

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/HB 309	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Health Care Appropriations Subcommittee; Harrison and others	118 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/SB 768	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/HB 309 passed the House on April 22, 2015, and subsequently passed the Senate on April 23, 2015.

When a patient enters a hospital, a physician must decide whether or not to admit the individual for inpatient care. The term "observation status" means a hospital patient who is currently considered an outpatient, but is receiving observation services to determine if admission as an inpatient is necessary.

During an observation stay in a hospital, a treating physician may order a variety of outpatient services, including laboratory tests, medication, minor procedures, x-rays, and other imaging services. Observation stays can occur anywhere in the hospital.

A patient on "observation status" may experience higher costs than a patient on admission status for time spent in a hospital because Medicare covers inpatient and outpatient hospital services differently. Medicare Part A covers inpatient hospital services, which requires a one-time deductible covering all hospital services for the first 60 days a patient is in the hospital. A patient on "observation status" is covered under Medicare Part B, which covers outpatient hospital services and requires the patient to pay a copayment for each individual service.

In addition, observation status may affect Medicare coverage for care in a skilled nursing facility (SNF). A patient must have a qualifying inpatient hospital stay, defined as three consecutive days of inpatient care, to be covered by Medicare for SNF care. A patient who qualifies for Medicare and Medicaid will not be responsible for the copayment. A patient under "observation status" in a hospital does not meet the requirements for a qualifying inpatient hospital stay for Medicare coverage for SNF care.

In Florida, hospitals are not required to inform patients of their observation status under current law.

The bill requires that if a hospital places a patient on "observation status" rather than inpatient status, the observation services shall be documented in the patient's discharge papers. The bill requires that notice of "observation status" be given to the patient or patient's proxy through the discharge papers, which may include brochures, signage, or other forms of communication.

The bill appears to have a positive, yet indeterminate, fiscal impact which is anticipated to be insignificant.

The bill was approved by the Governor on June 10, 2015, ch. 2015-109, L.O.F., and will become effective on July 1, 2015.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Hospital Billing Transparency

Hospitals are licensed and regulated by the Agency for Health Care Administration (AHCA) under part I of ch. 395, F.S.<sup>1</sup> Current law requires hospitals to notify each patient, upon admission and discharge, of the right to receive an itemized bill. Upon request, the hospital must provide the patient an itemized statement detailing the specific nature of the charges or expenses incurred by the patient.<sup>2</sup>

A hospital must also give a patient, prior to providing any non-emergent medical services, within 7 days of a written request, a good faith estimate of reasonably anticipated charges for the facility to treat the patient's condition.<sup>3</sup> Upon request, the hospital must also provide revisions to the estimate.<sup>4</sup> A facility that fails to provide the estimate may be fined \$500 for each instance of the facility's failure to provide the requested information.<sup>5</sup>

#### Patient Status

When a patient enters a hospital, a physician must decide whether or not to admit the individual for inpatient care. Factors to be considered when making a decision to admit a patient include:

- The severity of the signs and symptoms exhibited by the patient;
- The medical predictability of an adverse event;
- The need for diagnostic studies to access whether the patient should be admitted;
- The availability of diagnostic procedures at the time when, and at the location where, the patient presents; and
- Whether the patient is expected to need at least 24 hours of hospital care.<sup>6</sup>

A patient in "observation status" in a hospital is considered an outpatient and receives observation services to determine if admission is necessary.<sup>7</sup> Observation services are commonly ordered for a patient who presents to the emergency department and requires a period of treatment or monitoring in order to make a decision between admission and discharge.<sup>8</sup> Outpatient services can include laboratory tests, medication, minor procedures, x-rays, and other imaging services. Observation stays can occur anywhere in the hospital, including the emergency department, a separate observation unit, or an inpatient unit.

The federal Medicare program does not expressly limit the number of days a patient may be on "observation status," but assumes the decision whether to admit or discharge a patient from the hospital can often be made in less than 48 hours; only in rare cases are outpatient observation services required beyond 48 hours.<sup>9</sup>

A patient on "observation status" may experience higher costs than a patient on admission status for time spent in a hospital because Medicare covers inpatient and outpatient hospital services differently.

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<sup>1</sup> S. 395.002(16), F.S., defines "licensed facility" as a hospital, ambulatory surgical center, or mobile surgical facility licensed in accordance with ch. 395, F.S. The bill applies to all three facility types because it amends part I of ch. 395, F.S., but will only affect hospitals because ambulatory surgical centers and mobile surgical facilities serve patients who are receiving elective outpatient services and know in advance that they are not going to be admitted to a hospital, barring any complications.

<sup>2</sup> S. 395.301(1), F.S.

<sup>3</sup> S. 395.301(7), F.S.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Centers for Medicare and Medicaid Services (CMS), *Medicare Benefit Policy Manual (MBPM)*, ch. 1, § 10.

<sup>7</sup> Id. at ch. 6, § 20.6.

<sup>8</sup> Id.

<sup>9</sup> Id.

Medicare Part A covers inpatient hospital services, which requires a one-time deductible covering all hospital services for the first 60 days a patient is in the hospital. A patient on "observation status" is covered under Medicare Part B, which covers outpatient hospital services and requires the patient to pay a 20-percent copayment for each individual outpatient hospital service.<sup>10</sup>

In addition, a patient's hospital status may affect their Medicare coverage for care in a skilled nursing facility (SNF). The patient must have a qualifying inpatient hospital stay, defined as three consecutive days of inpatient care, to be covered by Medicare for SNF care.<sup>11</sup> A patient who qualifies for Medicare and Medicaid will not be responsible for the copayment.<sup>12</sup> A patient under "observation status" in a hospital does not meet the requirements for a qualifying inpatient hospital stay for Medicare coverage for SNF care.

Four states have recently enacted legislation to require a hospital to notify a patient within 24 hours of being placed on "observation status".<sup>13</sup> Currently, a Florida hospital is not required to inform a patient of his or her "observation status".

### **Effect of the Bill**

The bill requires a hospital that places a patient on "observation status" rather than inpatient status to document the observation services in the patient's discharge papers. The bill requires that notice of "observation status" be given to the patient or the patient's proxy through the discharge papers, which may include brochures, signage, or other forms of communication.

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

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

#### **1. Revenues:**

The bill is expected to have a positive, yet indeterminate, fiscal impact on AHCA. The bill requires hospitals to provide documentation of observation services in the patient's discharge papers. Section 395.1065(2), F.S., authorizes AHCA to impose an administrative fine, not to exceed \$1,000 per violation, per day, for a violation of part I of ch. 395, F.S., part II of ch. 408, F.S., or applicable rules. The number of violations and the amount of fines that may be collected are unknown.

#### **2. Expenditures:**

None.

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<sup>10</sup> 42 CFR § 419.40(b)

<sup>11</sup> 42 CFR § 409.30

<sup>12</sup> 42 CFR § 440.20 Outpatient hospital services are a mandatory Medicaid benefit. For services that both Medicare and Medicaid cover, Medicare pays first, and Medicaid pays second by covering an individual's remaining costs for Medicare coinsurances and copayments.

<sup>13</sup> Connecticut (2014), Substitute House Bill No. 5535, Public Act No. 14-180; Maryland (2013), Senate Bill 195, Chapter 202; New York (2013), Bill S3926A-2013; and Pennsylvania (2013), House Bill No. 1907.

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

1. Revenues:

None.

2. Expenditures:

None.

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

Hospitals may realize a minimal increase in administrative costs associated with providing the documentation of observation services in the discharge papers. Hospitals may also realize an increase in fines for failing to provide notification of observation services included in the discharge papers.

**D. FISCAL COMMENTS:**

None.