

STORAGE NAME: h4455s1.cor

DATE: April 6, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CORRECTIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4455

RELATING TO: Mobile surgical facilities

SPONSOR(S): Rep. Brooks

COMPANION BILL(S): SB 1728 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

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I. SUMMARY:

HB 4455 will create licensing requirements for mobile surgical facilities. There is currently one mobile surgical facility operating in Florida. However, there are no licensing or regulatory standards for operating such facilities in Florida. This bill will authorize the Agency for Health Care Administration (AHCA) to license and regulate mobile surgical facilities under Chapter 395. The bill's licensing requirements do not appear to interfere with the contract that the existing mobile surgical facility has with the Department of Corrections. However, the bill will allow such mobile surgical facilities to contract with other entities to provide similar services.

Mobile surgical facilities will be included in the definition of "ambulatory surgical center." The bill also specifically exempts mobile surgical facilities under contract with the Department of Corrections from the Chapter 408 requirements to procure a certificate of need. Additionally, the bill will authorize AHCA to inspect alterations and additions to licensed mobile surgical facilities, but will not authorize inspections of construction plans or new unmodified construction, although AHCA is authorized to conduct all of such inspections on other health facilities under chapter 395. Finally, the bill authorizes AHCA to establish separate minimum standards for mobile surgical facilities.

AHCA has reported the bill will have an insignificant fiscal impact. However, this conclusion is based on the fact that there is only one mobile surgical facility currently operating in Florida. It is unclear how many such facilities may apply for licensure in the future.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Mobile Surgical Facilities

Developed with the intention of providing outpatient surgery services to a population that may benefit from the mobility of such services, a mobile surgical facility is generally a semitrailer that has been modified to be a full-service, comprehensive surgical unit. There is currently only one such mobile surgical facility operating in Florida. Owned by American Mobile Surgical Services, Inc.(AMSSI), this mobile surgical facility is located at North Florida Reception Center (NFRC) and operates under contract with the Department of Corrections¹.

A provision in the April 1997 contract between the DOC and AMSSI required that the mobile surgical facility meet all licensing requirements. This mobile surgical facility, however, is not currently licensed or inspected by the Agency for Health Care Administration (AHCA) or any other agency in the state. According to AHCA, there is no statutory authority for the agency to regulate such facilities. So, the mobile surgical facility at NFRC has remained unlicensed, essentially operating under the license of the NFRC hospital because the unit connects to the hospital utilities inside the fence. This hospital is licensed by AHCA and receives an annual on-site survey by AHCA, in addition to surveys conducted by Correctional Medical Authority.

Regulation of Health Care Facilities

Although the statutes do not currently create licensing requirements for mobile surgical facilities, all hospitals and ambulatory surgical centers in Florida must be licensed and regulated under Chapter 395. Hospitals are facilities that provide care beyond 24 hours and regularly make available certain specified medical services. Ambulatory surgery

¹ The DOC's stated goal in contracting with AMSSI was to save health care costs spent on inmates and to increase public safety by reducing inmate transport in the community. Although the unit is capable of moving from location to location, it has remained parked at NFRC. The NFRC uses the unit for all outpatient surgeries that previously would have been routed to the hospital in Jacksonville, saving medical, security and transportation costs.

The mobile surgical facility at NFRC as been supplied with "state of the art" medical equipment and technology, according to the Department of Corrections and American Mobile Surgical Services, Inc. It contains a pre-op area, operating room, and post-op area. The unit is connected to the facility for power and water, but is also equipped with an emergency generator. The unit features a 15.5' x 22' regulation operating room as well as pre-op and recovery, clean and soiled utility rooms, and telemedicine capabilities.

The first procedure performed in the mobile surgical facility was in April, 1997. Since that time, over 400 cases have reportedly 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.

centers are not part of a hospital, but provide elective surgery in which the patient is admitted to and discharged from the facility within the same working day. Physician's offices are not construed to be ambulatory surgery centers, although physicians may perform some surgical procedures within their offices.

AHCA administers the state licensure program under Chapter 395. AHCA issues a license if the applicant and facility have received all approvals required by law and upon receipt of a license application and fee, as provided in §395.004. The licensure program includes the following components:

1. Application to AHCA. All applications must be accompanied by the application fee as required in §395.004.
2. Licensure inspections and investigations as deemed necessary by AHCA. Section 395.0161, F.S. 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. With the exception of state-operated licensed facilities, each facility licensed under Chapter 395 is required to pay inspection fees to AHCA as provided in statute.
3. Construction inspections. Current licensure requirements also include a review by AHCA of construction plans and an inspection of new facility construction and facility alterations and additions, as required by §395.0163. The statutes additionally require that construction, maintenance, repair, lifesafety and renovation of licensed facilities be governed by nationally recognized lifesafety codes. §395.1055. The National Fire Protection Association's codes relating to health care facilities include minimum fire prevention and lifesafety standards for such things as fire sprinkler systems; heating, ventilation and air conditioning systems; medical gas systems; plumbing systems; and electrical systems. These standards prevent fire and infection through air-borne and water-borne pathogens.
4. Adherence to minimum standards as provided by AHCA. §395.1055.
5. Peer-review provision. One requirement that is statutorily placed upon facilities licensed under Chapter 395, 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. §395.0193. Each licensed facility is required to develop written, binding procedures by which such peer review be conducted in accordance with statutory requirements.
5. Establishment of an internal risk management program as required by §395.0197.

In addition to the licensing program, AHCA also administers the state certificate of need program under the Health Facility and Services Development Act. §408.031 - §408.045. Hospitals and other facilities and services are required to receive a certificate of need prior to receiving a license to operate. The certificate of need program does not include ambulatory surgical centers and specifically exempts inmate health care facilities built by or for the exclusive use of the DOC, pursuant to paragraph 408.036(3)(j).

The Correctional Medical Authority, as authorized under §945.601 - §945.6035, is responsible for oversight of the quality of the physical and mental health care delivery system of the Department of Corrections. This oversight includes periodic surveys of the health care system at each correctional institution. These surveys do not include a review of facility construction and related fire prevention and lifesafety standards, as conducted by the Agency through the hospital and ambulatory surgical center licensure program.

§395.1065 provides for criminal and administrative penalties, injunctions, emergency orders, and moratoriums for medical facilities that are subject to the requirements and restrictions of Chapter 395 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. §395.1065(1).

Pursuant to §395.1065 (2) (a), 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 this part or rules promulgated pursuant to Chapter 395. 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.

Annual Assessments for the Public Medical Assistance Trust Fund

Currently, hospitals, ambulatory surgical centers, clinical laboratories, freestanding radiation therapy centers, and diagnostic-imaging centers are required to pay an annual assessment of 1.5 percent of the entities annual net operating revenues. See 395.701 and 395.7015. All moneys collected are deposited in the Public Medical Assistance Trust Fund, which is used to help fund Medicaid. Hospitals operated by the DOC and clinical laboratories operated by the state or which which are exempt under s. 501(c)(3) of the Internal Revenue Code of 1986 and which receives 70 percent or more of its gross revenues from services to charity patients or Medicaid patients are excluded from the requirement to pay the assessment.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 4455 will create licensing requirements, including licensing fees, for mobile surgical facilities under Chapter 395. Persons shall have to obtain a license before establishing, conducting or maintaining a mobile surgical facility. Furthermore, mobile surgical facilities must be licensed before they may be used or advertised to the public.

The committee substitute will include mobile surgical facilities in the statutory definition of ambulatory surgical centers - a facility with the primary purpose of providing elective surgical care, in which patients are admitted and discharged in the same working day and which is not part of a hospital. The CS adds that offices that may appear to the public to be mobile because the structure or vehicle operates at more than one address, shall be construed to be a mobile surgical facility.

The committee substitute will also create a separate definition of mobile surgical facility. This second definition limits the definition of mobile surgical facilities to those mobile facilities providing elective surgical care under contract with the Department of Corrections or a private correctional facility. The separate definition of mobile surgical facilities limits such facilities to providing health care services to inmate patients of the DOC or private correctional facilities.

The CS will require AHCA to inspect licensed mobile surgical facilities at initial licensure and at each time a facility establishes a new location, prior to the admission of patients. However, such inspection would not be required when the facility is moved temporarily to a location where medical treatment will not be provided.

The CS will authorize AHCA to establish separate minimum standards for mobile surgical facilities. Current statutes allow AHCA to establish separate minimum standards for general and specialty hospitals, rural hospitals, and ambulatory surgical centers.

The CS will exempt expenditures to provide mobile surgical facilities and related health care services under contract with the Department of Corrections or a private health care facility from the certificate of need requirements.

The CS will require licensed mobile surgical facilities to pay an annual assessment on net operating revenues to fund public medical assistance under §395.7015. This provision will not apply to mobile surgical facilities operating under contracts entered into before July 1, 1998.

The CS will allow mobile surgical facilities operating under a contract with the DOC prior to the effective date of the act to continue operating pursuant to that contract and only be subject to the act after the effective date of rules promulgated by AHCA for mobile surgical facilities.

The bill does not appear to interfere with the ability of the DOC to continue utilizing the mobile surgical facility at North Florida Reception Center. However, although one definition of mobile surgical facilities in the CS limits such facilities to the correctional setting, the bill also .

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

Yes. The bill authorizes AHCA to establish separate standards for mobile surgical facilities.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. AHCA will have new licensure responsibilities. AHCA will also have to develop standards of patient care and construction standards for mobile surgical units. County public health units of the Department of Health will have an increased workload for sanitation inspections. The Correctional Medical Authority may have additional workload related to potential utilization of such facilities by DOC.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

The bill does not authorize an increase in fees for hospitals or ambulatory surgery centers. However, the bill will include mobile surgical facilities in the licensure program, subjecting these facilities to a minimum license fee of \$1,500, and alteration construction plan review fees of \$2,000.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not directly. The cost of licensure would be borne by the mobile surgical facility; however, such costs may be passed on to patients through patient care fees.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The bill requires mobile surgical facilities to obtain a license before opening for business.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

§395.001, §395.002, §395.003, §395.004, §395.0161, §395.0163, §395.1055, §408.036, §395.7015

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends §395.001 to provide legislative intent to protect the public safety in the establishment, construction, maintenance and operation of mobile surgical facilities by requiring licensure of and development of minimum standards for mobile surgical facilities.

Section 2. Amends §395.002 to include "mobile surgical facility" in the definition of ambulatory surgical center. Defined to mean a facility with a primary purpose of providing elective surgical care, in which the patient is admitted and discharged in the same working day and does not stay overnight, and which is not part of a hospital. Provides that 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 it operates at more than one address, shall be construed to be a mobile surgical facility.

Mobile surgical facility is added to the definition of "licensed facility" and all licensed premises must be in reasonable proximity to the address of the licensed facility as to appear to the public to be under the dominion and control of the licensee.

Creates a separate definition of mobile surgical facility. Mobile surgical facility is 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 and in which inmates are admitted to and discharged from in the same working day and are not permitted to stay overnight. Limits the services to be provided by mobile surgical facilities to health care services to inmate patients of the Department of Corrections or a private correctional facility. Prohibits such facilities from providing services to the general public.

Section 3. Amends §395.003 to require the licensure of mobile surgical facilities. Prohibits the advertisement of any facility as a mobile surgical facility unless the facility has first secured a license. Also exempts mobile surgical facilities that are limited to veterinary or other non-human surgery from the licensure requirements.

Section 4. Amends §395.004 to include mobile surgical facilities under requirements relating to license applications and application fees.

Section 5. Amends §395.0161 to require licensure inspections of mobile surgical facilities each time a facility establishes a new location prior to the admission of patients. However, such inspections shall not be required when the facility is moved temporarily to a location where medical treatment will not be provided.

Section 6. Amends §395.0163, relating to construction plan approvals and construction inspections. Requires AHCA to inspect licensed mobile surgical facilities at initial licensure and at each time the facility establishes a new location, prior to the admission of patients. However, such inspections shall not be required when the facility is moved temporarily to a location where medical treatment will not be provided.

Section 7. Amends §395.1055 to authorize AHCA to establish separate minimum standards for mobile surgical facilities.

Section 8. Amends §408.036 to exempt mobile surgical facilities and related health care services provided under contract with the DOC from certificate of need requirements.

Section 9. Amends §395.7015 to include licensed mobile surgical facilities in the definition of health care facilities that must pay an annual assessment on net operating revenues to fund public medical assistance. The subsection does not apply to mobile surgical facilities operating under contracts entered into before July 1, 1998.

Section 10. Provides that mobile surgical facilities operating pursuant to a contract with the Department of Corrections prior to the effective date of this act shall continue to operate and shall only be subject to the act after the effective date of rules promulgated by AHCA for mobile surgical facilities.

Section 11. This act will take effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

According to AHCA, the minimum licensure fee for a mobile surgical facility will be \$1,500. Such facilities will also be subject to a minimum \$2,000 plan review fee for any alteration of or additions to the facility's construction.

2. Direct Private Sector Benefits:

Patients will have the option of receiving treatment at mobile surgical facilities. The bill exempts mobile surgical facilities from the requirement that AHCA inspect new construction, therefore such facilities will avoid a \$2,000 new construction plan review fee.

3. Effects on Competition, Private Enterprise and Employment Markets:

Mobile surgical facilities will compete with hospital services and ambulatory surgical centers.

D. FISCAL COMMENTS:

There is currently only one mobile surgical facility operating in Florida. According to AHCA, the licensure workload for the single mobile surgical facility would be minimum and will not require additional FTE staff positions. However, the potential number of mobile surgical facilities that may seek to operate in Florida in the future and thereby be subject to licensure requirements is currently unknown.

The increasing costs of licensure may cause the cost of services provided under the contract between DOC and AMSSI to increase.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenue.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

AHCA has stated that all facilities performing general operations should be required to meet, at a minimum, nationally adopted standards and guidelines relating to patient care and minimum construction standards. According to AHCA, if mobile surgical facilities are excluded from inspection of new construction by the Office of Plans and Construction, as is required or freestanding ambulatory surgery centers, construction standards will not be uniform and patients there may not be assured that mobile surgical facilities will provide for their health and safety.

AHCA has also noted that the bill does not provide limits on the procedures that may be performed in a mobile surgical facility, aside from statutory restrictions that these be elective, non-emergency procedures for which the patient can be discharged within the same working day.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

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