

**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 Children, Families, and Elder Affairs

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BILL: CS/SB 474

INTRODUCER: Health Policy Committee and Senator Grimsley

SUBJECT: Hospice Care

DATE: April 14, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE – Substantial Changes

**I. Summary:**

CS/SB 474 amends and creates several sections of the Florida Statutes related to the provision of hospice care. The bill:

- Requires the Department of Elder Affairs (DOEA) and the Agency for Health Care Administration (AHCA) to adopt federal guidelines for hospice outcome measures by December 31, 2019, and to develop a system for reporting hospice outcomes to consumers;
- Creates new requirements for hospices that choose to assist in the disposal of prescribed controlled substances after in a patient’s home after his or her death; and
- Expands the ways a person may be authorized to receive a hospice patient’s medical records both before the patient’s death and afterwards.

The bill is not expected to have a fiscal impact on the state and has an effective date of July 1, 2017.

## II. Present Situation:

### Hospice Care

Hospice care is a continuum of care for the terminally ill<sup>1</sup> patient and his or her family members.<sup>2</sup> Hospice care is provided by a team which includes physicians, nurses, medical social workers, spiritual/pastoral counselors, home health aides, therapists, bereavement counselors, and specially trained volunteers.<sup>3</sup> Currently there are 45 licensed hospice providers in Florida.<sup>4</sup> Hospices can be for-profit or non-profit and provide four levels of care:

- **Routine care** provides the patient with hospice services at home or in a home-like setting. The patient's family provides the primary care with the assistance of the hospice team.
- **Continuous care** provides the patient with skilled nursing services in his or her home during a crisis.
- **Inpatient care** is provided in a healthcare facility for symptoms of a crisis that cannot be managed in the patient's home. Inpatient care is provided on a temporary basis as determined by the patient's physician and the hospice team.
- **Respite care** is provided in a healthcare facility and is primarily to provide the patient's family members and caretakers with a period of relief.<sup>5</sup>

### *Disposal of Prescription Medication by a Hospice*

While there is no statutory provision related to hospice care that addresses the disposal of prescribed controlled substances in a hospice patient's home, Rule 58A-2.005(3)(a)7 of the Florida Administrative Code, requires hospices to have policies and procedures in place for disposal of Schedule II Controlled Substances upon the patient's death. Similarly, federal Medicare standards require hospices to dispose of controlled drugs in accordance with state and federal law.<sup>6</sup>

### Hospice Outcome Measures

#### *Current Florida Requirements*

Rule 58A-2.005(4) of the Florida Administrative Code, requires hospice providers to annually report outcome measures to the DOEA including:

- Facility demographic information;
- The effectiveness of the hospice's pain management program;<sup>7</sup>
- Patient and family satisfaction including:
  - Whether or not the patient received the right amount of medicine for pain; and

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<sup>1</sup> "Terminally ill" means that the patient has a medical prognosis that his or her life expectancy is 1 year or less if the illness runs its normal course. s. 400.601, F.S.

<sup>2</sup> Fla. Admin. Code R. 59C-1.0355.

<sup>3</sup> Florida Hospice and Palliative Care Association, *About Hospice* <http://www.floridahospices.org/hospice-palliative-care/about-hospice/> (last visited April 12, 2017).

<sup>4</sup> Agency for Health Care Administration, *Senate Bill 474 Analysis* (January 27, 2017) (on file with the Senate Committee on Health Policy).

<sup>5</sup> *Supra* note 3

<sup>6</sup> *Supra* note 4. See 21 CFR s. 1317, for the federal regulations controlling the disposal of controlled substances.

<sup>7</sup> Section 400.60501, F.S., requires 50 percent of patients who report severe pain at the time of admission to a hospice must report a reduction in pain to a level of five or less (on a ten point scale) by the end of the fourth day of hospice care.

- Would the patient recommend hospice services to others; and
- Aggregate patient data including:
  - Age;
  - Race;
  - Payor source;
  - Total number of patient days by location; and
  - The number of discharges by disposition.<sup>8</sup>

### ***Federal Requirements***

As a condition of participation for Medicare and Medicaid certification, 42 C.F.R. 418.54(e), requires that, as a part of a comprehensive assessment of each patient, the hospice must collect data elements that allow for measurement of outcomes for each patient. The hospice is required to document and measure the data elements in the same way for each patient and the data must take into consideration all aspects of care related to hospice and palliation. Additionally, the data must be documented in a systematic and retrievable way for each patient and must be used in individual patient care planning, in coordination of services, and must be used for each hospice's quality assessment and performance improvement program.<sup>9</sup>

### **Hospice Patient Records**

Currently, s. 400.611, F.S., restricts a hospice from releasing a patient's record, or any portion thereof, unless:

- The patient or legal guardian has given express written informed consent;
- A court of competent jurisdiction has ordered the record released; or
- A state or federal agency, acting under its statutory authority, requires the submission of aggregate statistical data.

### ***Legal Guardians, Health Care Surrogacies, and Health Care Proxies.***

A legal guardian is a person who is designated by a court pursuant to ch. 744, F.S., to act on the behalf of a ward's person or property. In most cases, in order to have a guardian appointed, a court must determine that the ward is incapacitated. Chapter 744, F.S., defines an incapacitated person as a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person.

Section 765.101, F.S., defines a health care surrogate as any competent adult expressly designated by a principal to make health care decisions and to receive health information. The principal may stipulate whether the authority of the surrogate to make health care decisions or to receive health information can be exercised immediately without a determination of incapacity or only upon the principal's incapacity as provided in s. 765.204, F.S. In the case of a patient who is

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<sup>8</sup> DOEA Form H-002, *Hospice Demographic and Outcome Measures Report* (August 2008) available at <http://elderaffairs.state.fl.us/english/hospice/DOEAformH002.xls> (last visited on April 12, 2017).

<sup>9</sup> The details of the quality assessment and performance improvement program requirements are in 42 C.F.R. 418.58.

incapacitated and has not designated a health care surrogate, the authority to make health care decisions for a patient rests in the patient's proxy.

Section 765.101, F.S., defines a proxy as a competent adult who has not been expressly designated to make health care decisions for a particular incapacitated individual, but who, nevertheless, is authorized pursuant to s. 765.401, F.S., to make health care decisions for such individual and s. 765.401, F.S., lists in descending order of priority persons who may be considered the patient's proxy.<sup>10</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 400.60501, F.S., to require the DOEA and the AHCA adopt outcome measures for quality and effectiveness of hospice care by December 31, 2019. The bill requires that the DOEA and the AHCA adopt national hospice outcome measures in 42 C.F.R. part 418 and develop a system for publicly reporting these measures identified as useful consumer information. The bill also eliminates a quality standard pertaining to reducing a patient's severe pain by the end of the fourth day after admission.

**Section 2** creates s. 400.6096, F.S., to establish requirements for a hospice that chooses to assist with the disposal of prescribed controlled substances after the death of a patient in his or her home. The bill requires a hospice that assists in the disposal of prescribed controlled substances in a patient's home to establish clearly defined policies, procedures, and systems for acceptable disposal methods. Disposal procedures must be carried out in the home and hospice staff and volunteers are not permitted to remove controlled substances from the patient's home. The bill permits hospice physicians, nurses, and social workers to assist family members with the disposal of controlled substances in the patient's home after a patient's death pursuant to regulations in 21 C.F.R. s. 1317 (related to the disposal of controlled substances) and pursuant to the hospice's written policy, procedure, or system for disposal methods.

**Section 3** amends s. 400.611, F.S., to expand the ways a person may be authorized to receive a hospice patient's record of care both before and after the patient's death. The bill:

- Increases the length of time a hospice must keep a patient's record from 5 to 6 years after termination of hospice services;
- Restricts a hospice from releasing a patient's interdisciplinary record of care unless the person requesting the record provides:
  - A patient authorization executed by the patient;
  - For incapacitated patients, a patient authorization executed before the patient's death by the patient's legal guardian, health care surrogate, health care proxy, or agent under power of attorney;
  - A court order appointing the person as the administrator, curator, executor, or personal representative of the patient's estate with authority to obtain the patient's medical records;

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<sup>10</sup> Proxies may include, in descending order of priority: a judicially appointed guardian, the patient's spouse, an adult child of the patient, the patient's parent, an adult sibling of the patient (or majority of adult siblings if he or she has more than one), an adult relative of the patient who is close to the patient, a close friend of the patient, and a clinical social worker who meets specified criteria.

- If a judicial appointment has not been made, a last will that is self-proved pursuant to s. 732.503, F.S., and designates the person to act as the patient’s personal representative; or
- An order by a court of competent jurisdiction mandating the release of the records.<sup>11</sup>

For the purposes of this section, the bill defines the term “patient authorization” as an unrevoked written statement by the patient or an oral statement by the patient, or, in the case of incapacitated patients, the patient’s legal guardian, health care surrogate, health care proxy, or agent under power of attorney which has been reduced to writing in the patient’s record of care and gives the patient’s permission to release the record to the person.

The effective date of the bill is July 1, 2017.

#### **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:**

CS/SB 474 may have a positive fiscal impact on persons who would be authorized under the bill to receive a hospice patient’s records without the need to obtain a court order.

##### **C. Government Sector Impact:**

None.

#### **VI. Technical Deficiencies:**

The bill amends s. 400.611, F.S., to allow a hospice to release a patient’s record of care to a person if the person has a “patient authorization” executed after the patient becomes

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<sup>11</sup> Currently a hospice may only provide records pursuant to the patient’s consent, the patient’s legal guardian’s consent, or a court order.

incapacitated but before the patient's death by the patient's acting legal guardian, health care surrogate, health care proxy, or agent under power of attorney. However, the definition provided in the bill for "patient authorization" only allows the patient him or herself to provide a written authorization and requires that a "patient authorization" from a patient's representative (as listed above) be provided as an oral statement that is reduced to writing in the patient's record of care. The bill should be clarified to allow a patient's representative to provide a written authorization as well as an oral authorization for the release of the patient's record of care.

## **VII. Related Issues:**

The bill amends s. 400.611, F.S., to allow a hospice patient's record of care to be released to a person providing a last will that is self-proved under s. 732.503, F.S., and which designates the person to act as the patient's personal representative. Although the language implies that such person should only receive the patient's record of care after the patient's death by stating that the provision is effective if there is no court order appointing the person as the administrator, curator, executor, or personal representative of the patient's estate, as written, the language may technically allow the person to receive the patient's record prior to the patient's death.

## **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 400.60501 and 400.611.

This bill creates section 400.6096 of the Florida Statutes.

## **IX. Additional Information:**

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

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

#### **CS by Health Policy on March 27, 2017:**

The CS amends SB 474 to:

- Remove all portions of the bill related to a hospice providing palliative care to seriously ill persons;
- Amend s. 400.611, F.S., to expand the ways a person may be authorized to receive a hospice patient's record of care while the patient is still alive and after the patient's death;
- Require that hospice staff adhere to 21 C.F.R. s. 1317, when assisting with the disposal of controlled substances; and
- Make other technical and clarifying changes.

### **B. Amendments:**

None.