hospital (offsite) to another (main) must be provided by the hospital or through a contract with the local community EMS system. All services provided by on-call physicians must be available to patients at the offsite facility as well as the main hospital.
- A hospital's freestanding emergency department is subject to the same signage requirements (Chapter 59A-3.255, F.A.C.) as the main emergency department. Signs posted in the freestanding emergency department must be identical to signs posted in the onsite emergency department, as they must identify the service capability of the hospital.
- A list of services provided at the main campus and at the freestanding location must be provided.
- Medical screening and stabilization are required for all patients seeking emergency services at both the main emergency department and the freestanding location.
- An emergency medicine physician member of the organized medical staff must be in charge of each emergency department location.
- Supervision of care by a registered nurse qualified by relevant training and experience in emergency care for all emergency department nursing staff must be provided at each location.
- A control register identifying all persons seeking emergency care must be maintained at each location.
- Both onsite and freestanding emergency departments must have procedures in place and a listing of on-call physicians.
- Onsite and freestanding emergency departments are subject to the federal Emergency Medical Treatment and Labor Act (EMTALA) regulations as well as Florida's emergency access statute.
- The AHCA Office of Plans and Construction must review and approve construction plans for freestanding emergency departments.
- Freestanding emergency departments must meet all of the physical plant requirements, including electrical and mechanical, of an onsite emergency department as described in Section 419.4.11 of the Florida Building Code. These facilities must also meet the requirements of section 7.D.9, Definitive Emergency Care, as described in the *Guidelines for the Design and Construction of Hospitals and Health Care Facilities, 2001*, edition incorporated by referenced in Section 419.2.1.2 of the Florida Building Code.
- Freestanding emergency departments must meet the occupancy and construction requirements of the Life Safety Code and Florida Building Code relevant to the actual use of the facility.

The 2004 statute placed a moratorium on any additional off-premises emergency departments until July 1, 2005. The following year the moratorium was extended until July 1, 2006. Subsequently, the moratorium expired, and hospitals have contacted the Agency about the development of additional off-premises departments. These hospitals have been directed that the same standards for operation and construction must be met as those for any hospital emergency department. Two hospitals have submitted construction plans to the Agency which have completed Stage 1 or Stage 2 review.

There are currently no limitations on where an off-premises emergency department can be located; however an off-premises emergency department can only be established by an existing licensed hospital as a department of that same hospital. The off-premises emergency department must be accredited by the same entity as the main hospital if that hospital is accredited (but hospitals and emergency departments are not required to be accredited), and must provide the same emergency services as are provided by the main hospital. Medical specialists must be on call and available to provide services 24/7. All emergency departments (on and off-premises) are subject to the federal Emergency Medical Treatment and Labor Act (EMTALA) and Florida emergency access statutes. Off-premises emergency departments must meet the same requirements as on site emergency departments. Policies and procedures must include direction of the emergency department by a designated physician who is a member of the organized medical staff. All hospitals and their emergency departments, whether on or off-premises, must treat all patients regardless of ability to pay. Hospitals are not required to have written transfer agreements with emergency medical services providers.

C. SECTION DIRECTORY:

Section 1. Amends s. 395.1041(6), F.S., relating to access to emergency services.

Section 2. Provides an effective date of July 1, 2007.

## 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:**

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

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

#### **D. STATEMENT OF THE SPONSOR**

No statement provided.

### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 20, 2007, the Health Innovation Committee adopted one strike-all amendment to the bill. This amendment:

- Provided licensure criteria for hospital off-premises emergency departments.
- Directed the Agency for Health Care Administration to review hospital licensure applications for off-premises emergency departments based on certain criteria.

The bill was reported favorably with one strike-all amendment.