

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 14, 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>Carter</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The CS/CS/SB 1728 authorizes mobile surgical facilities to contract with the Department of Corrections to provide elective surgical services to inmates of the Department of Corrections or private correctional facilities. A descriptive definition of “mobile surgical facility” is added to ch. 395, F.S., and such facilities are placed under the regulatory jurisdiction of the Agency for Health Care Administration. Mobile surgical facilities are exempted from certificate-of-need requirements. Mobile surgical facilities that operate under contracts entered into on or after July 1, 1998, are made subject to the Public Medical Assistance Trust Fund assessment. This bill would take effect upon becoming a law.

This bill amends sections 395.001, 395.002, 395.003, 395.004, 395.0161, 395.0163, 395.1055, 395.7015, and 408.036, Florida Statutes, and creates one undesignated section of law.

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 American Mobile Surgical Services, Incorporated. During 1997, 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-operating 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 surgical facility with no case requiring hospital admission or causing a security issue. According to American Mobile

Surgical Services, Inc., the infection rate at the mobile surgical facility 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 surgical 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 DOC and American Mobile Surgical Services, Inc., required that the mobile surgical facility be licensed by the Agency for Health Care Administration (AHCA or “agency”). This mobile surgical facility, however, is not licensed or inspected by AHCA 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 in Lake Butler.

American Mobile Surgical Services, Inc., is currently seeking to have the statutes clarified so that there is state oversight of mobile surgical facilities, such as the mobile unit it owns and has been 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 under Chapter 395

Chapter 395, F.S., pertains to the licensing and regulation of hospitals and ambulatory surgical centers, and is administered by AHCA. The licensure of medical facilities under ch. 395, F.S., is a stringent process that requires absolute compliance by a licensed facility. Therefore, as provided in subparagraph 395.003(1)(b)1., F.S., 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. 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 agency issues a license when it receives a license application and fee, if the applicant and facility have received all approvals required by law and meet the requirements established under ch 395, F.S.

A new facility, or a facility that is in substantial compliance with this part and with AHCA rules, may receive a provisional license. A provisional license is effective for up to one year and expires automatically at the end of the term for which it was granted. However, a provisional license may not be renewed. A license, unless it is suspended or revoked, automatically expires two 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.

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 premise. 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.

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. Thus, a license is only valid for the premises for which it was originally issued.

In licensing a hospital or ambulatory surgical center, 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.

The license issued by AHCA must specify the service categories and the number of hospital beds in each bed category for which a license is received. 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.

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 the hospital and ambulatory surgical center licensure law and regulations, 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 premise, as designated on the license;
or
- (c) Licensure approval limited to a facility, building, or portion of a facility or building, or a service, within a given premise.

Section 395.0161, F.S., provides for licensure inspection of facilities that are licensed under ch. 395, F.S. This section authorizes AHCA to make or cause to be made such inspections and investigations as it deems necessary. The agency can accept, in lieu of its own periodic inspections for licensure, the survey or inspection of an accrediting organization under certain circumstances. 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, must provide for peer review of physicians who deliver health care services at the facility, in accordance with statutorily prescribed guidelines. 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., the “Medicare/Medicaid Conditions of Participation,” and rules of the agency and the Department of Health. 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 for the disciplinary action.

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. 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 hospitals and ambulatory surgical centers that are subject to the requirements and restrictions of ch. 395, F.S., but are being operated 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.

Pursuant to s. 395.1065(2)(a), F.S., AHCA 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 the hospital and ambulatory surgical center licensure law. 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. 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.

The Public Medical Assistance Trust Fund (PMATF) is funded through assessments on the net operating revenues of hospitals and other statutorily specified health care entities, as provided under ss. 395.701 and 395.7015, F.S. Funds deposited into the PMATF are used to defray the expenses relating to indigent health care provided by hospitals.

Section 395.701, F.S., requires hospitals to submit 1.5 percent of annual net operating revenues to AHCA for deposit into the PMATF. Likewise, under s. 395.7015, F.S., health care entities which include ambulatory surgical centers, certain clinical laboratories, freestanding radiation therapy centers, and certain diagnostic-imaging centers that provide *sophisticated radiological services* are required to submit 1.5 percent of their annual net operating revenues to AHCA for deposit into the PMATF. The annual assessments on *health care entities* apply to revenues received through the end of the fiscal year, beginning with the most recently completed fiscal year after July 1, 1993.

III. Effect of Proposed Changes:

Section 395.002, F.S., would be amended to modify the definition of the term “ambulatory surgical center” to include a reference to *mobile surgical facility* and includes language that clarifies that such a facility is any structure or vehicle in which a physician maintains an 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. A “mobile surgical facility” would be defined, in subsection 395.002(21), F.S., 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. Such facilities, by definition, are explicitly restricted to providing health care services to the inmate patients of the Department of Corrections or inmates of a private correctional facility pursuant to ch. 957, F.S., and not to the general public. Definitions for the terms “licensed facility” and “premises” would include references to “mobile surgical facilities.”

The bill 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 AHCA. 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 AHCA 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, or a minimum of \$1,500. The agency would be required to provide licensure application forms for initial and 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. However, AHCA is not required to conduct a licensure inspection when a mobile surgical facility is moved temporarily to a location where medical treatment will not be provided.

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 certificate-of-need review. Licensed mobile surgical facilities operating under contracts entered into on or after July 1, 1998, are required to pay the PMATF assessment imposed under s. 395.7015(2), F.S., and must comply with the requirements of that subsection. Additionally, a mobile surgical facility that is operating under a contract with the Department of Corrections that was entered into before the bill takes effect is authorized to continue to operate unaffected by the provisions of the bill until AHCA adopts rules to implement the regulation of such facilities.

This bill would take 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, Subsections 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:

Mobile surgical facilities are made subject to the Public Medical Assistance Trust Fund assessment under s. 395.7015, F.S., which requires them to submit 1.5 percent of annual net operating revenue after January 1, 1998. Additionally, the applicability of licensure fees authorized under ch. 395, F.S., 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 AHCA. This 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 and additional revenue for the Public Medical Assistance Trust Fund. The impact is anticipated to be minimal in both instances.

The Department of Corrections states that there would be no fiscal impact on the department if this bill passes. The department intends to continue its use of mobile surgical units in the prison system. With the one mobile unit that is currently operating at NFRC, DOC anticipates it will achieve a \$1.2 million cost avoidance for Fiscal Year 1997-1998, ending June 30, 1998, the first year the mobile surgical facility 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 facilities is 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.