

The Florida Senate
PROFESSIONAL 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 Regulation Committee

BILL: SB 2886

INTRODUCER: Senator Dawson

SUBJECT: Off-premises Hospital Emergency Departments

DATE: March 25, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bedford	Wilson	HR	Pre-meeting
2.			HA	
3.				
4.				
5.				
6.				

I. Summary:

The bill authorizes hospitals to apply for a license to operate an off-premises emergency department. The off-premises emergency department is required to provide emergency services and care that is within the service capability of the hospital seeking the license. The off-premises emergency department must meet certain requirements for licensure. These new licensure provisions for off-premises hospital emergency departments expire December 31, 2009.

This bill amends s. 395.1041, F.S.

II. Present Situation:

Hospital Regulation

Under ch. 395, F.S., the Agency for Health Care Administration (agency) is responsible for licensing and regulating hospitals. A hospital offers services more intensive than those required for room, board, personal services, and general nursing care. A range of health care services are offered with beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy. Also available are clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent. Unaccredited facilities and initial licenses require certification and licensing surveys by the agency. Under state and federal regulations, accredited hospitals are “deemed” to meet the requirements and do not receive an annual license and certification survey by the agency. Hospitals are not required to be accredited, however. All hospitals are subject to annual life-safety and biennial risk management surveys.

Florida hospitals are not required by law 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.

Current Freestanding Emergency Departments

Under s. 395.003(1)(b)3. F.S., there was a moratorium in place from July 1, 2004, until July 1, 2006, for new freestanding emergency departments. Prior to this being the law, the agency had authorized the licensure of two freestanding emergency departments as described below. The agency approved these freestanding emergency departments for two reasons:

- Emergency room patients are outpatients, and;
- Chapter 395, F.S., the licensing statute for hospitals, allows hospitals to list offsite outpatient facilities on their licenses.

Chapter 395, F.S., does not regulate outpatients or outpatient services or define them. Emergency room patients are considered and billed as outpatients by Medicaid and Medicare.

Munroe Regional Medical Center

In June 2000, the CEO for the Munroe Regional Medical Center sent a letter to the agency requesting to build a freestanding emergency department. The agency responded with a letter outlining the criteria that would need to be met for the facility to be added to the license, which included: review by the Joint Commission on Accreditation of Healthcare Organizations; same level of emergency department services as the main hospital; state inspection and safety requirements; and meeting the requirements of the federal Emergency Medical Treatment and Labor Act. In April 2002, the agency approved the first freestanding emergency department to the license of the Munroe Regional Medical Center inpatient facility. This facility, located in Ocala, Florida, approximately 12 miles from the freestanding emergency department, also has an on-site emergency department.

Ft. Walton Beach Medical Center

In October 2003, the agency approved Florida's second freestanding emergency department for Ft. Walton Beach Medical Center. The off-site facility is located in Destin, approximately 12 miles east of the main inpatient facility.

There are currently no limitations on where a freestanding emergency department can be located; however, a freestanding emergency department can only be established by an existing licensed hospital as a department of that same hospital. The freestanding emergency department must be accredited by the same entity as the main hospital, if that hospital is 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 twenty-four hours a day, seven days a week. All emergency departments (on-site and off-site) are subject to the federal Emergency Medical Treatment and Labor Act (EMTALA) and the Florida emergency access statutes. Freestanding

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 freestanding or on-site, must treat all patients regardless of their ability to pay. Hospitals are not required to have written transfer agreements with emergency medical services providers.

Currently, hospitals desiring to offer freestanding emergency departments must meet the requirements of Rule 59A-3.255, Florida Administrative Code (F.A.C.). The agency's Office of Plans and Construction must review and approve the facilities' plans and specifications before any construction begins. 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 freestanding emergency department must meet all of the physical plant requirements of an on-site emergency department as described in s. 419.4.11 of the Florida Building Code and also meet the requirements of s. 7.D.9, Definitive Emergency Care (Guidelines for the Design and Construction of Hospitals and Health Care Facilities, 2001) incorporated by reference in s. 419.2.1.2 of the Florida Building Code.

Since July 1, 2006, two hospitals have initiated the process to add a freestanding emergency department to their license. A case against the agency has been in litigation since 2003 challenging its authority to license freestanding emergency departments. This case is currently in abeyance.

III. Effect of Proposed Changes:

Section 1. Adds subsection (8) to s. 395.1041, F.S., to allow a hospital to apply for a license to operate an off-premises emergency department. The off-premises emergency department is required to provide emergency services and care that is within the service capability of the hospital seeking the license. The off-premises emergency department must meet the following requirements for licensure. The off-premises emergency department:

- Must not be located within specified distances of a class 1 hospital in both large and small counties (there is currently no such requirement for off-premises emergency departments);
- Can transport a patient from the off-premises emergency department to the main hospital only if an inpatient admission is determined necessary by a physician (there is currently no such requirement for off-premises emergency departments);
- Must ensure that the same medical specialists are available for consult as are available at the main hospital, within specified timeframes (currently, medical specialists must be on call and available to provide services twenty-four hours a day, seven days a week – they are not all physically on premises at on-premises or off-premises emergency departments);
- Must have a written agreement with emergency medical services providers regarding transferring patients (this is currently not a requirement for existing on-premises emergency departments or off-premises emergency departments);

- Must have a written agreement with an acute care hospital, located within one hour's travel time, which has agreed to accept the transfer of patients requiring emergency medical care not within the off-premises emergency department or its main hospital's service capability (this is currently not a requirement for existing on-premises emergency departments or off-premises emergency departments). The agreement must specify the particular medical services to be provided and contain a transfer protocol;
- Must be supervised at all times by a physician who is a member of the hospital's medical staff and who is board certified by the American College of Emergency Physicians;
- Must treat all patients without regard to their ability to pay (this is currently a requirement for all emergency departments, on-premises and off-premises);
- Must comply with all rules governing emergency care (this is currently a requirement for all emergency departments, on-premises and off-premises);
- Must be accredited (this is currently not a requirement for hospitals);
- Must ensure that nursing care is supervised by a registered nurse who has clinical training and experience in emergency care and that direct nursing care is provided by registered nurses (these requirements are higher than those for on-premises emergency departments, and;
- Must meet the same physical plant criteria as for on-premises emergency departments in the construction of the off-premises emergency department (if "architectural" requirements were added, then this requirement would be the same as is currently required for all emergency departments).

Subsection (8) expires December 31, 2009.

Section 2. Provides that this act takes effect 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:

The bill affects all licensed hospitals in Florida that may be considering the addition of a freestanding emergency department and specifically the two hospitals that currently have submitted plans to the agency. The bill does not provide for grandfathering freestanding emergency departments that have initiated the process prior to the proposed effective date of July 1, 2007. Some sectors of the general population will have access to a closer emergency department as off-premises emergency departments are licensed.

C. Government Sector Impact:

It is expected the agency will have a minimal fiscal impact due to increased workload. It is difficult to determine the exact fiscal impact on the agency since it is not known how many hospitals will apply for licensure of an off-premises emergency department.

VI. Technical Deficiencies:

On page 1, line 21, the word “application” should be replaced with “off-premises emergency department.”

VII. Related Issues:

It is not clear how off-premises emergency departments already in existence prior to this bill becoming a law would be affected. It is unclear if it is the intent of the bill to require compliance of the remaining new criteria to these, already licensed and operational, off-premises emergency departments.

The bill does not include specific rule authority for the agency for this proposed section of statute, although it may be implied. The agency will be responsible for writing and adopting the rules for the off-premises emergency departments.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
