

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SPB 7186

INTRODUCER: For consideration by the Health Regulation Committee

SUBJECT: Health Care Consumer Protection

DATE: January 24, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

The bill requires certain health care practitioners and health care facilities to provide patients with information that will enable patients to better protect their financial interests when they need health care services. The bill also provides protections for insured patients who are financially vulnerable when they need services that can only be obtained from a non-contract health care provider and they are unable to choose a contract provider.

The bill requires physicians to publish and distribute a schedule of charges for at least the 50 services most frequently provided by the physician. The schedule must be given to patients upon each visit. The bill specifies additional requirements for the content and posting of the schedule of charges and makes non-compliance a ground for discipline by the physician's board.

The bill also requires ambulatory surgical centers and diagnostic-imaging centers, in addition to urgent care centers, to publish and post a schedule of charges for the medical services offered to patients. The bill specifies additional requirements for the content and posting of the schedule of charges and imposes a fine for non-compliance with these requirements.

For insured patients, balance billing is prohibited for non-contract providers for emergency services and care, if a patient is transported to the hospital by emergency medical transportation services. Balance billing is also prohibited for non-contract providers for non-emergency services and care in a hospital that has a contract with the insurer, if the patient could not choose a contract provider.

The bill establishes disclosure requirements for insurers, hospitals, and in-hospital providers that will alert a patient when health care providers do not have a contract with the patient's insurer

and that they may be balance billed for services received from non-contract providers. The bill provides penalties for non-compliance with the disclosure requirements.

This bill substantially amends the following sections of the Florida Statutes: 381.026, 395.002, 395.107, 456.072, 627.6131, 383.50, 390.011, 394.4787, 395.003, 395.602, 395.701, 408.051, 409.905, 409.97, 409.975, 468.505, 627.736, 766.118, 766.316, and 812.014.

The bill creates s. 627.6385, Florida Statutes.

II. Present Situation:

Florida Patient's Bill of Rights and Responsibilities

The Florida Patient's Bill of Rights and Responsibilities¹ establishes rights of patients of health care facilities (defined as hospitals, ambulatory surgical centers, and mobile surgical facilities) and health care providers (defined as allopathic physicians, osteopathic physicians, and podiatric physicians). The rights of patients include rights relating to individual dignity, information about services and patient privacy, financial information, access to health care, and experimental research. The law also establishes certain patient responsibilities.

Some of the rights pertinent to this bill include:

- A patient has the right to know the name, function, and qualifications of each health care provider who is providing medical services to the patient.
- A health care provider or a health care facility shall, upon request, disclose to each patient who is eligible for Medicare, before treatment, whether the health care provider or the health care facility accepts the Medicare assignment rate.
- A patient has the right to receive, upon request, prior to treatment, a reasonable estimate of charges for medical care.
- A patient has the right to receive a copy of a reasonably clear and understandable, itemized bill and, upon request, to have the charges explained.

Both the rights and responsibilities are summarized in the law. Health care facilities and health care providers, as defined in the law, are required to make available to patients a statement of the rights and responsibilities of patients.

The Agency for Health Care Administration may impose administrative fines against health care facilities that fail to make available to patients a summary of their rights. The law authorizes the appropriate regulatory board to impose an administrative fine against a health care provider who fails to make available to patients a summary of their rights.²

Health Care Price Transparency

The 2011 Legislature passed CS/CS/HB 935 (ch. 2011-122, L.O.F.), an act relating to health care price transparency. The law amended the Florida Patient's Bill of Rights and Responsibilities to

¹ See s. 381.026, F.S.

² See s. 381.0261, F.S.

authorize, but not require, primary care providers³ to publish a schedule of charges for the medical services that the provider offers to patients. The law required the schedule to include certain price information for at least the 50 services most frequently provided by the primary care provider. The law also required the posting of the schedule in a conspicuous place in the reception area of the provider's office. The posting must be at least 15 square feet in size.

The law provided an incentive to primary care providers to voluntarily publish a schedule of charges. A primary care provider who publishes and maintains a schedule of charges is exempt from licensure fees for a single renewal of a professional license and from the continuing education requirements for a single 2-year period.

Chapter 2011-122, L.O.F., also established a requirement for urgent care centers to publish a schedule of charges for the medical services offered to patients. The law established requirements that are the same as those established for primary care providers under the Florida Patient's Bill of Rights and Responsibilities for the content of the schedule of charges and the posting of the schedule. The law imposed a fine of not more than \$1,000 per day (until the schedule is published and posted) on an urgent care center that fails to publish and post the schedule of charges.

Health Care Practitioners

Health care practitioners are regulated under the general provisions of ch. 456, F.S., and specific licensing statutes for each type of practitioner.

- Medical practice is governed by ch. 458, F.S., under the Board of Medicine within the Department of Health.
- The practice of osteopathic medicine is governed by ch. 459, F.S., under the Board of Osteopathic Medicine within the Department of Health.
- The practice of chiropractic medicine is governed by ch. 460, F.S., under the Board of Chiropractic Medicine within the Department of Health.
- The practice of podiatric medicine is governed by ch. 461, F.S., under the Board of Podiatric Medicine within the Department of Health.
- Nursing practice is governed by ch. 464, F.S., under the Board of Nursing within the Department of Health. Section 464.012, F.S., provides for the certification of registered nurses as advanced registered nurse practitioners. A nurse practitioner may perform certain acts within the framework of an established protocol with a physician.
- Physician assistants are governed by sections 458.347 and 459.022, F.S., under the Board of Medicine and the Board of Osteopathic Medicine within the Department of Health. Physician assistants perform certain medical services delegated by a supervising physician.

³ Section 381.026(2)(d), F.S., defines primary care providers to include allopathic physicians, osteopathic physicians, and nurses who provide medical services that are commonly provided without referral from another health care provider, including family and general practice, general pediatrics, and general internal medicine.

Each of these health care practitioners must be licensed in order to practice in this state. Both ch. 456, F.S., and the specific licensing statutes for each of these practitioners specify grounds for which a practitioner may be disciplined.⁴

Health Care Facilities Licensed Under Chapter 395, F.S.

Chapter 395, F.S., is titled Hospital Licensing and Regulation. Part I of ch. 395, F.S., establishes the general licensure requirements for hospitals and other licensed facilities. Section 395.002, F.S., defines “licensed facility” to include hospitals, ambulatory surgical centers, and mobile surgical facilities. Each of these types of facilities is also defined in s. 395.002, F.S.

Health Insurer Payment of Claims

Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the “Florida Insurance Code.” Section 624.02, F.S., defines “insurance” as “a contract whereby one undertakes to indemnify another or pay or allow a specified amount or a determinable benefit upon determinable contingencies.”

III. Effect of Proposed Changes:

Section 1 amends s. 381.026, F.S., the Florida Patient’s Bill of Rights and Responsibilities, to require health care practitioners licensed under ch. 458, F.S. (medical practice), ch. 459, F.S. (osteopathic medical practice), ch. 460, F.S. (chiropractic medicine), and ch. 461, F.S. (podiatric medicine) to publish a schedule of charges for at least the 50 medical services that the practitioner most frequently provides to patients. Current law authorizes, but does not require, only primary care providers to publish a schedule of charges.

Under the bill, the schedule must describe the medical services in language comprehensible to a layperson and must be distributed to patients upon each visit. Current law requires, and the bill retains the requirement, that the schedule of charges must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card.

Current law requires the schedule to be posted in a conspicuous place in the reception area of the provider’s office, that is, if the primary care provider elects to publish a schedule of charges, since the publishing of a schedule of charges is not required. Current law also requires any such posting to be at least 15 square feet in size. The bill requires the text describing the medical services to fill at least 12 square feet of the posting.

The bill maintains an existing exemption for primary care providers from certain licensure fees and continuing education requirements if they voluntarily published and maintained a schedule of charges for medical services from July 1, 2011, through June 30, 2012, in accordance with ch. 2011-122, L.O.F. The bill repeals the penalty imposed on primary care providers who voluntarily publish a schedule of charges, obtain the exemption from licensure fees and continuing education requirements, and then discontinue posting the schedule of charges.

⁴ See ss. 456.072, 458.331, 459.015, 460.413, and 461.013, F.S.

Section 2 amends s. 395.002, F.S., to define “diagnostic-imaging center” to mean a freestanding outpatient facility that provides specialized services for the diagnosis of a disease by examination and also provides radiological services. This section is also amended to correct cross-references to conform to the addition of the definition of diagnostic-imaging center.

Section 3 amends s. 395.107, F.S., to include ambulatory surgical centers and diagnostic-imaging centers in the requirements to publish and post a schedule of charges that currently applies to urgent care centers. The bill specifies that the schedule must describe the medical services in language comprehensible to a layperson.

For any of these centers that are affiliated with a hospital, the schedule must include text that notifies the patient whether the charges for medical services received at the center will be the same as, more than, or less than charges for medical services received at the hospital. The text must be in a font size equal to or greater than the font size used for prices and must be in contrasting color. The text must also be included in all advertisements for the center and must be in language comprehensible to a layperson.

The posted text describing the medical services must fill at least 12 square feet of the posting. The bill authorizes a center to use an electronic device to post the schedule of charges. The bill exempts an urgent care center that is operated and used exclusively for employees and the family members of employees of the business that owns or contracts for the urgent care center from the requirements of this section.

The existing \$1,000 per day fine is made to apply to the failure of a center to comply with any of the provisions of this section. The fine will be imposed until the center comes into compliance.

Section 4 amends s. 456.072, F.S., relating to grounds for discipline of health care practitioners regulated by the Department of Health, to add a ground for discipline for failing to comply with s. 395.107, F.S., which establishes requirements for publishing and posting a schedule of charges for urgent care centers, ambulatory surgical centers, and diagnostic-imaging centers. (The requirements for publishing and posting a schedule of charges for health care practitioners are contained in s. 381.026, F.S., in section 1 of the bill, not in s. 395.107, F.S.)

Section 5 amends s. 627.6131, F.S., relating to payment of claims by health insurers, to specify that if an insurer is liable for emergency services and care, regardless of whether a contract exists between the insurer and the provider of emergency services and care, the insurer is solely liable for payment of fees to the provider. The insured is not liable for payment of fees to the provider (other than applicable copayments and deductibles) if the insured is transported to the facility by emergency medical transportation services.

The bill also makes an insurer solely liable for payment of fees to the provider and the insured is not liable for payment of fees to the provider (other than applicable copayments and deductibles) for nonemergency medical services and care that is:

- Provided in a hospital or ambulatory surgical center which has a contract with the insurer; and
- Provided by a provider that does not have a contract with the insurer and the patient has no ability and opportunity to choose an alternative provider having a contract with the insurer.

Section 6 creates s. 627.6385, F.S., to require each insurer issuing a health insurance policy that covers medical and related services provided in a hospital or ambulatory surgical center to disclose to its insureds whether the facility contracts with providers who are not under contract with the insurer. The disclosure must be included in the insurer's member website and distributed by the insurer to each insured.

The bill requires each facility licensed under ch. 395, F.S., to disclose to each patient upon scheduling services or nonemergency admission which providers will treat the patient and which of these providers are not under contract with the patient's insurer. The disclosure must include notification to the insured that such providers may bill the insured directly for services rendered within the facility. The disclosure must be limited to the providers that are reasonably expected to provide specific medical services and treatment scheduled to be received by the insured, must be in writing, and must include certain information about the providers. The disclosure must also advise patients to contact providers before the delivery of medical services to determine whether or not providers will bill the patient directly for medical services rendered in the facility. Failure to make the disclosure will result in a fine of \$500 per occurrence.

The bill requires a provider not under contract with a patient's insurer to disclose, in writing, to a patient who is scheduled or admitted for nonemergency services in a facility licensed under ch. 395, F.S., before the provision of medical services, whether the patient will be billed directly for medical services rendered within the facility. The patient is not liable for any charges (other than applicable copayments or deductibles) billed to the patient by the provider who fails to make the disclosure.

Sections 7 through 21 amend various sections of the Florida Statutes to correct cross-references to definitions in s. 395.002, F.S., since the addition of the definition of diagnostic-imaging center in section 2 of the bill changed the numbering of most of the definitions in s. 395.002, F.S.

Section 22 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Physicians, urgent care centers, ambulatory surgical centers, and diagnostic-imaging centers will incur costs to publish and post a schedule of charges.

Insured patients will be protected from balance billing under certain circumstances.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

On line 175, the word “facility” should be “hospital” since an ambulatory surgical center is also licensed under ch. 395, F.S.

On line 236, the word “insured” should be plural.

The provisions on lines 240 through 266 establish requirements for facilities licensed under ch. 395, F.S., and should not be located in ch. 627, F.S.

VII. Related Issues:

It is unclear why practitioners licensed under ch. 460, F.S. (chiropractic medicine), are included in the new requirement to publish a schedule of charges, but are not included in the definition of health care provider under the Florida Patient’s Bill of Rights and Responsibilities. Practitioners licensed under ch. 460, F.S., are not currently subject to the requirements of the Florida Patient’s Bill of Rights and Responsibilities. The bill would make these practitioners subject only to the requirement to publish a schedule of charges.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.