

By the Committee on Health Regulation

588-03490-08

20081372\_\_

1 A bill to be entitled

2 An act relating to access to emergency services and care;  
3 amending s. 395.002, F.S.; redefining the term  
4 "stabilized" to include patients awaiting further  
5 emergency services and care; amending s. 395.1041, F.S.;  
6 clarifying legislative intent regarding followup treatment  
7 after a patient is stabilized; deleting obsolete dates and  
8 requirements relating to inventories of hospital emergency  
9 services; authorizing the transmission of a patient's  
10 medical records to another emergency department prior to  
11 the transfer of a patient; authorizing the Agency for  
12 Health Care Administration to adopt rules to facilitate a  
13 hospital's compliance with its requirement to provide  
14 emergency care; deleting obsolete dates and requirements  
15 relating to exemptions from required services; providing  
16 an effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20 Section 1. Subsection (29) of section 395.002, Florida  
21 Statutes, is amended to read:

22 395.002 Definitions.--As used in this chapter:

23 (29) "Stabilized" means, with respect to an emergency  
24 medical condition, that no material deterioration of the  
25 condition is likely, within reasonable medical probability, to  
26 result from the transfer of the patient from a hospital or while  
27 the patient is awaiting further emergency services and care.

28 Section 2. Subsections (1), (2), and (3) of section  
29 395.1041, Florida Statutes, are amended to read:

588-03490-08

20081372\_\_

30 395.1041 Access to emergency services and care.--

31 (1) LEGISLATIVE INTENT.--The Legislature finds and declares  
32 it to be of vital importance that emergency services and care be  
33 provided by hospitals and physicians to every person in need of  
34 such care. The Legislature finds that persons have been denied  
35 emergency services and care by hospitals. It is the intent of the  
36 Legislature that the agency vigorously enforce the ability of  
37 persons to receive all necessary and appropriate emergency  
38 services and care and that the agency act in a thorough and  
39 timely manner against hospitals and physicians which deny persons  
40 emergency services and care. It is further the intent of the  
41 Legislature that hospitals, emergency medical services providers,  
42 and other health care providers work together in their local  
43 communities to enter into agreements or arrangements to ensure  
44 access to emergency services and care. The Legislature further  
45 recognizes that appropriate emergency services and care often  
46 require followup consultation and treatment that may not occur  
47 immediately after a patient is stabilized in order to effectively  
48 care for emergency medical conditions.

49 (2) INVENTORY OF HOSPITAL EMERGENCY SERVICES.--The agency  
50 shall establish and maintain an inventory of hospitals with  
51 emergency services. The inventory shall list all services within  
52 the service capability of the hospital, and such services shall  
53 appear on the face of the hospital license. Each hospital having  
54 emergency services shall notify the agency of its service  
55 capability in the manner and form prescribed by the agency. The  
56 agency shall use the inventory to assist emergency medical  
57 services providers and others in locating appropriate emergency  
58 medical care. The inventory shall also be made available to the

588-03490-08

20081372\_\_

59 | ~~general public. On or before August 1, 1992, the agency shall~~  
60 | ~~request that each hospital identify the services which are within~~  
61 | ~~its service capability. On or before November 1, 1992, the agency~~  
62 | ~~shall notify each hospital of the service capability to be~~  
63 | ~~included in the inventory. The hospital has 15 days from the date~~  
64 | ~~of receipt to respond to the notice. By December 1, 1992, the~~  
65 | ~~agency shall publish a final inventory. Each hospital shall~~  
66 | ~~reaffirm its service capability when its license is renewed and~~  
67 | ~~shall notify the agency of the addition of a new service or the~~  
68 | ~~termination of a service prior to a change in its service~~  
69 | ~~capability.~~

70 | (3) EMERGENCY SERVICES; DISCRIMINATION; LIABILITY OF  
71 | FACILITY OR HEALTH CARE PERSONNEL.--

72 | (a) Every general hospital which has an emergency  
73 | department shall provide emergency services and care for any  
74 | emergency medical condition when:

75 | 1. Any person requests emergency services and care; or  
76 | 2. Emergency services and care are requested on behalf of a  
77 | person by:

78 | a. An emergency medical services provider who is rendering  
79 | care to or transporting the person; or

80 | b. Another hospital, when such hospital is seeking a  
81 | medically necessary transfer, except as otherwise provided in  
82 | this section.

83 | (b) Arrangements for transfers must be made between  
84 | hospital emergency services personnel for each hospital, unless  
85 | other arrangements between the hospitals exist. A hospital may  
86 | transmit relevant medical records of a patient in the emergency  
87 | department who needs to be transferred to another hospital

588-03490-08

20081372\_\_

88 emergency department in accordance with the provisions of this  
89 section in advance of the arrival of the patient at the receiving  
90 hospital in order to expedite care and treatment of the patient  
91 or to assist in determining whether the receiving hospital has  
92 the requisite service capability and service capacity to provide  
93 further emergency care and treatment to that patient.

94 (c) A patient, whether stabilized or not, may be  
95 transferred to another hospital that ~~which~~ has the requisite  
96 service capability or is not at service capacity, if:

97 1. The patient, or a person who is legally responsible for  
98 the patient and acting on the patient's behalf, after being  
99 informed of the hospital's obligation under this section and of  
100 the risk of transfer, requests that the transfer be effected;

101 2. A physician has signed a certification that, based upon  
102 the reasonable risks and benefits to the patient, and based upon  
103 the information available at the time of transfer, the medical  
104 benefits reasonably expected from the provision of appropriate  
105 medical treatment at another hospital outweigh the increased  
106 risks to the individual's medical condition from effecting the  
107 transfer; or

108 3. A physician is not physically present in the emergency  
109 services area at the time an individual is transferred and a  
110 qualified medical person signs a certification that a physician,  
111 in consultation with personnel, has determined that the medical  
112 benefits reasonably expected from the provision of appropriate  
113 medical treatment at another medical facility outweigh the  
114 increased risks to the individual's medical condition from  
115 effecting the transfer. The consulting physician must countersign  
116 the certification;

588-03490-08

20081372\_\_

117  
118 provided that this paragraph shall not be construed to require  
119 acceptance of a transfer that is not medically necessary.

120 (d)1. Every hospital shall ensure the provision of services  
121 within the service capability of the hospital, at all times,  
122 either directly or indirectly through an arrangement with another  
123 hospital, through an arrangement with one or more physicians, or  
124 as otherwise made through prior arrangements. A hospital may  
125 enter into an agreement with another hospital for purposes of  
126 meeting its service capability requirement, and appropriate  
127 compensation or other reasonable conditions may be negotiated for  
128 these backup services. The agency may adopt rules providing for  
129 physician on-call coverage and other standards to help facilitate  
130 a hospital's compliance with this subsection related to:

131 a. Conditions under which a physician may be on call at  
132 multiple hospitals concurrently;

133 b. Conditions under which a physician may perform scheduled  
134 elective surgeries while on call; and

135 c. The use of telemedicine to provide consultation or care  
136 for a patient in the emergency department.

137 2. If any arrangement requires the provision of emergency  
138 medical transportation, such arrangement must be made in  
139 consultation with the applicable provider and may not require the  
140 emergency medical service provider to provide transportation that  
141 is outside the routine service area of that provider or in a  
142 manner that impairs the ability of the emergency medical service  
143 provider to timely respond to prehospital emergency calls.

144 3. A hospital shall not be required to ensure service  
145 capability at all times as required in subparagraph 1. if, prior

588-03490-08

20081372\_\_

146 to the receiving of any patient needing such service capability,  
147 such hospital has demonstrated to the agency that it lacks the  
148 ability to ensure such capability and it has exhausted all  
149 reasonable efforts to ensure such capability through backup  
150 arrangements. In reviewing a hospital's demonstration of lack of  
151 ability to ensure service capability, the agency shall consider  
152 factors relevant to the particular case, including the following:

153 a. Number and proximity of hospitals with the same service  
154 capability.

155 b. Number, type, credentials, and privileges of  
156 specialists.

157 c. Frequency of procedures.

158 d. Size of hospital.

159 4. The agency shall adopt ~~publish proposed~~ rules  
160 implementing a reasonable exemption procedure ~~by November 1,~~  
161 ~~1992. Subparagraph 1. shall become effective upon the effective~~  
162 ~~date of said rules or January 31, 1993, whichever is earlier. For~~  
163 ~~a period not to exceed 1 year from the effective date of~~  
164 ~~subparagraph 1., a hospital requesting an exemption shall be~~  
165 ~~deemed to be exempt from offering the service until the agency~~  
166 ~~initially acts to deny or grant the original request. The agency~~  
167 has 45 days following ~~from~~ the date of receipt of the request for  
168 an exemption to approve or deny the request. ~~After the first year~~  
169 ~~from the effective date of subparagraph 1.,~~ if the agency fails  
170 to initially act within the time period, the hospital is deemed  
171 to be exempt from offering the service as set forth in the  
172 request until the agency initially acts to deny the request.

173 (e) Except as otherwise provided by law, all medically  
174 necessary transfers shall be made to the geographically closest

588-03490-08

20081372\_\_

175 hospital that has ~~with~~ the service capability, unless another  
176 prior arrangement is in place or the geographically closest  
177 hospital is at service capacity. When the condition of a  
178 medically necessary transferred patient improves so that the  
179 service capability of the receiving hospital is no longer  
180 required, the receiving hospital may transfer the patient back to  
181 the transferring hospital and the transferring hospital shall  
182 receive the patient within its service capability.

183 (f) In no event shall the provision of emergency services  
184 and care, the acceptance of a medically necessary transfer, or  
185 the return of a patient pursuant to paragraph (e) be based upon,  
186 or affected by, the person's race, ethnicity, religion, national  
187 origin, citizenship, age, sex, preexisting medical condition,  
188 physical or mental handicap, insurance status, economic status,  
189 or ability to pay for medical services, except to the extent that  
190 a circumstance such as age, sex, preexisting medical condition,  
191 or physical or mental handicap is medically significant to the  
192 provision of appropriate medical care to the patient.

193 (g) Neither the hospital nor its employees, nor any  
194 physician, dentist, or podiatric physician shall be liable in any  
195 action arising out of a refusal to render emergency services or  
196 care if the refusal is made after screening, examining, and  
197 evaluating the patient, and is based on the determination,  
198 exercising reasonable care, that the person is not suffering from  
199 an emergency medical condition or a determination, exercising  
200 reasonable care, that the hospital does not have the service  
201 capability or is at service capacity to render those services.

202 (h) A hospital may request and collect insurance  
203 information and other financial information from a patient, in

588-03490-08

20081372\_\_

204 accordance with federal law, if emergency services and care are  
205 not delayed. A ~~No~~ hospital to which another hospital is  
206 transferring a person in need of emergency services and care may  
207 not require the transferring hospital or any person or entity to  
208 guarantee payment for the person as a condition of receiving the  
209 transfer. In addition, a hospital may not require any contractual  
210 agreement, any type of preplanned transfer agreement, or any  
211 other arrangement to be made prior to or at the time of transfer  
212 as a condition of receiving an individual patient being  
213 transferred. However, the patient or the patient's legally  
214 responsible relative or guardian shall execute an agreement to  
215 pay for emergency services or care or otherwise supply insurance  
216 or credit information promptly after the services and care are  
217 rendered.

218 (i) Each hospital offering emergency services shall post,  
219 in a conspicuous place in the emergency service area, a sign  
220 clearly stating a patient's right to emergency services and care  
221 and the service capability of the hospital.

222 (j) If a hospital subject to the provisions of this chapter  
223 does not maintain an emergency department, its employees shall  
224 nevertheless exercise reasonable care to determine whether an  
225 emergency medical condition exists and shall direct the persons  
226 seeking emergency care to a nearby facility that ~~which~~ can render  
227 the needed services and shall assist the persons seeking  
228 emergency care in obtaining the services, including  
229 transportation services, in every way reasonable under the  
230 circumstances.

231 (k)1. Emergency medical services providers may not  
232 condition the prehospital transport of any person in need of



588-03490-08

20081372\_\_

233 emergency services and care on the person's ability to pay. Nor  
234 may emergency medical services providers condition a transfer on  
235 the person's ability to pay when the transfer is made necessary  
236 because the patient is in immediate need of treatment for an  
237 emergency medical condition for which the hospital lacks service  
238 capability or when the hospital is at service capacity. However,  
239 the patient or the patient's legally responsible relative or  
240 guardian shall execute an agreement to pay for the transport or  
241 otherwise supply insurance or credit information promptly after  
242 the transport is rendered.

243         2. A hospital may enter into an agreement with an emergency  
244 medical services provider for purposes of meeting its service  
245 capability requirements, and appropriate compensation and other  
246 reasonable conditions may be negotiated for these services.

247         (1) Hospital personnel may withhold or withdraw  
248 cardiopulmonary resuscitation if presented with an order not to  
249 resuscitate executed pursuant to s. 401.45. Facility staff and  
250 facilities shall not be subject to criminal prosecution or civil  
251 liability, nor be considered to have engaged in negligent or  
252 unprofessional conduct, for withholding or withdrawing  
253 cardiopulmonary resuscitation pursuant to such an order. The  
254 absence of an order not to resuscitate executed pursuant to s.  
255 401.45 does not preclude a physician from withholding or  
256 withdrawing cardiopulmonary resuscitation as otherwise permitted  
257 by law.

258         Section 3. This act shall take effect July 1, 2008.