

FOR CONSIDERATION By the Committee on Health Regulation

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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; requiring
16 the Board of Medicine and the Board of Osteopathic
17 Medicine, in consultation with the Agency for Health Care
18 Administration, to adopt rules establishing standards for
19 on-call physician services for emergency department
20 patients requiring orthopedic specialty services;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (29) of section 395.002, Florida
26 Statutes, is amended to read:

27 395.002 Definitions.--As used in this chapter:

28 (29) "Stabilized" means, with respect to an emergency
29 medical condition, that no material deterioration of the

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30 condition is likely, within reasonable medical probability, to
31 result from the transfer of the patient from a hospital or while
32 the patient is awaiting further emergency services and care.

33 Section 2. Subsections (1), (2), and (3) of section
34 395.1041, Florida Statutes, are amended to read:

35 395.1041 Access to emergency services and care.--

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

54 (2) INVENTORY OF HOSPITAL EMERGENCY SERVICES.--The agency
55 shall establish and maintain an inventory of hospitals with
56 emergency services. The inventory shall list all services within
57 the service capability of the hospital, and such services shall
58 appear on the face of the hospital license. Each hospital having

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59 emergency services shall notify the agency of its service
60 capability in the manner and form prescribed by the agency. The
61 agency shall use the inventory to assist emergency medical
62 services providers and others in locating appropriate emergency
63 medical care. The inventory shall also be made available to the
64 general public. ~~On or before August 1, 1992, the agency shall~~
65 ~~request that each hospital identify the services which are within~~
66 ~~its service capability. On or before November 1, 1992, the agency~~
67 ~~shall notify each hospital of the service capability to be~~
68 ~~included in the inventory. The hospital has 15 days from the date~~
69 ~~of receipt to respond to the notice. By December 1, 1992, the~~
70 ~~agency shall publish a final inventory.~~ Each hospital shall
71 reaffirm its service capability when its license is renewed and
72 shall notify the agency of the addition of a new service or the
73 termination of a service prior to a change in its service
74 capability.

75 (3) EMERGENCY SERVICES; DISCRIMINATION; LIABILITY OF
76 FACILITY OR HEALTH CARE PERSONNEL.--

77 (a) Every general hospital which has an emergency
78 department shall provide emergency services and care for any
79 emergency medical condition when:

80 1. Any person requests emergency services and care; or
81 2. Emergency services and care are requested on behalf of a
82 person by:

83 a. An emergency medical services provider who is rendering
84 care to or transporting the person; or

85 b. Another hospital, when such hospital is seeking a
86 medically necessary transfer, except as otherwise provided in
87 this section.

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88 (b) Arrangements for transfers must be made between
89 hospital emergency services personnel for each hospital, unless
90 other arrangements between the hospitals exist. A hospital may
91 transmit relevant medical records of a patient in the emergency
92 department who needs to be transferred to another hospital
93 emergency department in accordance with the provisions of this
94 section in advance of the arrival of the patient at the receiving
95 hospital in order to expedite care and treatment of the patient
96 or to assist in determining whether the receiving hospital has
97 the requisite service capability and service capacity to provide
98 further emergency care and treatment to that patient.

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

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

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

113 3. A physician is not physically present in the emergency
114 services area at the time an individual is transferred and a
115 qualified medical person signs a certification that a physician,
116 in consultation with personnel, has determined that the medical

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117 | benefits reasonably expected from the provision of appropriate
118 | medical treatment at another medical facility outweigh the
119 | increased risks to the individual's medical condition from
120 | effecting the transfer. The consulting physician must countersign
121 | the certification;

122 |
123 | provided that this paragraph shall not be construed to require
124 | acceptance of a transfer that is not medically necessary.

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

136 | a. Conditions under which a physician may be on call at
137 | multiple hospitals concurrently;

138 | b. Conditions under which a physician may perform scheduled
139 | elective surgeries while on call; and

140 | c. The use of telemedicine to provide consultation or care
141 | for a patient in the emergency department.

142 | 2. If any arrangement requires the provision of emergency
143 | medical transportation, such arrangement must be made in
144 | consultation with the applicable provider and may not require the
145 | emergency medical service provider to provide transportation that

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146 is outside the routine service area of that provider or in a
147 manner that impairs the ability of the emergency medical service
148 provider to timely respond to prehospital emergency calls.

149 3. A hospital shall not be required to ensure service
150 capability at all times as required in subparagraph 1. if, prior
151 to the receiving of any patient needing such service capability,
152 such hospital has demonstrated to the agency that it lacks the
153 ability to ensure such capability and it has exhausted all
154 reasonable efforts to ensure such capability through backup
155 arrangements. In reviewing a hospital's demonstration of lack of
156 ability to ensure service capability, the agency shall consider
157 factors relevant to the particular case, including the following:

158 a. Number and proximity of hospitals with the same service
159 capability.

160 b. Number, type, credentials, and privileges of
161 specialists.

162 c. Frequency of procedures.

163 d. Size of hospital.

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

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175 to initially act within the time period, the hospital is deemed
176 to be exempt from offering the service as set forth in the
177 request until the agency initially acts to deny the request.

178 (e) Except as otherwise provided by law, all medically
179 necessary transfers shall be made to the geographically closest
180 hospital that has ~~with~~ the service capability, unless another
181 prior arrangement is in place or the geographically closest
182 hospital is at service capacity. When the condition of a
183 medically necessary transferred patient improves so that the
184 service capability of the receiving hospital is no longer
185 required, the receiving hospital may transfer the patient back to
186 the transferring hospital and the transferring hospital shall
187 receive the patient within its service capability.

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

198 (g) Neither the hospital nor its employees, nor any
199 physician, dentist, or podiatric physician shall be liable in any
200 action arising out of a refusal to render emergency services or
201 care if the refusal is made after screening, examining, and
202 evaluating the patient, and is based on the determination,
203 exercising reasonable care, that the person is not suffering from

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204 an emergency medical condition or a determination, exercising
205 reasonable care, that the hospital does not have the service
206 capability or is at service capacity to render those services.

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

223 (i) Each hospital offering emergency services shall post,
224 in a conspicuous place in the emergency service area, a sign
225 clearly stating a patient's right to emergency services and care
226 and the service capability of the hospital.

227 (j) If a hospital subject to the provisions of this chapter
228 does not maintain an emergency department, its employees shall
229 nevertheless exercise reasonable care to determine whether an
230 emergency medical condition exists and shall direct the persons
231 seeking emergency care to a nearby facility that ~~which~~ can render
232 the needed services and shall assist the persons seeking

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233 emergency care in obtaining the services, including
234 transportation services, in every way reasonable under the
235 circumstances.

236 (k)1. Emergency medical services providers may not
237 condition the prehospital transport of any person in need of
238 emergency services and care on the person's ability to pay. Nor
239 may emergency medical services providers condition a transfer on
240 the person's ability to pay when the transfer is made necessary
241 because the patient is in immediate need of treatment for an
242 emergency medical condition for which the hospital lacks service
243 capability or when the hospital is at service capacity. However,
244 the patient or the patient's legally responsible relative or
245 guardian shall execute an agreement to pay for the transport or
246 otherwise supply insurance or credit information promptly after
247 the transport is rendered.

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

252 (l) Hospital personnel may withhold or withdraw
253 cardiopulmonary resuscitation if presented with an order not to
254 resuscitate executed pursuant to s. 401.45. Facility staff and
255 facilities shall not be subject to criminal prosecution or civil
256 liability, nor be considered to have engaged in negligent or
257 unprofessional conduct, for withholding or withdrawing
258 cardiopulmonary resuscitation pursuant to such an order. The
259 absence of an order not to resuscitate executed pursuant to s.
260 401.45 does not preclude a physician from withholding or

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261 withdrawing cardiopulmonary resuscitation as otherwise permitted
262 by law.

263 Section 3. The Board of Medicine and the Board of
264 Osteopathic Medicine, in consultation with the Agency for Health
265 Care Administration, shall adopt by rule standards for physicians
266 and osteopathic physicians to use in determining whether a
267 specialist must be called in prior to or immediately following a
268 patient's stabilization in order to reduce the need for on-call
269 services related to orthopedic medicine.

270 Section 4. This act shall take effect July 1, 2008.