

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 517 Licensure of Life Support Services

SPONSOR(S): Local Government Affairs Subcommittee; Health Quality Subcommittee; Renner

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	13 Y, 0 N, As CS	Siples	O'Callaghan
2) Local Government Affairs Subcommittee	9 Y, 0 N, As CS	Darden	Miller
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The provision of emergency medical transportation services are governed by the Raymond H. Alexander, M.D., Emergency Medical Transportation Services Act, found in part III of ch. 401, F.S.

The Department of Health (DOH) is charged with licensing basic life support (BLS) service providers, advanced life support (ALS) service providers and air ambulances. All license applicants must meet the minimum standards regarding equipment, vehicles, personnel, services, and insurance established by the DOH. However, BLS and ALS service providers must also obtain a Certificate of Public Convenience and Necessity (COPCN) from the government of each county where the provider plans to operate.

Pursuant to s. 401.25, F.S., each county may adopt an ordinance establishing the standards for the issuance of a COPCN. Currently, a county must consider state guidelines, recommendations of local and regional trauma centers, and recommendations of municipalities within its jurisdiction. The bill makes the adoption of such an ordinance mandatory for counties not classified as fiscally constrained and requires existing COPCN ordinances to be amended to comply with the bill's provisions. The new or amended ordinance must include objective standards for examining the application. The bill also requires the county commission to consider recommendations from fire control districts in establishing the standards for the COPCN.

Currently, if a COPCN is denied or revoked, an applicant appeals the decision in accordance with an enacted ordinance, which may include appealing to the county commission that denied or revoked the application or to a court of competent jurisdiction. However, in counties without enacted ordinances, the appropriate forum to review such decision may be unclear to the applicant. The bill requires the review process for approval or denial of the application to be quasi-judicial in nature. The bill allows an applicant for a COPCN whose application is denied to seek review of the county commission's decision in the circuit court with jurisdiction over the county and the applicant.

The bill may have an indeterminate, negative fiscal impact on the state court system related to the review of denied COPCN applications in the circuit court having jurisdiction over the county and applicant.

The bill may have an indeterminate, negative fiscal impact on those counties that have to defend denial of COPCN applications in circuit court.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Emergency Medical Services

Part III of ch. 401, F.S., governs the provision of emergency medical transportation services in Florida and is titled the "Raymond H. Alexander, M.D., Emergency Medical Transportation Services Act (Act)."¹ The Act establishes the licensing and operational requirements for emergency medical services.

Emergency Medical Services Advisory Council

The Act creates the Emergency Medical Services Advisory Council (Council)² to act as an advisory body to the emergency medical services program within the Department of Health (DOH).³ The Council's duties include:

- Identifying and making recommendations to the DOH regarding the appropriateness of suggested changes to statutes and administrative rules;
- Acting as a clearinghouse for information specific to changes in the provision of medical services and trauma care;
- Providing technical support to the DOH in the areas of emergency medical services and trauma systems design, required medical and rescue equipment, required drugs and dosages, medical treatment protocols and emergency medical services personnel education and training requirements;
- Providing a forum for discussing significant issues facing the emergency medical services and trauma care communities;
- Providing a forum for planning the continued development of the state's emergency medical services system through the joint production of the emergency medical services state plan;
- Assisting the DOH in developing the emergency medical services quality management program;
- Assisting the DOH in setting program priorities; and
- Providing feedback to the DOH on the administration and performance of the emergency medical services program.⁴

Emergency Medical Transportation Services

Basic life support (BLS) service refers to any emergency medical service that uses only basic life support techniques.⁵ BLS includes basic non-invasive interventions to reduce morbidity and mortality associated with out-of-hospital medical and traumatic emergencies.⁶ The services provided may include stabilization and maintenance of airway and breathing, pharmacological interventions, trauma care, and transportation to an appropriate medical facility.⁷

¹ Section 401.2101, F.S.

² Section 401.245(2), F.S. The Council consists of 15 members appointed by the State Surgeon General, except that state agency representatives are appointed by the respective agency heads. Members are typically appointed for four year terms, with the chair being designated by the State Surgeon General and Secretary of Health. Additional members include six ex officio representatives appointed by various other state agency heads.

³ Section 401.245(1), F.S.

⁴ *Id.*

⁵ Section 401.23(8), F.S.

⁶ Section 401.23(7), F.S., and U.S. Department of Transportation, National Highway Safety Administration, *National EMS Scope of Practice Model 23-24*, available at www.nhtsa.gov/people/injury/ems/pub/emtbnsnc.pdf (last visited Nov. 21, 2015).

⁷ *Id.*

Advanced life support (ALS) service refers to any emergency medical or non-transport service that uses advanced life support techniques.⁸ ALS includes the assessment or treatment of a person by a qualified individual, such as a paramedic, who is trained in the use of techniques such as the administration of drugs or intravenous fluid, endotracheal intubation, telemetry, cardiac monitoring, and cardiac defibrillation.⁹

Air ambulance service refers to a licensed publicly or privately owned service that operates air ambulances to transport persons requiring or likely to require medical attention during transport.¹⁰ An air ambulance is a fixed-wing or rotary-wing aircraft used for, or intended to be used for, the air transportation of sick or injured persons that require or are likely to require medical attention during transport.¹¹

Licensure

Current law requires providers of basic or advanced life support transportation services to be licensed in their respective fields.¹² Air ambulances must also be licensed by the DOH.¹³ The provider must submit an application to the DOH and must include documentation that the applicant meets the requirements for a BLS service or an ALS service.¹⁴ There are currently 233 licensed ALS providers, 8 licensed BLS providers, and 33 licensed air ambulance providers in Florida.¹⁵

To be licensed as a BLS or ALS service, an applicant must comply with the following requirements:

- The ambulances, equipment, vehicles, personnel, communications systems, staffing patterns, and services of the applicant meet the statutory requirement and administrative rules for either a BLS service or an ALS service, whichever is applicable;
- Have adequate insurance coverage or certificate of self-insurance for claims arising out of injury to or death of persons and damage to the property of others resulting from any cause for which the owner of such business or service would be liable; and
- A Certificate of Public Convenience and Necessity from each county in which the applicant will operate.¹⁶

In addition to the general licensure requirement, the DOH by rule provides a list of the equipment and supplies with which each BLS vehicle must be equipped and maintained and the equipment and medication with which each ALS vehicle must be equipped and maintained.¹⁷ Each BLS and ALS service must employ or contract with a medical director who is a licensed physician to oversee the services provided.¹⁸

To be licensed as an air ambulance service, an applicant must:

- Submit an application to the DOH with the appropriate fee;
- Specify the location of all required medical equipment and provide documentation that all such equipment is available and in good working order;
- Provide documentation that all aircraft and crew members meet applicable Federal Aviation Administration (FAA) regulations;

⁸ Section 401.23(2), F.S.

⁹ Section 401.23(1), F.S.

¹⁰ Section 401.23(4), F.S.

¹¹ Section 401.23(3), F.S.

¹² Section 401.25(1), F.S.

¹³ Section 401.251, F.S.

¹⁴ *Id.*

¹⁵ E-mail communication with staff of the Department of Health (Nov. 20, 2015) (on file with the Health Quality Subcommittee).

¹⁶ Section 401.25(2), F.S.

¹⁷ Rule 64J-1.002(4) F.A.C. (Basic Life Support Service License – Ground); Rule 64J-1.003(7), F.A.C. (Advanced Life Support Service License – Ground)..

¹⁸ Rule 64J-1.004, F.A.C. The medical director must also be board certified, active in a broad-based clinical medical specialty with experience in prehospital care, and hold a certificate in Advanced Cardiac Life Support or its equivalent.

- Provide proof of adequate insurance coverage or certificate of self-insurance for claims arising out of injury to or death of persons and damage to the property of others resulting from any cause for which the owner of such business or service would be liable;
- Specify whether the service uses either fixed-winged or rotary-winged aircraft, or both; and
- Provide evidence the service has employed or contracted with a medical director, if the service provides interhospital air transport, air transport from one hospital to another facility, air transport from hospital to home, or other similar air transport.¹⁹

The DOH has provided a list of structural, equipment, and supply requirements that air ambulances must meet for licensure.²⁰ An air ambulance service must also have a safety committee and emergency protocols to address, at minimum, emergency procedures when the aircraft is overdue, when radio communications cannot be established, or when aircraft location cannot be verified.²¹

Certificate of Public Convenience and Necessity

A Certificate of Public Convenience and Necessity (COPCN) is a written statement, issued by the governing board of a county, granting permission for an emergency medical service provider to provide authorized services for the benefit of the population of that county or the benefit of the population of some geographic area of that county.²² At the time of licensure, each provider of life support transportation services must have a COPCN from the county in which the provider intends to operate.²³ Section 401.25(6), F.S., authorizes each county to adopt an ordinance establishing standards for issuing a COPCN.

Thirty-eight of Florida's sixty-seven counties have adopted ordinances to establish the procedure and set the standards for obtaining a COPCN.²⁴ These ordinances generally provide instructions on the application process, criteria on which the application may be judged, and procedures for appealing a denial, suspension, or revocation of a COPCN with the county commission or a court of competent jurisdiction.

Fiscally Constrained County

A county that is either entirely within a rural area of opportunity,²⁵ as designated by the Governor, or where the value of a mill would raise less than \$5 million in revenue is defined as a fiscally constrained county.²⁶ These counties are eligible for additional distributions from the Local Government Half-Cent Sales Tax Clearing Trust Fund.²⁷ There are currently 29 fiscally constrained counties.²⁸

Effect of Proposed Changes

Each county has the authority to adopt an ordinance providing standards for a COPCN, which takes into account state guidelines, recommendations of local and regional trauma centers, and recommendations of municipalities within its jurisdiction. The bill requires each county that is not a

¹⁹ Section 401.251, F.S.

²⁰ Rule 64J-1.005, F.A.C.

²¹ *Id.*

²² Rule 64J-1.001(4), F.A.C.

²³ Section 401.25(2)(d), F.S.

²⁴ *See, e.g.* Volusia County Code of Ordinances Chapter 46 (Emergency Services) ; St. Johns County Ordinance No. 2012-20. County ordinances generally are available from Municode (<https://www.municode.com/library/fl>). Some counties have adopted policies or informal procedures to award COPCNs, but have not enacted an ordinance.

²⁵ Section 288.0656(1)(d), F.S.

²⁶ Section 218.67(1), F.S.

²⁷ Section 218.67(2), F.S.

²⁸ *See* Fla. Dept. of Revenue, *Distribution to Fiscally Constrained Counties*, <http://dor.myflorida.com/dor/property/cofficials/fiscal/> (last visited Jan. 19, 2016) (list of fiscally constrained counties). Six (Baker, Bradford, Highlands, Jackson, Madison, and Wakulla) of the twenty-nine fiscally constrained counties currently have a COPCN ordinance.

fiscally constrained county to adopt an ordinance concerning basic or advanced life support services or amend an existing ordinance to comply with the bill's provisions. The new or amended ordinance must include objective standards for approval or denial of the petition. The bill also requires the county commissions to consider recommendations from fire control districts in establishing the standards for the COPCN. Fiscally constrained counties may adopt an ordinance, but are not required to do so. Any county may choose to adopt an ordinance concerning COPCNs for air ambulance services, but is not required to do so.

Currently, if a COPCN is denied or revoked, there is no uniform appeal process and an applicant must adhere to the appeal process provided in an ordinance, if the county has enacted such an ordinance. This may include appealing the decision to the county commission that denied or revoked the application or to a court of competent jurisdiction. The bill requires the ordinance to provide a quasi-judicial process for approval or denial of an application for a COPCN and allows an applicant whose application is denied to appeal the decision to the circuit court with jurisdiction over the county and the applicant to review the county commission's decision.²⁹

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Amends s. 401.25, F.S., relating to licensure as a basic life support or an advanced life support service.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The state court system may see an indeterminate, positive fiscal impact from the collection of filing fees associated with providers filing appeals in circuit court to review the decision of a county commission to deny an application for a COPCN.

2. Expenditures:

The state court system may see an indeterminate, negative fiscal impact from ALS, BLS, or air ambulance providers filing appeals in circuit court to review the decision of a county commission to deny an application for a COPCN.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

A county that has not enacted an ordinance or needs to amend an existing ordinance establishing standards for issuing a COPCN, as required by the bill, may incur expenses or use resources to enact or amend an ordinance to comply with the bill's provisions.

To the extent that a county commission must defend its decision to deny the award of a COPCN, a county may incur legal fees associated with such a legal action.

²⁹A circuit court may review the determination of a quasi-judicial county proceeding, if provided by general law. Fla. R. App. P. 9.030(c)(1)(C). *See* Fla. R. App. P. 9.190 (Judicial Review of Administrative Action, stating the "review of quasi-judicial decisions of any administrative body ... not subject to the Administrative Procedure Act shall be commenced by filing a petition for certiorari ... unless judicial review by appeal is provided by general law.")

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide authority or require implementation by administrative agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A state or any of its political subdivisions is preempted from enacting or enforcing any law or regulation that has the force or effect of law related to price, route, or service of any air carrier providing air transportation subject to the provisions of the Airline Deregulation Act.³⁰ The General Counsel of the U.S. Department of Transportation has opined that the Florida requirement for air ambulances to obtain a COPCN was preempted by the Airline Deregulation Act of 1978, because it effectively regulates the routes a carrier may fly by limiting them to the counties for which they have obtained a COPCN.³¹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 1, 2015, the Health Quality Subcommittee adopted an amendment that did the following:

- Requires the standards for certificates of public convenience and necessity (COPCN) for basic or advanced life support services and air ambulance services to be objective and address the quality and cost of services.
- Provides that a court's review of a denial of a COPCN is to be based on the standards set forth in the enacted ordinance in the appellant's jurisdiction and state guidelines.

On January 19, 2016, the Local Government Affairs Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment requires each county that is not a fiscally constrained county to adopt an ordinance concerning COPCNs for basic or advanced life support services, but leaves in place the discretionary authority of current law for fiscally constrained counties to adopt ordinances pertaining to the COPCN application process for basic or advanced life support services. The amendment provides all counties have discretionary authority to adopt ordinances on the application process for COPCNs for air ambulance services. The amendment clarifies that the process for approving or denying an application shall be quasi-judicial. The amendment removes language concerning specific requirements for the ordinance.

³⁰ 49 U.S.C. s. 41713(b).

³¹ Letter from D.J. Gribbin, General Counsel, U.S. Department of Transportation, to Michael Grief, Assistant General Counsel, Florida Department of Health (Oct. 10, 2007) (on file with the Health Quality Subcommittee).

The bill was reported favorably as a committee substitute. This analysis is drafted to the committee substitute reported favorably by the Local Government Affairs Subcommittee.