

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 768

INTRODUCER: Health Policy Committee and Senator Gaetz

SUBJECT: Patient Observation Status Notification

DATE: April 8, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	<b>Fav/CS</b>
2.	Hendon	Hendon	CF	<b>Favorable</b>
3.	Jones	Hrdlicka	FP	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 768 amends s. 395.301, F.S., to require a hospital, if a patient is placed on observation status, to document the observation services in the patient's discharge papers. The bill requires that the patient or his or her proxy be notified of the observation services through the discharge papers. The bill also allows the facility to notify the patient through brochures, signage, or other forms of communication.

The bill is not expected to have a fiscal impact on the state.

**II. Present Situation:**

When a patient enters a hospital the physician or other practitioner responsible for a patient's care must decide whether the patient should be admitted for inpatient care. The factors considered include:

- The severity of signs and symptoms exhibited by the patient;
- The medical probability of something adverse happening to the patient;
- The need for diagnostic studies to assist in the admitting decision; and
- The availability of diagnostic procedures at the time when the patient presents.<sup>1</sup>

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<sup>1</sup> Medicare Benefit Policy Manual, ch. 1 at 10, (Rev.189, 06-27-14) available at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs-Items/CMS012673.html> (last visited Mar. 31, 2015).

Observation status is commonly ordered for a person who comes to the emergency department and requires treatment or monitoring to determine if he or she should be admitted or discharged.<sup>2</sup> A patient receives observation services when on observation status and can spend one or more nights in the hospital. These services can occur in the hospital's emergency department or in another area of the hospital.<sup>3</sup>

Observation services are covered under Medicare Part B, rather than Part A, so some patients with Medicare will experience an increase in out-of-pocket costs for observation services versus being admitted to the hospital.<sup>4</sup> For example, hospital inpatient services are covered under Medicare Part A and require the patient to pay a one-time deductible (\$1,260) for the first 60 days of his or her stay. Whereas, hospital outpatient services, including observation services, are covered under Medicare Part B and require the patient to pay a deductible (\$147) as well as 20 percent of the Medicare-approved amount for doctor services.<sup>5</sup> A person who is treated for an extended period of time as a hospital outpatient receiving services may incur greater financial liability.<sup>6</sup> However, it can be difficult for a person to determine his or her status based purely on the type of care provided at the hospital.<sup>7</sup>

Once a person is discharged, additional rehabilitation in a nursing home is often necessary. Hospital admission can also affect a person's eligibility for other services.<sup>8</sup> When a person is admitted and has a three night stay in a hospital and needs rehabilitative care, Medicare will pay for up to 60 days in a skilled nursing home. However, if a person is not admitted to the hospital and subsequently goes into a nursing home, Medicare will not pay for the nursing home stay.<sup>9</sup>

Between 2001 and 2009, the rate of hospitals' use of observation services for Medicare patients doubled. In addition, the number of Medicare patients placed on observation status and then released without being admitted to the hospital has increased by 131 percent over the same time period.<sup>10</sup>

Due to these increases the Centers for Medicare & Medicaid Services adopted guidance and rules to try to address the issue. Adopted in 2013 and effective April 1, 2015, a new federal rule identifies a stay that spans two midnights as the minimum stay length that a person may be appropriately admitted as an inpatient; otherwise a person with a shorter stay should be treated as

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<sup>2</sup> *Id.* at ch. 6 at 20.6 (Rev. 194, 09-03-14).

<sup>3</sup> U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Product No. 11435, *Are You a Hospital Inpatient or Outpatient? If You Have Medicare – Ask!* (May 2014) available at <https://www.medicare.gov/Pubs/pdf/11435.pdf> (last visited Mar. 31, 2015).

<sup>4</sup> AARP Public Policy Institute, *Rapid Growth in Medicare Hospital Observation Services: What's Going On?*, p. 1 (September 2013), available at [http://www.aarp.org/content/dam/aarp/research/public\\_policy\\_institute/health/2013/rapid-growth-in-medicare-hospital-observation-services-AARP-ppi-health.pdf](http://www.aarp.org/content/dam/aarp/research/public_policy_institute/health/2013/rapid-growth-in-medicare-hospital-observation-services-AARP-ppi-health.pdf) (last visited Mar. 31, 2015).

<sup>5</sup> Medicare.gov., *Medicare 2015 costs at a glance*, available at <http://www.medicare.gov/your-medicare-costs/costs-at-a-glance/costs-at-a-glance.html> (last visited Mar. 31, 2015) and 42 CFR s. 419.40.

<sup>6</sup> Fed. Reg., Vol. 78, No. 160, pp. 50495-50907 (Aug. 19, 2013) <http://www.gpo.gov/fdsys/pkg/FR-2013-08-19/pdf/2013-18956.pdf> (last visited Mar. 31, 2015).

<sup>7</sup> See Amanda Cassidy, *The Two-Midnight Rule*, Health Affairs, Health Policy Briefs (Jan. 22, 2015) available at [http://www.healthaffairs.org/healthpolicybriefs/brief.php?brief\\_id=133](http://www.healthaffairs.org/healthpolicybriefs/brief.php?brief_id=133) (last visited Mar. 31, 2015).

<sup>8</sup> *Id.*

<sup>9</sup> Medicare.gov., *Skilled nursing facility (SNF) care*, available at <http://www.medicare.gov/coverage/skilled-nursing-facility-care.html> (last visited Mar. 31, 2015).

<sup>10</sup> *Supra* note 5, at 6-7.

an outpatient. While expected to be beneficial to patients, the rule has been highly debated, particularly by hospitals.<sup>11</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 395.301, F.S., to require a hospital,<sup>12</sup> if a patient is placed on observation status, to document the observation services in the patient's discharge papers. The bill requires that the patient or his or her proxy be notified of the observation services through the discharge papers. The bill also allows the facility to notify the patient through brochures, signage, or other forms of communication. A greater awareness among patients and their families will allow better planning for paying for the cost of any subsequent rehabilitative care in a nursing home.

**Section 2** provides an effective date of July 1, 2015.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

The bill may provide a positive fiscal impact for some patients who are placed on observation status in a hospital if such placement would require that they pay high out of pocket costs for observation services not covered by their insurance and if through receiving the notification the patient can avoid such costs.

The bill may have a negative fiscal impact for facilities that fail to document the observation status and services in a patient's discharge papers, which could be found as a

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<sup>11</sup> *Supra* note 7.

<sup>12</sup> The bill refers to any licensed facility which also includes ambulatory surgical centers and mobile surgical facilities. However, patients are not permitted to stay overnight in either of those facility types and, therefore, it is unlikely the provisions in this bill would affect such facilities.

violation of the requirements of the bill and therefore subject the facility to an administrative fine as specified in s. 395.1065(2), F.S.

C. **Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 395.301 of the Florida Statutes.

**IX. Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

**CS by Health Policy on March 10, 2015:**

The CS removes the requirement that a hospital, ambulatory surgical center, or mobile surgical facility provide written and oral notification immediately to a patient when that patient is placed on observation status, as well as the details required to be in such a notification. The CS adds a requirement that a hospital, ambulatory surgical center, or mobile surgical facility document observation services in a patient's discharge papers and that the patient, or his or her proxy, must be notified of the observation services through such documentation. The CS also allows the facility to notify the patient through brochures, signage, or other forms of communication.

B. **Amendments:**

None.