

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1209 CS                      Poison Control  
**SPONSOR(S):** Sansom  
**TIED BILLS:**                                **IDEN./SIM. BILLS:** SB 1868 CS

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Regulation Committee	8 Y, 0 N, w/CS	Bell	Mitchell
2) Health & Families Council	9 Y, 0 N	Bell	Moore
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

HB 1209 CS addresses the release of patient records to poison control facilities for patient case management and for state and federal data reporting requirements.

Poison control centers play a significant role in assessing, triaging, managing, and monitoring known and suspected poisonings in Florida, and in protecting the public health. Poison control centers perform epidemiological surveillance and may be the first line of defense in the event of a bioterrorism attack. In order to better care for poisoned patients, poison control centers need access to patient information.

The Legislature tried to address this issue in 2004 by passing SB 2448. SB 2448 included a provision that required licensed facilities to release patient information to regional poison control centers for patient case management. However, this provision only captured hospital records, not private medical centers or physician offices. The poison control centers are still experiencing difficulties accessing patient information, and are concerned about meeting state and federal reporting requirements.

HB 1209 CS amends ss. 395.1027, 395.3025, and 456.057, F.S., to authorize the release of patient records to regional poison control centers of patient information that is relevant to the episode under evaluation for treatment or case management of poison cases, and necessary to comply with data collection and reporting requirements of state and federal law. The requirements in the bill apply to patient records in all licensed facilities, including physician offices and private medical centers.

The bill extends the moratorium on the authorization of hospital off-site emergency departments to July 1, 2006.

The effective date of the bill is upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill authorizes the release of patient records to regional poison control centers for patient treatment purposes and reporting requirements.

Maintain Public Security – The bill authorizes the release of patient information to treat poisoned patients. Having all relevant patient information is likely to improve poisoned patient outcomes.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Poison Control Centers**

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##### **Freestanding Emergency Departments**

HB 1209 CS amends s. 395.003, F.S., to extend the moratorium on the authorization of hospital off-site emergency departments to July 1, 2006, and to repeal obsolete language regarding a report that was completed on December 31, 2004.

##### **PRESENT SITUATION – POISON CONTROL CENTERS**

Pursuant to Section 18, Chapters 89-283, Laws of Florida, codified in Section 395.1027, F.S., the Legislature created the Florida Poison Information Center Network. The three poison control centers in Florida are located in Jacksonville, Tampa, and Miami. Each regional poison control center must be affiliated with and physically located in a certified Level I trauma center and must be affiliated with an accredited medical school or college of pharmacy. Regional poison control centers provide the following services:

- Toll-free access by the public for poison information;
- Case management of poison cases;
- Professional consultation to health care practitioners;
- Prevention education to the public; and
- Data collection and reporting.

##### **Poison Control Center Requirements**

Poison control centers must be certified or have a waiver from certification to obtain federal funding under the Poison Control Center Enhancement and Awareness Act (Act).<sup>1</sup> Under the Act, a poison control center may seek a waiver of certification requirements if the center can reasonably demonstrate that the center will obtain certification within a reasonable period of time. The American Association of Poison Control Centers (AAPCC) is a nationwide organization of poison centers and interested

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<sup>1</sup> The law (Section 4 of P.L. 108-194) requires the Secretary to award grants to only certified regional poison control centers for specified purposes which include improving and expanding poison control data collection systems including, at the Secretary's discretion, by assisting poison control centers to improve data collection activities, and improving national toxic exposure surveillance by enhancing activities at the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

individuals.<sup>2</sup> AAPCC certifies regional poison control centers and poison center personnel. The AAPCC requires certified poison control centers to submit their human exposure data to AAPCC's Toxic Exposure Surveillance System with all required data elements.

### **Role of Poison Control Centers**

Poison control centers play a significant role in assessing, triaging, managing, and monitoring known and suspected poisonings in Florida, and in protecting public health. Poison control centers perform epidemiological surveillance and may be the first line of defense in the event of a bioterrorism attack. In order to better care for poisoned patients, poison control centers need access to patient information.

### **HIPPA Law Requirements**

Sections 261-264 of the "Administrative Simplification" provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPPA), enacted August 21, 1996, relate to health information privacy. The United States Department of Health and Human Services issued Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) which took effect April 14, 2003. On October 2, 2003, the Florida Secretary of Health sent a letter to health care providers, which noted that poison control centers met significant resistance from health care providers within Florida to share protected health information.

### **Previous Legislation**

In 2004 the Legislature passed SB 2448. This bill included a provision that required licensed facilities to release patient information to regional poison control centers for patient case management. However, this provision only captured hospital records not private medical centers or physician offices. The poison control centers are still experiencing difficulties accessing patient information, and are concerned about meeting state and federal reporting requirements.

### **Florida Statutory Provisions**

Several statutory provisions already allow health facilities and providers to share patient information with regional poison control centers for case management purposes. However, the provisions do not allow patient information to be shared for state and federal data reporting requirements.

Regional poison control centers are exempt from the requirements of the federal Privacy Rule when performing public health functions required under s. 395.1027, F.S. The Privacy Rule allows for disclosure of protected health information to a health care provider involved in the treatment of any patient. Florida law requires the disclosure without the patient's authorization to relate to care provided to the particular patient under the care of the disclosing entity. Both Florida law and the Privacy Rule, when interpreted, would authorize health care providers to share protected health information with a regional poison control center for the treatment of a particular patient and to share protected health information with a poison control center so that the center may complete its required public health activities outlined in s. 395.1027, F.S.

Section 456.057, F.S., deals with the confidentiality of medical records created by specified health care practitioners, including medical physicians. Section 457.057(5), F.S., allows patient records, which are otherwise confidential, to be furnished without written authorization to other health care practitioners and providers involved in the care or treatment of the patient. Section 395.3025, F.S., provides requirements for the confidentiality of patient records held by hospitals in Florida and outlines uses and disclosures of such records. Under s. 395.3025, F.S., patient records that are otherwise confidential may be disclosed to a licensed facility, personnel, and attending physicians for use in connection with treatment of the patient without the consent of the person with whom they pertain. Section 395.3025(7)(a), F.S., provides that if the content of any record of patient treatment is provided under s. 395.3025, F.S., to a recipient other than the patient or the patient's representative, the recipient may use such information only for the purpose provided and may not further disclose any information to any other person or entity, unless expressly permitted by the written consent of the patient. A general authorization for the release of medical information is not sufficient for this purpose. The content of

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<sup>2</sup> See the website for the American Association of Poison Control Centers at [<http://www.aapcc.org/aapcc.htm>].

such patient treatment record is confidential and exempt for the Public Records Law. Section 395.3025(8), F.S., also provides that patient records in hospitals and ambulatory surgical centers are exempt from the disclosure requirements of the Public Records Law, with specified exceptions. To the extent that poison control centers must be affiliated with and physically located in a certificated Level I trauma center and are subject to the Public Records Law, ss. 395.3025(7)(a) and 456.057(5), F.S., would apply to the centers to exempt treatment records from the Public Records Laws and keep such records confidential when provided to the centers from hospitals or other health care providers.

Therefore, a statutory change is needed to specifically allow for sharing of information with poison control centers for data reporting requirements.

## BACKGROUND – FREESTANDING EMERGENCY DEPARTMENTS

### **Freestanding Emergency Departments**

Chapter 395, F.S., provides for the regulation of hospitals by the Agency for Health Care Administration (AHCA). According to AHCA:

*Acute care hospitals have diversified their services in recent decades, particularly in the 1990s. The expansion of managed care in the 1990s led hospitals to eliminate unnecessary inpatient stays in favor of greater use of outpatient services. The overnight inpatient stay has become shorter and hospitals have increased their involvement with outpatient surgery, outpatient diagnostic imaging, outpatient clinical laboratories, freestanding urgent care centers, outpatient rehabilitation centers and outpatient clinic services... The development of freestanding emergency departments is part of this trend toward more hospital-based outpatient services.<sup>3</sup>*

Emergency room patients are considered outpatients and are billed as such. The Centers for Medicare and Medicaid Services (CMS), which establishes federal payment policies for the reimbursement of hospital services, pays for emergency department patients as “outpatients”.

CMS recognizes both onsite and freestanding emergency departments. On September 9, 2003, CMS published the final rule, 42 CFR Parts 413, 482, and 489, clarifying policies related to the responsibilities of Medicare-participating hospitals in treating individuals with emergency medical conditions. The rule defines “dedicated emergency department,” as “any department or facility of the hospital regardless of whether it is located on or off the main hospital campus, that meets at least one of the following requirements:

- (1) It is licensed by the state in which it is located under applicable state law as an emergency department;
- (2) It is held out to the public (by name, posted signs, advertising or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment...”

Section 395.003(2)(d), F.S., specifies that “the agency shall, at the request of a licensee, issue a single license to a licensee for facilities located on separate premises. Such a license shall specifically state the location of the facilities, and the licensed beds available on each separate premises....” Rule 59A-3.203(f), F.A.C., related to hospital licensure, allows for the “addition of beds or offsite facilities to a hospital’s license...” According to AHCA, approximately 70 of Florida’s 270 licensed hospitals list offsite outpatient facilities on their licenses. The Legislature removed the review of hospital proposals for new outpatient services from Florida’s Certificate-of-Need (CON) program in 1987. AHCA does not regulate the establishment of outpatient services or the mix of outpatient services a hospital can provide.

In April 2002, AHCA approved the addition of an offsite, freestanding emergency department to the license of Munroe Regional Medical Center (MRMC) in Ocala. The freestanding emergency department

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<sup>3</sup> *Freestanding Emergency Departments*. Florida Agency for Health Care Administration. December 2004.

is located approximately 12 miles to the southwest of the MRMC inpatient facility. The inpatient facility also includes a traditional, onsite emergency department.

In October 2003, AHCA approved the state's second freestanding emergency department for Ft. Walton Beach Medical Center. The offsite emergency department is located in Destin, approximately 12 miles to the east of the main inpatient facility.

In September 2003, AHCA published a proposed administrative rule regarding freestanding emergency departments which was challenged and later withdrawn by the agency.

The 2004 Legislature then required AHCA to submit a report to the President of the Senate and the Speaker of the House of Representatives by December 31, 2004, recommending whether it is in the public interest to allow a hospital to license or operate an emergency department located off the premises of the hospital. The legislature imposed a moratorium on the authorization of additional emergency departments located off the premises of licensed hospitals until July 1, 2005.

The report<sup>4</sup>, issued in December, 2004, concluded that:

- It is in the public interest to allow hospitals in certain unique communities to develop freestanding emergency departments and to have them listed separately on their license.
- As long as the hospital understands that the freestanding emergency department will be regulated identically to the onsite emergency department, there is no reason to have a concern about quality of care.
- The Legislature should add freestanding emergency departments as a project subject to CON review by AHCA.

The report made two recommendations:

- Allow the development of freestanding emergency departments, adding them to projects subject to CON pursuant to s. 408.036(1), Florida Statutes.
- Direct AHCA to promulgate rules designating that the regulatory criteria for onsite emergency departments also apply to offsite freestanding emergency departments.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 395.003, F.S., to extend the moratorium on the authorization of hospital off-site emergency departments to July 1, 2006, and to repeal obsolete language regarding a report that was complete on December 31, 2004.

**Section 2.** Amends s. 395.1027, F.S., to require a licensed health facility or health care practitioner to release patient information to a regional poison control center. The information must be relevant to the episode under evaluation for treatment or case management of poison cases, and necessary to comply with state and federal data collection and reporting requirements.

**Section 3.** Amends s. 395.3025, F.S., to authorize the release of hospital patient records, without the patient's consent, to regional poison control centers to a regional poison control center for the purpose of treating a poison episode under evaluation or case management, and to comply with state and federal data collection and reporting requirements.

**Section 4.** Amends s. 456.057, F.S., to authorize the release of medical records created by specified health care practitioners, without the patient's consent, to regional poison control centers for the purposes of treating a poison episode under evaluation or case management and, to comply with state and federal data collection and reporting requirements.

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<sup>4</sup> *Freestanding Emergency Departments*. Florida Agency for Health Care Administration. December 2004.

**Section 5.** Provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

Indeterminate. [See D. FISCAL COMMENTS]

### D. FISCAL COMMENTS:

#### **Poison Control Center - Comment**

The bill will require health care facilities and practitioners to report a limited amount of patient information related to poisoning cases. There may be nominal costs associated with record duplication and transmission to poison control centers.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

N/A

### C. DRAFTING ISSUES OR OTHER COMMENTS:

Concerns were raised with committee staff regarding a public records exemption for regional poison control centers. However, poison control centers patient records are currently exempt covered under the exemptions provided in ss. 395.3025 (7)(a) and (8), F.S.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On April 13, 2005, the Health Care Regulation Committee adopted one strike-all amendment proposed by the bill sponsor. The strike-all amendment included a few technical changes to conform the bill the senate companion and extended a moratorium on the authorization of off-site emergency departments to July 1, 2006.

The analysis is drafted to the committee substitute.