

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 2, 1998 Revised: _____

Subject: Mobile Surgical Facilities

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Barrow</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>HC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The CS/SB 1728 would authorize mobile surgical facilities to contract with the Department of Corrections to provide surgical services to inmates of the Department of Corrections or private correctional facilities. Mobile surgical facilities would be defined in ch. 395, F.S., and would be subject to licensure and oversight by the Agency for Health Care Administration. This CS would take effect upon becoming a law.

This CS substantially amends or creates the following sections of the Florida Statutes: 395.001, 395.002, 395.003, 395.004, 395.0161, 395.0163, 395.0164, 395.1055, and 408.036.

II. Present Situation:

The Mobile Surgical Facility Located at North Florida Reception Center

The Department of Corrections (DOC) has a mobile surgical unit located at North Florida Reception Center (NFRC). This mobile facility is a semitrailer that has been modified to be a full-service, comprehensive surgical unit and is owned by the American Mobile Surgical Services, Incorporated. Nearly one year ago, the DOC entered into a contract with American Mobile Surgical Services, Inc., to have one of its mobile surgical facilities provide surgical services to inmates in the state correctional system. The mobile unit contains a pre-operation area, operating room, and post-operating area. The first procedure performed in the mobile surgical facility was in April, 1997. Since that time, over 400 cases have been handled at the mobile unit with no case requiring hospital admission or causing a security issue. According to American Mobile Surgical Services, Inc., the infection rate at the mobile unit has been less than .5 percent. Some of the typical surgical procedures performed include: cystectomies, biopsies, hernia repairs, and epidermal cysts.

The goal in having a mobile facility provide services to inmates was to save health care costs spent on inmates and to increase public safety by having the facility go to the inmate rather than the inmate go out into the community to the facility. Although it is capable of moving from location to location, it has remained parked at the Lake Butler, Florida, location at NFRC.

A provision in the contract between the DOC and American Mobile Surgical Services, Inc., required that the mobile surgical facility be licensed by the Agency for Health Care Administration. This mobile surgical facility, however, is not licensed or inspected by the Agency for Health Care Administration (AHCA or "agency") or any other agency in the state. According to AHCA, there is no statutory authority for the agency to regulate such facilities; therefore, the mobile surgical facility at NFRC has remained unlicensed. Accordingly, the mobile surgical facility at NFRC has essentially operated under the license of the DOC hospital at the Lake Butler facility.

American Mobile Surgical Services, Inc., is currently seeking to have the statutes clarify that there is state oversight of mobile surgical facilities, such as the mobile unit it owns and has operating at NFRC. The manufacturer of the unit currently owned by American Mobile Surgical Services, Inc., has already obtained federal Medicare approval. There is a mobile surgical unit that has already been licensed in the State of California by the equivalent of Florida's Agency for Health Care Administration. Thus, there has already been some state and federal licensure and oversight of mobile units such as the one owned by American Mobile Surgical Services, Inc.

Health-Care Facility Regulation by Chapter 395

Chapter 395, F.S., pertains to the licensing and regulation of hospitals as well as other medical facilities. Currently, any hospital or ambulatory surgical center in Florida must be licensed under ch. 395, F.S. *See*, s. 395.003 (1) (a), F.S. Therefore, it is unlawful for any person to use or advertise to the public, in any way or by any medium whatsoever, any facility as a "hospital" or "ambulatory surgical center" unless such facility has first secured a license under that chapter. s. 395.003 (1) (b) 1., F.S. This restriction, however, does not apply to veterinary hospitals or to commercial business establishments using the word "hospital" or "ambulatory surgical center" as a part of a trade name if no treatment of human beings is performed on the premises of such establishments.

The licensure and oversight of medical facilities that are required to comply with ch. 395, F.S., is a stringent process that requires absolute compliance by a licensed facility. The Agency for Health Care Administration is the state agency that is in charge of licensure and regulation of hospitals and ambulatory surgical care.

The agency issues a license when the agency has received a license application and fee, which is provided in s. 395.004, F.S., if the applicant and facility have received all approvals required by law and meet the requirements established under ch. 395, F.S. s. 395.003 (2) (a), F.S.

A new facility or a facility that is in substantial compliance with this part and with the rules of AHCA can receive a provisional license. A provisional license is effective for up to 1 year and expires automatically at the end of its term for which it was granted. However, a provisional license may not be renewed. A license, unless it is suspended or revoked, automatically expires 2 years from the date of issuance and must be renewed biennially upon application for renewal and payment of the fee prescribed by s. 395.004 (2), F.S., provided the applicant and licensed facility meet the requirements established under ch. 395, F.S., and in AHCA rules. s. 395.003 (2) (c), F.S.

At the request of a licensee, AHCA must issue a single license to a licensee for facilities located on separate premises. Such a license must specifically state the location of the facilities, the services, and the licensed beds available on each separate premises. s. 395.003 (2) (d), F.S. If a licensee requests a single license, the licensee must designate which facility or office is responsible for receipt of information, payment of fees, service of process, and all other activities necessary for the agency to carry out the provisions of this part. *Id.*

Each license that is issued is valid only for the person to whom it is issued and cannot be sold, assigned, or otherwise transferred, voluntarily or involuntarily. s. 395.003 (3) (a), F.S. Thus, a license is only valid for the premises for which it was originally issued.

In licensing a hospital or other facility required to be licensed under ch. 395, F.S., many other requirements and limitations apply. For instance, an application for a new license is required if ownership, a majority of the ownership, or controlling interest of a licensed facility is transferred or assigned and when a lessee agrees to undertake or provide services to the extent that legal liability for operation of the facility rests with the lessee. s. 395.003 (3) (b) 1., F.S.

AHCA's license must specify "the service categories and the number of hospital beds in each bed category for which a license is received." s. 395.003 (4), F.S. A licensed facility is prohibited from operating a number of hospital beds greater than the number indicated by AHCA on the face of the license without approval from the agency under conditions established by rule. *Id.*

Pursuant to s. 395.003 (8), F.S., whenever AHCA finds that there has been a substantial failure to comply with the requirements established under this part or in rules, the agency is authorized to deny, modify, suspend, or revoke:

- (a) A license;
- (b) That part of a license which is limited to a separate premises, as designated on the license; or
- (c) Licensure approval limited to a facility, building, or portion thereof, or a service, within a given premises.

Section 395.0161, F.S., provides for the inspection of facilities for the licensure of such facilities under ch. 395, F.S. This section authorizes AHCA to make or cause to be made such inspections and investigations as it deems necessary. s. 395.0161 (1), F.S.

The agency can accept, in lieu of its own periodic inspections for licensure, the survey or inspection of an accrediting organization under certain circumstances. s. 395.0161 (2), F.S. The agency, however, has administrative rules that provide criteria for accepting survey reports of accrediting organizations in lieu of conducting a state licensure inspection. With the exception of state-operated licensed facilities, each facility licensed under ch. 395, F.S., is required to pay inspection fees to AHCA as provided in statute.

One requirement that is statutorily placed upon facilities licensed under ch. 395, F.S., is that each licensed facility, as a condition of licensure, shall provide for peer review of physicians who deliver health care services at the facility and provides guidelines therefor. s. 395.0193, F.S. Each licensed facility is required to develop written, binding procedures by which such peer review is to be conducted.

However, the procedures for such actions must comply with the standards outlined by the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, the Commission on Accreditation of Rehabilitation Facilities, the Accreditation Association for Ambulatory Health Care, Inc., and the "Medicare/Medicaid Conditions of Participation," and rules of the agency and the department. s. 395.0193, F.S. All final disciplinary actions taken must be reported within 10 working days to the Division of Health Quality Assurance of the agency in writing and shall specify the disciplinary action taken and the specific grounds therefor.

Each licensed hospital with an emergency department must be capable of communicating by two-way radio with all ground-based basic life support service vehicles and advanced life support service vehicles that operate within the hospital's service area under a state permit and with all rotocraft air ambulances that operate under a state permit. s. 395.1031, F.S. The hospital's radio system must be capable of interfacing with municipal mutual aid channels designated by the Division of Communications of the Department of Management Services and the Federal Communications Commission.

Section 395.1065, F.S., provides for criminal and administrative penalties, injunctions, emergency orders, and moratoriums for medical facilities that are subject to the requirements and restrictions of ch. 395, F.S., and operate without a license. Any person establishing, conducting, managing, or operating any facility without a license under this part is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500 for the first offense and not more than \$1,000 for each subsequent offense, and each day of continuing violation after conviction shall be considered a separate offense. s. 395.1065 (1), F.S.

Pursuant to s. 395.1065 (2) (a), F.S., the Agency for Health Care Administration may deny, revoke, or suspend a license or impose an administrative fine, of up to \$1,000 per violation, per

day, for the violation of any provision of this part or rules promulgated pursuant to ch. 395, F.S. Each day of violation constitutes a separate violation and is subject to a separate fine. The statute provides the agency with factors to consider when setting the amount of fine to be levied for a violation.

Currently, under ch. 395, F.S., each hospital operated by the agency or by the Department of Corrections is required to use a system of problem-oriented medical records for its patients and the system must include the following elements: basic client data collection; a listing of the patient's problems; the initial plan with diagnostic and therapeutic orders as appropriate for each problem identified; and progress notes, including a discharge summary. s. 395.3015, F.S. The agency has rules that establish criteria for such problem-oriented medical record systems in order to ensure comparability among facilities and to facilitate the compilation of statewide statistics. *Id.*

III. Effect of Proposed Changes:

A “mobile surgical facility” would be defined as a mobile facility in which licensed health care professionals provide elective surgical care under contract with the Department of Corrections or a private correctional facility operating pursuant to ch. 957, F.S., and in which inmate-patients are admitted to and discharged from the facility within the same working day and are not permitted to stay overnight. The definition would also go on to state that a “mobile surgical facility” includes any structure or vehicle in which a physician maintains his office and practices surgery, and which can appear to the public to be a mobile office because the structure or vehicle operates at more than one address.

Definitions for the terms “ambulatory surgical center,” “licensed facility,” and “premises” would include references to “mobile surgical facilities.”

The CS would authorize mobile surgical facilities to operate in the state pursuant to having a contract with the Department of Corrections, or private correctional facility operating pursuant to ch. 957, F.S., and would require mobile surgical facilities to be licensed by the Agency for Health Care Administration. The agency would be provided specific authority to create separate standards for mobile surgical facilities and to enforce such standards.

Mobile surgical facilities would be required to apply for a license or a license renewal with the Agency for Health Care Administration and pay a fee for a license, license renewal, or provisional license. The fee would be assessed at a rate of between \$9.50 and \$30 per hospital bed, but at a minimum would be \$1,500. The Agency would be required to provide forms for application for licensure or licensure renewal.

The agency would have authority to inspect mobile surgical facilities at each time a facility establishes a new location prior to the admission of patients.

Any expenditure to provide mobile surgical facilities and related health care services under contract with the Department of Corrections or a private correctional facility would be specifically exempt from being reviewed and filing a certificate of need with AHCA.

This CS would take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

No new fees would be created by this CS. However, the applicability of fees for applications for licensure, license renewal, and inspections would be expanded to include mobile surgical facilities.

B. Private Sector Impact:

Any person or company that owns a mobile surgical facility would be required to pay the costs associated with licensure and inspections by the Agency for Health Care Administration. This negative fiscal impact on the private sector is indeterminate, but it is anticipated by staff that it would be insignificant.

C. Government Sector Impact:

The state would experience an indeterminate positive fiscal impact that would result from the increase in license application fees. This impact is anticipated to be minimal.

The DOC states that there would be no fiscal impact on the department if this CS passes. The DOC intends to continue its use of mobile surgical units in the prison system. With the one mobile unit that is currently operating at NFRC, the DOC anticipates it will achieve a \$1.2 million cost avoidance for the first year it has operated. According to American Mobile

Surgical Services, Inc., a state “audit run” showed that a cost savings of approximately \$1,300 per case has been realized by the state. If the use of mobile surgical units are continued and expanded within the prison system, it is possible that the cost avoidance of inmate surgical care could be increased.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.