

STORAGE NAME: h1431.hcl

DATE: March 22, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE LICENSING & REGULATION
ANALYSIS**

BILL #: HB 1431

RELATING TO: Emergency Medical Services

SPONSOR(S): Representative Casey

COMPANION BILL(S): SB 1476(i), HB 1433(c), and SB 1810(c)

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

- (1) HEALTH CARE LICENSING & REGULATION
 - (2) GOVERNMENTAL RULES & REGULATION
 - (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

HB 1431 amends and creates sections of chapter 401, F.S., to update regulations, clarify provisions, and make technical changes.

According to the Department of Health, provisions which establish the licensing and operational requirements for emergency medical service licensees:

- lacks time frames, other than the expiration date of a license, for the timely submission of licensure renewal applications;
- does not address medical direction as a condition of licensure;
- does not address trauma transport protocol as a condition of licensure. This limits the department's ability to provide oversight in the coordination of trauma transports; and
- lack explicit rule authority for the department to administer the requirements of the section.

Among many of the changes made, HB 1431:

- Enables the Department of Health to fund projects designed to assess the impact of prevention and other programs targeting the reduction of mortality and morbidity and projects that evaluate the efficient utilization of EMS resources.
- Modifies the qualifications of medical directors to require emergency medical services education or experience, effective July 1, 2005. The change recognizes emergency medicine as a specialty field and ensures appropriate medical supervision of emergency medical technicians and paramedics.
- Allows mitigation of impairment complaints against emergency medical technicians or paramedics under specified conditions. Requires the certificateholder to acknowledge the impairment, enroll in and successfully complete and approved treatment program, and remove himself or herself from medical functions consistent with the recommendation of the treatment program and his or her medical director until treatment has been successfully completed.
- Effective October 1, 1999, amends s. 401.34(1), F.S., to increase fee structure for licensure, permitting, and certification to make regulation self-supporting.

The Department of Health estimates that the biennial program costs will be \$2,850,006 and the biennial revenues based on proposed fee schedule will be \$2,847,500. The department also estimates that the impact on local governments will be \$156,196 for FY 1999-00.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 401, F.S., relates to Medical Telecommunications and Transportation. Part I addresses Telecommunication Systems, Part II is known as the "Florida Emergency Medical Services Grant Act," and Part III is cited as the "Raymond H. Alexander, M.D., Emergency Transportation Services Act."

According to the Department of Health, s. 401.25, F.S., which establishes the licensing and operational requirements for emergency medical service licensees:

- lacks time frames, other than the expiration date of a license, for the timely submission of licensure renewal applications;
- does not address medical direction as a condition of licensure;
- does not address trauma transport protocol as a condition of licensure. This limits the department's ability to provide oversight in the coordination of trauma transports; and
- lack explicit rule authority for the department to administer the requirements of the section.

Section 401.251, F.S., provides the licensure requirements for air ambulance services. It does not address medical direction as a condition of licensure. Although s. 401.265, F.S., provides requirements of a medical director, without statutory authority, the department's ability to take appropriate disciplinary action against licensees in complaints related to medical direction is limited. Rule authority is not provided to the department to administer the section.

Under s. 401.252, F.S., which provides requirements for interfacility transfers, air ambulance services, though actively involved in interfacility transfers, are not specifically addressed. The section specifically addresses interfacility transfers conducted by basic and advanced life support services, but air ambulance services have not been explicitly included. Although most air ambulance services are licensed dually to provide both ground and air service, the requirements become less clear should the provider possess only the air ambulance license. Emergency medical service licensee provides the transport with the licensee's vehicles, equipment, and personnel, the licensee's medical director is left out of medical control unless contacted by his or her transport staff. This handicaps the medical director's ability to provide appropriate medical direction for interfacility transfers.

Pursuant to s. 401.265, F.S., a medical director must be a physician licensed pursuant to chapters 458 or 459, F.S., but no specific emergency medical education or emergency medical service experience is required. The section requires medical directors to report emergency medical technicians and paramedics that the medical director reasonably believes to have acted in a manner which might constitute grounds for disciplinary action.

Currently, there is no provision in law related to a statewide medical direction for the Department of Health.

The certification/recertification requirements for emergency medical technicians and paramedics are provided; however, the statutes are not explicit in the staffing requirements for basic and advanced life support vehicles. Requirements for staffing of permitted vehicles is currently established in rule. Repeal of the rule effective July 1, 1999, will leave the department without authority to establish staffing requirements. Rule authority is not provided to the department to administer the section.

There is currently no provision in law related to the mitigation of complaints of impairment against emergency medical technicians and paramedics as is provided for other health care practitioners regulated by the department.

Section 401.30, F.S., establishes records requirements for emergency medical service licensees. The section provides for the confidentiality of patient records and appropriate limited release of these records without the consent of the patient. The section permits release of the emergency medical service licensee's patient records to the treating hospital, but does not provide an explicit requirement to deliver such copy to the hospital. Requirements for delivery of patient records by licensees to receiving hospitals are currently established in rules. Repeal of the rule effective July 1, 1999, leaves the department without authority to require licensees to provide emergency medical services patients' records to receiving hospitals.

There is no provision in law holding certificateholders and licensees responsible for ensuring the department has a current mailing address.

Section 401.31, F.S., provides for corrective action for violations found during inspections by the department. Licensees must submit a corrective action statement attesting that the correction has been made within time frames set by the department. This limits the department's role in approving and monitoring the process to correct improvements and restricts the licensee's participation in identifying the deadlines for corrections. Rule authority is not provided to the department to administer the section.

The current requirements relating to the transfer of licenses restrict validity of a license or permit to the original location for which it was issued. The requirement causes the department to invalidate licenses and permits when the licensee erects a new physical plant within the same service area. This section also causes a license to expire and requires the licensee to surrender the license when the licensee changes the name of service. The department is required to reissue the license upon new application and payment of a \$30 fee. The requirement is written such that it may halt delivery of health care services to the public while the paper work is being finalized. Rule authority is not provided to the department to administer the section.

Section 401.33, F.S., provides exemptions from the requirements of chapter 401, Part III, F.S., for specified cases. Currently, specialty vehicles which are used to access and move patients from locations that are inaccessible by permitted ambulances are required to meet the provisions for vehicle design, staffing, equipment, and permitting.

Section 401.34, F.S., establishes nonrefundable fees for licensing emergency medical service providers, permitting ground and air vehicles, and certifying/recertifying emergency medical technicians and paramedics. While other licensing entities within the department are statutorily required to be fiscally self-sufficient, fees for these services have not been sufficiently adjusted to cover the costs of licensing and certifying, or related administrative and regulatory activities. Rule authority is not provided to the department to administer the section.

Section 401.41, F.S., provides for penalties against certificateholders and licensees. The section lists as a violation practicing as an ambulance driver without being so certified. Chapter 401, F.S., has not provision for the certification of ambulance drivers, but rather holds a licensee responsible for ensuring that drivers of their vehicles meet specified training requirements.

Section 401.411, F.S., establishes disciplinary actions and penalties related to both licensees and certificateholders. The section provides a mix of requirements, some of which apply to both licensees and certificateholders and the rest of which apply to only one or the other. Rule authority is not provided to the department to administer this section.

Section 401.414, F.S., provides procedures for the department to investigate complaints against licensees and certificateholders. Rule authority is not provided to the department to administer the section.

Section 401.421, F.S., authorizes the department to institute civil action for injunctive relief to correct or prevent violations of Chapter 401, Part III, F.S. The section authorizes the department to issue and deliver a cease and desist order, and to seek an injunction or a writ of mandamus to remedy unlicensed activity. The department may seek imposition of a civil penalty by the circuit court, but no provision is made for administrative penalty, including attorney's expenses or the cost of collection.

Section 401.425, F.S., identifies the entities that compose a quality assurance committee and provides immunity from civil liability for quality assurance committee members. The section protects the confidentiality of records created by the committee, but appears to conflict with other provisions of the section.

Section 401.435, F.S., requires first responder agencies to take reasonable efforts to enter into a memorandum of understanding with the emergency medical services licensees that operates in the same geographical location. Such agreements provide for the coordination of local service delivery and facilitate effective use local resources. The section identifies specific types of agencies, e.g., law enforcement and fire services, and includes some agencies by the related emergency functions they perform to identify entities affected by the memorandum of agreement requirements. The section

does not currently recognize any agency that performs emergency medical dispatch as an affected entity. Lifeguard agencies are currently recognized in this section as a category of first responder agencies subject to these requirements. The department is unable to recognize the medical director's approval of recertification training. Rule authority is not provided to the department to administer the section.

Section 401.45, F.S., prohibits a licensed emergency medical services provider from denying prehospital treatment or transport to any person needing such services, except in accordance with do-not-resuscitate orders issued pursuant to the section. The section does not make it clear that prehospital emergency treatment and transport are required to be provided only by entities licensed under chapter 401, F.S. This could allow residential care facilities, such as nursing homes, to use an unlicensed transport provider, such as wheel chair transport service, to transport prehospital emergency patients who require emergency medical treatment on-scene and during transport.

Chapter 401, F.S., does not clearly define the department's role in the regulation of entities that provide emergency medical technician and paramedic certification and recertification education. Requirements for the regulation of education programs are currently established in rules. Repeal of the rule effective July 1, 1999, leaves the department without authority to regulate emergency medical technician and paramedic education programs.

There is currently no provision in law authorizing the department to administer oaths, take depositions, or issue subpoenas in its investigations or proceedings. Lack of such authority debilitates the department in obtaining evidence during investigations.

There is no provision in law that recognizes the role of critical incident stress management for emergency workers who experience work-related stress in the provision of emergency medical care to the public. Critical incident stress management is used to mitigate the impact of the daily impact of treating illness and injury as well as resolving issues related to mass casualty incidents. There is no clear provision in law describing the department's role in maintaining a healthy emergency work force.

Although there is a provision in chapter 401, F.S., for emergency medical service licensees to share patient information with receiving hospitals, there is no provision for hospitals to share information with the licensee without the consent of the patient. Emergency medical service licensees lack the definitive diagnoses of patient's conditions which can be used in quality management programs to improve the care and treatment they provide to the public.

B. EFFECT OF PROPOSED CHANGES:

The Effects of the Changes in this bill are included in the Section-by-Section Analysis.

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. Several rules will be repealed July 1, 1999, unless legislative authority is provided to the department to promulgate.

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

No.

(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?

N/A

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

Yes.

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?

N/A

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

N/A

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?

N/A

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:

Chapter 401, F.S., and ss. 395.3025 and 395.1027, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 401.117, F.S., to enable the Department of Health to fund projects designed to assess the impact of prevention and other programs targeting the reduction of mortality and morbidity and projects that evaluate the efficient utilization of EMS resources.

Section 2. Amends s. 401.211, F.S., to include in the legislative intent the provision of quality management and technical assistance to licensees. This provision will allow the department to offer licensees assistance in the development and implementation of modern programs of quality management designed to continuously evaluate and improve patient care processes.

Section 3. Amends s. 401.23, F.S., to provide updated definitions in medical practice and to clarify terms used in statutes that are not explicitly defined. Definitions for "advanced life support nontransport vehicle," "basic life support," "education program licensee," "education program medical director," "interfacility transfer," and "medical director" are provided.

Section 4. Amends s. 401.245, F.S., technical changes to reflect renumbering in the definition section and changes from program office to bureau to recognize the creation of the Department of Health.

Section 5. Amends s. 401.25, F.S., to require licensee, as a condition of licensure, to submit trauma transport protocols and to contract with or employ a medical director. The section also establishes a timeframe for renewal of a licensure application, consistent with chapter 120, F.S., and for the tolling of a license expiration pending final agency action when administrative proceedings concerning renewal have been initiated by the department. The bill transfers vehicle staffing requirements to s. 401.25, F.S., from s. 401.27, F.S., collocating it with other requirements for licensees, and provides staffing requirements for all permitted vehicles. The bill provides the department with rule authority to administer the section and specifically to require oaths on applications, as suggested to the department by the Joint Administrative Procedures Committee (JAPC).

Section 6. Amends s. 401.251, F.S., to clarify an air ambulance licensee's accountability for medical direction services by explicitly requiring the licensee to employ or contract with a medical director as a condition for licensure. Allows for the tolling of license expiration pending final agency action when administrative action has been initiated regarding renewal. Provides rulemaking authority.

Section 7. Amends s. 401.252, F.S., to clarify the shared medical charge of interfacility transfer patients between the transferring physician and the medical director. Permits using qualified medical staff, such as respiratory technicians, appropriate to the patient's condition and severity during transport.

Section 8. Amends s. 401.265, F.S., to modify the qualifications of medical directors to require emergency medical services education or experience, effective July 1, 2005. The change recognizes emergency medicine as a specialty field and ensures appropriate medical supervision of emergency medical technicians and paramedics.

Section 9. Creates s. 401.2651, F.S., to establish a state level medical director, thereby ensuring that the department has medical direction for its role in protecting and enhancing the public health and safety through emergency medical services.

Section 10. Amends s. 401.27, F.S., to permit the department to require a social security number on certification applications. This addresses a concern that the JAPC has raised in review of rules. Clarifies the certification and recertification requirements and voluntary and involuntary inactive certification status for emergency medical technicians and paramedics.

Section 11. Creates s. 401.2701, F.S., to allow mitigation of impairment complaints against emergency medical technicians or paramedics under specified conditions. Requires the certificateholder to acknowledge the impairment, enroll in and successfully complete an approved treatment program, and remove himself or herself from medical functions consistent with the recommendation of the treatment program and his or her medical director until treatment has been successfully completed.

Section 12. Amends s. 401.30, F.S., to recognize the licensee's transition to electronic recordkeeping from paper format. Requires licensees to provide a copy of the prehospital medical record to the receiving hospital to assist in patient assessment and care, trauma registry reporting, and hospital quality management activities.

Section 13. Creates s. 401.305, F.S., to require licensees and certificateholders to be responsible for updating the department with changes of address. Provides rulemaking authority.

Section 14. Amends s. 401.31, F.S., to require submission of a corrective action plan to allow the department to monitor the corrective action process and successful completion of the plan.

Section 15. Amends s. 401.321, F.S., to provide the department with rulemaking authority to establish a process for notification and application by a licensee for a change of service name or location. Provides for a \$30 fee.

Section 16. Amends s. 401.33, F.S., to exempt specialty vehicles from permitting, staffing, and other requirements of part III of the chapter. A specialty vehicle may be a golf cart used during public events where crowds or physical structure of the building may deny access by an ambulance. Due to the small size of these specialty vehicles and because they are used in concert with permitted emergency vehicles, there is not a public health need to regulate these vehicles.

Section 17. Effective October 1, 1999, amends s. 401.34(1), F.S., to increase fee structure for licensure, permitting, and certification to make regulation self-supporting.

Section 18. Amends s. 401.34, F.S., to provide for rulemaking authority and to require that fees be set at the actual cost of the regulatory activities.

Section 19. Amends s. 401.41, F.S., to eliminate a reference to certification of ambulance drivers. Drivers are not certified under chapter 401, F.S.

Section 20. Amends s. 401.411, F.S., to create separate disciplinary action sections for certificateholders and licensees. Requirements applicable to licensees have been deleted and are recreated in s. 401.52, F.S., of the bill.

Section 21. Amends s. 401.414, F.S., to create separate complaint investigation procedures for certificateholders and licensees. Requirements applicable to licensees have been deleted and are recreated in s. 401.51, F.S., of the bill.

Section 22. Amends s. 401.421, F.S., to prescribe the department's authority to issue cease and desist notices to education program licensees and institute administrative penalties against any person or entity providing emergency medical services.

Section 23. Amends s. 401.425, F.S., to delete contradictory language regarding access to quality assurance records by the department for disciplinary action to clarify the confidentiality of quality assurance records.

Section 24. Amends s. 401.435, F.S., to require memoranda of understanding between first responder agencies and licensed emergency medical services providers, effective October 1, 2000. Provides for recertification training for first response personnel.

Section 25. Amends s. 401.45, F.S., to clarify the responsibility of emergency medical service licensees to respond to calls for emergency medical assistance. If a patient needs, or is likely to need, emergency medical care, an emergency medical services licensee must respond or cause to be responded, a permitted vehicle.

Section 26. Creates s. 401.49, F.S., to provide the department oversight of training and education for certification of emergency medical technicians and paramedics. Authorizes the department to license education programs, perform site visits, assess fees to cover the expenses of regulation, and pursue disciplinary action. Makes private schools ineligible, effective July 1, 1999, and leaves community colleges and associate degree schools eligible to provide training. Rule relating to this issue will be repealed effective July 1, 1999, leaving the department without regulatory authority.

Section 27. Creates s. 401.50, F.S., to establish department oversight of recertification training for emergency medical technicians and paramedics. Recertification training must cover training for adult and pediatric clinical care.

Section 28. Creates s. 401.51, F.S., to establish a complaint investigation procedures section for licensees separate from that for certificateholders. Provides rulemaking authority.

Section 29. Creates s. 401.52, F.S., to establish a disciplinary actions and penalties section for licensees separate from that for certificateholders. Provides rulemaking authority.

Section 30. Creates s. 401.53, F.S., to authorize the department, on its own initiative, to administer oaths, take depositions, and issue subpoenas. Such authority will facilitate complaint investigations and proceedings of the department.

Section 31. Creates s. 401.55, F.S., to establish a health and safety program for emergency medical services at the state level and protect the confidentiality of individuals who participate in critical incident stress management activities.

Section 32. Amends s. 395.3025, F.S., to expand a hospital's authority to release patient records without the patient's consent to include release of information to emergency medical service licensees.

Section 33. Amends s. 395.1027, F.S., technical cross-reference change.

Section 34. Requires a report and proposal to the Legislature on the department's licensing and regulatory requirements for licensees and certificateholders. Report is due by February 1, 2000.

Section 35. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Expenditures:	1999-00
Department of Health	
Rule promulgation	\$3,000

2. Recurring Effects:

Expenditures:	1999-00
Department of Health	
Salaries	\$1,022,756
Expenses	735,920
Indirect	<u>1,091,330</u>
Emergency Medical Service Trust Fund	\$2,850,006

Revenues based on current fee schedule	\$1,856,610
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Revenues based on proposed fee schedule	\$2,847,500
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Expenses for Education Program License

Department of Health		
Salaries, expenses, licensing, permitting, and certification/recertification	\$ 495,445	\$495,445
Education program licensing	80,000	26,667

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Approximately 68% of licensed providers are public providers. Though many public providers pay the cost of recertification for their personnel as a fringe benefit, chapter 401, F.S., ultimately holds the certificateholder responsible for the payment of recertification fees.

	1999-00	2000-01
Licensing and permitting	\$156,196	\$156,196
Education program licensing	26,667	26,667

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See C.2.

2. Direct Private Sector Benefits:

The private sector, including private licensees and individual certificateholders, will experience a \$475,038 annual increase in fees for licensees, permits, and certificates.

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

N/A

D. FISCAL COMMENTS:

Fees set at the amounts indicated for emergency medical service licenses, permitting, initial certification and recertification will require the department to continue to subsidize regulatory activities with approximately \$100,000 annually from the Emergency Medical Services Trust Fund. Based on current revenue projections for the biennium period of FY 1999-00, expenses will exceed revenues by approximately \$1,123,359. The fee increases requested will reduce the projected deficit to approximately \$201,831, biennially. The majority of this deficit is the direct result of the 7% General Revenue surcharge assessed against revenues. The last time fees were increased was in 1992.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not required counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

V. COMMENTS:

This bill is the result of emergency medical service representatives and staff of the Department of Health working together over the last eight months. Three sections of the bill have been proposed to insert authority for requirements that exist in rule with uncertain statutory basis. They are the regulation of training centers, the requirement to deliver an emergency medical services patient record to the receiving hospital with the patient, and the staffing of advanced life support vehicles meeting the minimum of a paramedic and an emergency medical technician. Three workshops have already been held in the rule repeal process. The rules related to these issues will be repealed effective July 1, 1999, leaving the department without any regulatory authority over these three areas.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Lucretia Shaw Collins

Lucretia Shaw Collins