

**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 Criminal Justice

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BILL: CS/CS/SB 588

INTRODUCER: Criminal Justice Committee; Health Policy Committee; and Senator Passidomo

SUBJECT: Drug Overdoses

DATE: April 18, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	<b>Fav/CS</b>
2.	Cellon	Hrdlicka	CJ	<b>Fav/CS</b>
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 588 requires hospitals with emergency departments to develop best practice policies that focus upon the prevention of unintentional drug overdoses. The bill sets forth suggestions that hospitals may include in the policy.

The bill permits the voluntary reporting of a suspected or actual overdose of a controlled substance to the Department of Health (DOH) by basic and advanced life support service providers that treat and release, or transport, a person in response to an emergency call.

The bill defines overdose as:

- A condition, including extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death resulting from the consumption or use of any controlled substance which requires medical attention, assistance, or treatment; or
- Clinical suspicion for drug overdose, such as respiratory depression, unconsciousness, or altered mental status which is not explained by another condition.

If a report is made, it must contain the date and time of the overdose, the address of where the patient was picked up or where the overdose took place, whether an emergency opioid antagonist was administered, and whether the overdose was fatal or non-fatal. Additionally, a report must include the gender and approximate age of the patient and the suspected controlled substances

involved only if permitted by the reporting mechanism. Reporters must use best efforts to make the report within 120 hours.

The DOH must make the data received available to law enforcement, public health, fire rescue, and EMS agencies in each county within 120 hours after receipt. Quarterly, the DOH must provide summarized reports to the Statewide Drug Policy Advisory Council, the Department of Children and Families (DCF), and the Florida Fusion Center, which may be used to maximize the utilization of funding programs for licensed basic and advanced life support service providers, and to disseminate available federal, state and, private funds for local substance abuse treatment services.

The bill makes a reporter exempt from civil or criminal liability for reporting, if the report is made in good faith. It also specifies that the failure to make a report is not grounds for licensure discipline.

The bill is effective October 1, 2017.

## II. Present Situation:

### Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.<sup>1</sup> Substance abuse disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.<sup>2</sup> Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.<sup>3</sup> Brain imaging studies of persons with substance abuse disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.<sup>4</sup>

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance abuse disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.<sup>5</sup> The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.<sup>6</sup>

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<sup>1</sup> World Health Organization, *Substance Abuse*, available at [http://www.who.int/topics/substance\\_abuse/en/](http://www.who.int/topics/substance_abuse/en/) (last visited April 7, 2017).

<sup>2</sup> Substance Abuse and Mental Health Services Administration, *Substance Use Disorders*, (last updated October 27, 2015) available at <http://www.samhsa.gov/disorders/substance-use>, (last visited April 7, 2017).

<sup>3</sup> National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction*, (last updated July 2014) available at <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited April 7, 2017).

<sup>4</sup> Id.

<sup>5</sup> *Supra* note 2.

<sup>6</sup> *Supra* note 2.

### ***Opioid Abuse and Overdose***

Opioids are commonly abused, with an estimated 15 million people worldwide suffering from opioid dependence.<sup>7</sup> Drug overdose is now the leading cause of injury-related death in the United States.<sup>8</sup> In 2015, Florida ranked fourth in the nation with 3,228 deaths from drug overdoses,<sup>9</sup> and the presence of at least one prescription drug in a person's body caused 2,530 of those deaths.<sup>10</sup> Statewide, in 2015, heroin caused 733 deaths, fentanyl caused 705, oxycodone caused 565, and hydrocodone caused 236; deaths caused by heroin and fentanyl increased more than 75 percent statewide when compared with 2014.<sup>11</sup>

Drug overdose deaths doubled in Florida from 1999 to 2012.<sup>12</sup> Over the same time period, drug overdose deaths occurred at a rate of 13.2 deaths per 100,000 persons.<sup>13</sup> The crackdown on “pill mills” dispensing prescription opioid drugs, such as oxycodone and hydrocodone, reduced the rate of death attributable to prescription drugs, but may have generated a shift to heroin use, contributing to the rise in heroin addiction.<sup>14</sup>

### ***Emergency Response to Overdose***

Opioid overdose can occur when an individual deliberately misuses a prescription opioid or an illicit drug such as heroin.<sup>15</sup> It can also occur when a patient takes an opioid as directed, but the prescriber miscalculated the opioid dose, an error was made by the dispensing pharmacist, or the patient misunderstood the directions for use.<sup>16</sup> Opioid overdose is life threatening and requires immediate emergency attention.<sup>17</sup>

To treat an opioid overdose, emergency personnel or a physician may administer an opioid antagonist such as Narcan® or Nalaxone. An opioid antagonist is a drug that blocks the effects of exogenously administered opioids. Opioid antagonists are used in opioid overdoses to counteract life-threatening depression of the central nervous system and respiratory system, allowing an

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<sup>7</sup> World Health Organization, *Information Sheet on Opioid Overdose*, (November 2014) available at [http://www.who.int/substance\\_abuse/information-sheet/en/](http://www.who.int/substance_abuse/information-sheet/en/) (last visited April 7, 2107).

<sup>8</sup> Trust for America's Health, *The Facts Hurt: A State-by-State Injury Prevention Policy Report*, (June 2015) available at <http://healthyamericans.org/reports/injuryprevention15/> (last visited April 7, 2017).

<sup>9</sup> Centers for Disease Control and Prevention, *Drug Overdose Death Data*, (December 16, 2016) available at <https://www.cdc.gov/drugoverdose/data/statedeaths.html>, (last visited April 7, 2017).

<sup>10</sup> Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners-2015 Annual Report*, (September 2016) available at <https://www.fdle.state.fl.us/cms/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2015-Annual-Drug-Report.aspx> (last visited April 7, 2017).

<sup>11</sup> *Id.* at p. iii.

<sup>12</sup> Florida Department of Health, *Special Emphasis Report: Drug Poisoning (Overdose) Deaths (1999-2012)*, available at <http://www.floridahealth.gov/statistics-and-data/florida-injury-surveillance-system/documents/CDC-Special-Emphasis-Drug-poisoning-overdose-1999-2012-B-Poston-FINAL.pdf> (last visited on April 7, 2017).

<sup>13</sup> *Id.*

<sup>14</sup> Christopher Ingraham, *Wonkblog: How an “abuse-deterrent” drug created the heroin epidemic*, Washington Post, (January 10, 2017) available at [https://www.washingtonpost.com/news/wonk/wp/2017/01/10/how-an-abuse-deterrent-drug-created-the-heroin-epidemic/?utm\\_term=.5bee5bb67285](https://www.washingtonpost.com/news/wonk/wp/2017/01/10/how-an-abuse-deterrent-drug-created-the-heroin-epidemic/?utm_term=.5bee5bb67285) (last visited April 13, 2017).

<sup>15</sup> Substance Abuse and Mental Health Services Administration, *Opioid Overdose Prevention Toolkit*, (revised January 2016) available at <http://store.samhsa.gov/shin/content/SMA16-4742/SMA16-4742.pdf> (last visited April 7, 2017).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

overdose victim to breathe normally.<sup>18</sup> This occurs because opioid antagonists create a stronger bond with opioid receptors than opioids. This forces the opioids from the opioid receptors and allows the transmission of signals for respiration to resume.<sup>19</sup>

From 2004 through 2009, emergency department visits nationally involving the nonmedical use of pharmaceuticals increased 98.4 percent, from 627,291 visits to 1,244,679 visits.<sup>20</sup> In 2009, almost one million emergency room visits nationally involved illicit drugs, either alone or in combination with other drugs.<sup>21</sup>

From 2008 to 2011, about half of all emergency department visits nationally for both unintentional and self-inflicted drug poisoning involved drugs in the categories of analgesics,<sup>22</sup> antipyretics,<sup>23</sup> and antirheumatics<sup>24</sup> or sedatives, hypnotics, tranquilizers, and other psychotropic agents.<sup>25</sup>

Opiates or related narcotics, including heroin and methadone, accounted for 14 percent of emergency department visits nationally for unintentional drug poisoning from 2008 to 2011.<sup>26</sup> In Florida, there were approximately 21,820 opioid-related emergency department visits in 2014.<sup>27</sup>

### ***Access to Emergency Services and Care***

The Agency for Health Care Administration (AHCA) regulates hospitals under ch. 395, F.S., and the general licensure provisions of part II of ch. 408, F.S. The AHCA must maintain a list of hospitals providing emergency services and care and the services that the hospital is capable of providing.<sup>28</sup>

Emergency services and care means medical screening, examination, and evaluation by a physician, or by authorized personnel under the supervision of a physician, to determine if an emergency medical condition exists and, if it does, the care, treatment, or surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the service capability of the facility.<sup>29</sup>

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<sup>18</sup> Harm Reduction Coalition, *Understanding Naloxone*, available at <http://harmreduction.org/issues/overdose-prevention/overview/overdose-basics/understanding-naloxone/> (last visited April 7, 2017).

<sup>19</sup> Harm Reduction Coalition, *Guide to Developing and Managing Overdose Prevention and Take-Home Naloxone Projects*, (2012), available at <http://harmreduction.org/issues/overdose-prevention/tools-best-practices/manuals-best-practice/od-manual/> (last visited April 7, 2017).

<sup>20</sup> National Institute on Drug Abuse, *Drug-Related Hospital Emergency Room Visits*, (revised May 2011) available at <https://www.drugabuse.gov/publications/drugfacts/drug-related-hospital-emergency-room-visits> (last visited April 7, 2017).

<sup>21</sup> *Id.*

<sup>22</sup> Analgesics are drugs that produce insensibility to pain.

<sup>23</sup> Antipyretics are drugs that reduce fever.

<sup>24</sup> Antirheumatics are drugs that alleviate or prevent inflammation or pain in muscles, joints, or fibrous tissue.

<sup>25</sup> Albert, M. et al., *Emergency Department Visits for Drug Poisoning: United States, 2008–2011*, NCHS Data Brief No. 196, April 2015, available at <https://www.cdc.gov/nchs/data/databriefs/db196.htm> (last visited April 7, 2017).

<sup>26</sup> *Id.*

<sup>27</sup> Calculated by committee staff from data that Florida had 109.1 opioid-related emergency department visits in 2014 per 100,000 population. See Weiss, A.J., et al., *Opioid-Related Inpatient Stays and Emergency Department Visits by State, 2009–2014*, HCUP Statistical Brief No. 219, (revised January 2017) p. 8, available at <https://www.hcup-us.ahrq.gov/reports/statbriefs/sb219-Opioid-Hospital-Stays-ED-Visits-by-State.pdf> (last visited April 7, 2017).

<sup>28</sup> Section 395.1041(2), F.S.

<sup>29</sup> Section 395.002(9), F.S.

Section 395.1041, F.S., requires all hospitals offering emergency services to provide care to every person presenting to the hospital requesting emergency care regardless of the person's race, ethnicity, religion, national origin, citizenship, age, sex, preexisting medical condition, physical or mental handicap, insurance status, economic status, or ability to pay for medical services. A hospital is prohibited from refusing to render emergency services unless a determination is made after screening, examining, and evaluating the patient that he or she is not suffering from an emergency or the hospital does not have the capability or capacity to render emergency services. A hospital must transfer persons requiring care beyond the hospital's capability or capacity to another facility that can provide the needed services. The AHCA may deny, revoke, or suspend the license of a hospital or impose an administrative fine up to \$10,000 for violating s. 395.1041, F.S., or any rules adopted thereunder.<sup>30</sup>

### ***Substance Abuse Prevention – Screening, Brief Intervention, and Referral to Treatment***

Screening, Brief Intervention, and Referral to Treatment (SBIRT) is “an evidence-based practice used to identify, reduce, and prevent problematic use, abuse, and dependence on alcohol and illicit drugs.”<sup>31</sup> SBIRT is “an early intervention approach that targets those with nondependent substance use to provide effective strategies for intervention prior to the need for more extensive or specialized treatment.”<sup>32</sup>

SBIRT consists of three major components:

- Screening – a healthcare professional assesses a patient for risky substance use behaviors using standardized screening tools. Screening can occur in any healthcare setting.
- Brief Intervention – a healthcare professional engages a patient showing risky substance use behaviors in a short conversation, providing feedback and advice.
- Referral to Treatment – a healthcare professional provides a referral to brief therapy or additional treatment to patients who screen in need of additional services.<sup>33</sup>

### **Privacy Rights of Individuals Receiving Substance Abuse Treatment**

#### ***Florida Protections***

Section 397.501, F.S., establishes statutory rights for individuals receiving substance abuse services, including the right to dignity, non-discriminatory services, quality services, confidentiality, counsel, and habeas corpus. In particular it prohibits service providers from disclosing records containing the identity, diagnosis, prognosis, and services provided to any individual without written consent of the individual, with certain exceptions.<sup>34</sup> Service providers

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<sup>30</sup> Section 395.1041(5), F.S.

<sup>31</sup> Substance Abuse and Mental Health Services Administration, SAMHSA-HRSA Center for Integrated Health Solutions, *SBIRT: Screening, Brief Intervention, and Referral to Treatment*, available at <http://www.integration.samhsa.gov/clinical-practice/sbirt> (last visited April 17, 2017).

<sup>32</sup> Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Factsheet: Substance (Other Than Tobacco) Abuse Structured Assessment and Brief Intervention (SBIRT) Services*, ICN 904084, (October 2011) available at [http://www.integration.samhsa.gov/sbirt/SBIRT\\_Factsheet\\_ICN904084.pdf](http://www.integration.samhsa.gov/sbirt/SBIRT_Factsheet_ICN904084.pdf) (last visited April 17, 2017).

<sup>33</sup> *Supra* note 31.

<sup>34</sup> Permitted disclosures include disclosure to: health service providers in cases of medical emergency if the information is necessary to provide services to the individual; the DCF for the purposes of scientific research; comply with state-mandated child abuse and neglect reporting; comply with a valid court order; report crimes that occur on program premises or against

who violate these rights are liable for damages, unless they act in good faith, reasonably, and without negligence.

### ***Federal Protections of Personal Health Information***

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects personal health information. The U.S. Department of Health and Human Services adopted the privacy rules to address the use and disclosure of an individual's personal health information and create standards for information security.<sup>35</sup> Only certain entities, "covered entities," are subject to HIPAA's provisions. Covered entities are obligated to meet HIPAA's requirements to ensure privacy and confidentiality of personal health information. These "covered entities" include:<sup>36</sup>

- Health plans;
- Health care providers;
- Health care clearinghouses; and
- Business associates of any of the above.

Additionally, federal law restricts the disclosure of alcohol and drug patient records maintained by federally assisted alcohol and drug abuse programs, which identify a patient as an alcohol or drug abuser.<sup>37</sup> Disclosure of patient-identifying information is permitted in certain cases and patients may consent in writing to the disclosure of such information.<sup>38</sup>

### ***Statewide Drug Policy Advisory Council***

The Legislature created the Office of Drug Control and the Drug Policy Advisory Council in the Executive Office of the Governor in 1999.<sup>39</sup> In 2011, the Legislature replaced it with the Statewide Drug Policy Advisory Council (the council) under the DOH.<sup>40</sup> The council, among other things, submits annual reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives with recommendations concerning developing and implementing a state drug control strategy.<sup>41</sup>

The council's 2016 report concluded that a key problem in combating drug overdoses in Florida is that there is "[n]o sustainable process to compile massive amounts of data and information, perform analysis and develop an evidence-based call to action."<sup>42</sup> To improve data collection and

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staff; federal, state, or local governments for audit purposes; or third party payors providing financial assistance or reimbursement. s. 397.501(7), F.S.

<sup>35</sup> U.S. Department of Health and Human Services, *The HIPPA Privacy Rule*, available at <http://www.hhs.gov/ocr/privacy/hipaa/administrative/privacypolicy/> (last visited on April 7, 2017).

<sup>36</sup> U.S. Department of Health and Human Services, *Covered Entities and Business Associates*, available at <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/> (last visited on April 7, 2017).

<sup>37</sup> 42 CFR Part 2 (2017).

<sup>38</sup> Permitted disclosures include disclosure: to comply with state-mandated child abuse and neglect reporting; to report the cause of death; to comply with a valid court order; in cases of medical emergency; for the purposes of scientific research; to report crimes that occur on program premises or against staff; to entities having administrative control; to qualified service organizations; and to outside auditors, evaluators, central registries, and researchers.

<sup>39</sup> Former s. 397.332, F.S., created by s. 3, ch. 99-187, Laws of Fla.

<sup>40</sup> Section 397.333, F.S., created by s. 8, ch. 2011-51, Laws of Fla.

<sup>41</sup> Section 397.333(3), F.S.

<sup>42</sup> Florida Department of Health, *Statewide Drug Policy Advisory Council 2016 Annual Report*, (December 1, 2016) p. 4, available at <http://www.floridahealth.gov/provider-and-partner-resources/dpac/DPAC-Annual-Report-2016-FINAL.pdf>, (last visited April 7, 2017).



surveillance, the council recommended that the DOH collaborate with other agencies, organizations, and institutions to create a comprehensive statewide strategy addressing fentanyl and heroin overdoses in the state.<sup>43</sup>

## **DOH Data Systems**

### ***Florida Injury Surveillance Data System***

The DOH's Injury Surveillance Data System is a passive data reporting mechanism that utilizes data resources from other agencies and systems, including:

- Vital records (death certificates);
- Hospital discharge data;
- Emergency department discharge data;
- Motor vehicle crash records;
- Behavioral Risk Factor Surveillance System;
- Youth Risk Behavior Surveillance System;
- Child Death Review;
- Uniform Crime Reporting System; and
- Emergency medical services.<sup>44</sup>

The Injury Surveillance Data System is used to monitor the frequency of fatal and non-fatal injuries; determine the risk factors for these injuries; evaluate the completeness, timeliness, and quality of data sources; provide information to Florida's injury prevention community for program planning and evaluation; and provide a foundation for injury prevention strategies.<sup>45</sup> One of the injury mechanisms it receives information on is poisoning, which includes drug overdoses;<sup>46</sup> however, the system is not currently set up to actively receive data regarding overdoses.<sup>47</sup>

### ***Emergency Medical Services Tracking and Reporting System (EMSTARS)***

The DOH maintains<sup>48</sup> the Emergency Medical Services Tracking and Reporting System (EMSTARS) to collect data on pre-hospital emergency care from EMS providers. This system allows for the collection and analysis of incident level data from EMS agencies for benchmarking and quality improvement initiatives.<sup>49</sup> Participation in EMSTARS, and the

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<sup>43</sup> Id. at p. 14.

<sup>44</sup> Florida Department of Health, *Florida Injury Surveillance Data System*, available at <http://www.floridahealth.gov/statistics-and-data/florida-injury-surveillance-system/index.html> (last visited April 7, 2017).

<sup>45</sup> Id.

<sup>46</sup> Florida Department of Health, *External Cause of Injury Intent and Mechanism Classifications and Descriptions* (September 8, 2008), available at <http://www.floridahealth.gov/statistics-and-data/florida-injury-surveillance-system/documents/icd-code-explanations.pdf>, (last visited April 7, 2017).

<sup>47</sup> Florida Department of Health, *2017 Agency Legislative Bill Analysis: HB 249* (similar to SB 588), (January 17, 2017) p. 6.

<sup>48</sup> "In 2004, the [DOH] signed a memorandum of understanding to participate in a national project that would standardize data collection for EMS agencies nationwide. The National Emergency Medical Services Information System (NEMSIS) is the national repository used to aggregate and analyze prehospital data from all participating states." Florida's Prehospital EMS Tracking and Reporting System, *About EMSTARS*, available at <http://www.floridaemstars.com/about.htm> (last visited April 13, 2017).

<sup>49</sup> Florida Department of Health, *The Basic Facts: Prehospital EMS Tracking and Reporting System*, p. 1, available at [http://www.floridaemstars.com/docs/EMSTARSFactSheet\\_102314.pdf](http://www.floridaemstars.com/docs/EMSTARSFactSheet_102314.pdf) (last visited April 7, 2017).

transmission of electronic incident level data from EMS providers<sup>50</sup> to the DOH, is voluntary.<sup>51</sup> However, the complete provision of incident level data, and full participation in EMSTARS, fulfills EMS provider prehospital reporting requirements.<sup>52</sup> The data collected by EMSTARS includes:

- All NHTSA “national” data elements for demographic data and EMS event data;
- Other selected elements identified by participants and other stakeholders;
- Demographic elements for the provider agency, its personnel, and patients;
- Incident and unit times;
- Situation and scene information;
- Patient care information including vital signs, injury assessment, trauma score, and intervention and procedural information; and
- Outcome and disposition information.<sup>53</sup>

Additionally, EMSTARS collects minimal data elements for overdoses if EMS administers an emergency opioid antagonist.<sup>54</sup> There are currently two versions of EMSTARS in use by EMS providers permitted by Rule 64J-1.014, F.A.C., versions 1.4.1 and 3.0. The more recent version allows EMS providers to capture the additional information about the patient, including his or her gender, as well as alcohol and drug use indicators.<sup>55</sup>

The electronic patient care records submitted by licensed EMS agencies to EMSTARS are confidential and exempt pursuant to s. 401.30(4), F.S.

#### ***Washington/ Baltimore High Intensity Drug Trafficking Overdose Detection Mapping Application Program (HIDTA)***

The Washington/ Baltimore High Intensity Drug Trafficking Area (HIDTA) is a federal grant program administered by the White House Office of National Drug Control Policy, that provides resources to assist federal, state, local, and tribal agencies coordinate activities addressing drug trafficking.<sup>56</sup> HIDTA created an app, known as the Overdose Detection Mapping Application Program, which allows EMS agencies to report overdose incidents, which will then be transmitted to the app in real time with an electronic map showing the location, date, time, and incident type.<sup>57</sup> It does not allow EMS agencies to report on the patient’s age or gender or the suspected controlled substance involved in the overdose.

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<sup>50</sup> There are 147 participating EMS agencies. Florida Department of Health, *Florida EMS Agencies Participating in EMSTARS*, available at <http://www.floridaemstars.com/docs/partagencies.pdf> (last visited April 7, 2017).

<sup>51</sup> *Supra* note 43 at p. 2.

<sup>52</sup> *Id.* See Rule 64J-1.014(1), F.A.C.

<sup>53</sup> *Id.* at p. 3.

<sup>54</sup> *Supra* note 41.

<sup>55</sup> See Florida’s Prehospital EMS Tracking and Reporting System, *Quick Links: FL Data Dictionary v.3.0 and FL Data Dictionary v.1.4*, available at <http://www.floridaemstars.com/index.htm> (last visited April 7, 2017).

<sup>56</sup> Washington/Baltimore High Intensity Drug Trafficking Area, available at <http://www.hidta.org/> (last visited April 7, 2017).

<sup>57</sup> See Emily Daniels, *Berkeley County signs off on an overdose app agreement*, *The Journal*, (December 16, 2016) available at <http://www.journal-news.net/news/local-news/2016/12/berkeley-county-signs-off-on-overdose-app-agreement/> (last visited April 13, 2017).



## Emergency Medical Technicians and Paramedics

An emergency medical technician (EMT) is a person who is certified by the DOH to perform basic life support.<sup>58</sup> A paramedic is a person who is certified by the DOH to perform basic and advanced life support.<sup>59</sup> EMTs and paramedics are regulated by the DOH, under part III of ch. 401, F.S. EMTs and paramedics care for sick or injured patients in an emergency medical setting and often work closely with police and firefighters during an emergency situation.<sup>60</sup> Some of the typical duties of an EMT or paramedic are:

- Responding to 911 calls for emergency medical assistance;
- Assessing a patient's condition and determining a course of treatment;
- Helping transfer patients to the emergency department of a healthcare facility and reporting observations and treatment to the emergency department staff; and
- Creating a patient care report, documenting the medical care given to the patient.<sup>61</sup>

Currently, there are 35,315 certified EMTs and 29,731 certified paramedics in Florida.<sup>62</sup>

## Current Overdose Prevention Statutes

Section 893.21, F.S., was created in 2012 to provide that a person experiencing a drug-related overdose, or a person lending aid by seeking medical help, may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for the charge is obtained as a result of the need for medical attention.

In 2015, s. 381.887, F.S., was created to encourage health care practitioners to prescribe and dispense emergency opioid antagonists to patients or caregivers. Section 381.887(4), F.S., gives emergency responders, including law enforcement officers, paramedics, and emergency technicians, the authority to possess, store, and administer opioid antagonists.

## III. Effect of Proposed Changes:

### Legislative Findings, Intent, and Goals (Section 1)

The bill makes the following legislative findings:

- Substance abuse and drug overdose are major health problems that affect the lives of many people and multiple service systems, leading to profoundly disturbing consequences;

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<sup>58</sup> Sections 401.23(11), F.S.; s. 401.23(7), F.S., defines “basic life support” as the assessment or treatment through the use of techniques described in the Emergency Medical Technician-Basic National Standard Curriculum or the National EMS Education Standards of the U.S. Department of Transportation.

<sup>59</sup> Section 401.23(17), F.S.; s. 401.23(1), F.S., defines “advanced life support” as the assessment or treatment by a qualified person through the use of techniques such as endotracheal intubation, the administration of drugs or intravenous fluids, telemetry, cardiac monitoring, cardiac defibrillation, and other techniques described in the Emergency Medical Technician-Paramedic National Standard Curriculum or the National EMS Education Standards of the U.S. Department of Transportation.

<sup>60</sup> U.S. Department of Labor, Bureau of Labor Statistics, *EMTs and Paramedics: What EMTs and Paramedics Do*, Occupational Outlook Handbook, available at <http://www.bls.gov/ooh/Healthcare/EMTs-and-paramedics.htm#tab-2> (last visited April 7, 2017).

<sup>61</sup> Id.

<sup>62</sup> Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan: Fiscal Year 2015-2016 – Table 1*, available at <http://mqawebteam.com/annualreports/1516/#12> (last visited April 7, 2017).

- These overdoses are a crisis and stress financial, health care, and public safety resources; and
- A central database that could quickly help address this problem does not currently exist.

The bill sets out the intent of the Legislature to:

- Require the collaboration of local, regional, and state agencies; service systems; and program offices to address the needs of the public;
- Establish a comprehensive system addressing the problems associated with drug overdoses;
- Reduce duplicative requirements across local, county, state, and health care agencies;
- Maximize the efficiency of financial, public education, health professional, and public safety resources so that these resources may be concentrated on areas and groups in need; and
- Maximize the use of funding programs for the dissemination of available federal, state, and private funds through contractual agreements with community based organizations or units of state or local government that deliver local substance abuse services.

The goals of the Legislature for the bill are identified as:

- Discouraging substance abuse and overdoses by quickly identifying the type of drug involved, the age of the individual involved, and the areas where drug overdoses pose a potential risk to the public, schools, workplaces, and communities; and
- Providing a central data point so that data can be shared between the health care community and municipal, county, and state agencies to quickly identify needs and provide short and long term solutions while protecting and respecting the rights of individuals.

### **Hospital Best Practices to Promote Prevention of Drug Overdoses (Section 2)**

The bill amends s. 395.1041, F.S., to require a hospital with an emergency department to develop a best practices policy related to unintentional drug overdoses. The goal of the policy is to connect patients that experience unintentional drug overdoses with substance abuse treatment services.

The bill allows a hospital to determine what should be included in its best practices policy. However, the bill expressly states that the policy may include, but is not limited to, the following:

- A process for obtaining patient consent to disclose to the patient's next of kin and the primary care physician or practitioner who prescribed a controlled substance to the patient that the patient overdosed, her or his location, and the nature of the substance or controlled substance involved in the overdose.
- A process for providing information to the patient or the patient's next of kin regarding licensed substance abuse treatment providers and voluntary and involuntary commitment procedures for mental health or substance abuse treatment.
- Controlled substance prescribing guidelines for emergency department health care practitioners.
- The use of licensed or certified behavioral health professionals or peer specialists in emergency departments to encourage the patient to voluntarily seek substance abuse treatment.
- The use of Screening, Brief Intervention, and Referral to Treatment protocols in the emergency department.

Hospitals that fail to develop a best practices policy to reduce readmissions for unintentional drug overdoses are subject to discipline by AHCA.<sup>63</sup>

### **Overdose Reporting (Section 3)**

The bill creates s. 401.253, F.S., which permits EMTs and paramedics, who provide basic and advanced life support services on an emergency call, to report to the DOH a suspected or actual controlled substances overdose. The bill defines “overdose” as:

- A condition which includes, but is not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death from the consumption or use of a controlled substance that requires medical attention, assistance, or treatment; or
- Clinical suspicion of a drug overdose such as respiratory depression, unconsciousness, or an altered mental state which is not explained by another condition.

An EMT or paramedic who treats and releases an individual, or treats and transports an individual to a medical facility, in response to an emergency call for a suspected or actual overdose of a controlled substance, may voluntarily report. If the EMT or paramedic reports, he or she must use best efforts to do so within 120 hours. The report must contain:

- The date and time of the overdose;
- The address of where the patient was picked up or where the overdose took place;
- Whether an emergency opioid antagonist was administered; and
- Whether the overdose was fatal or non-fatal.

Additionally, the report must include the approximate age and gender of the patient and the suspected controlled substances involved in the overdose only if permitted by the reporting mechanism.

The bill requires reporters to use EMSTARS, the Washington/Baltimore High Intensity Drug Trafficking Overdose Detection Mapping Application Program, or other program identified by the DOH in rule.

Anyone who files a report in good faith is not subject to civil or criminal liability for making the report. The bill also specifies that the failure to make a report is not grounds for licensure discipline.

### ***Use of Report***

The bill encourages reporting to the DOH within 120 hours. Within 120 hours of receiving the data, the DOH must make it available to law enforcement, public health, fire rescue, and EMS agencies in each county.

Additionally, the DOH must report quarterly to the Statewide Drug Policy Advisory Council, the DCF, and the Florida Fusion Center,<sup>64</sup> summarizing the data received. The council, the DCF, and

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<sup>63</sup> Section 395.1041(5), F.S.

<sup>64</sup> The Fusion Center, housed within the Florida Department of Law Enforcement, is a collaborative effort of state and federal agencies working with local partners to share resources, expertise, and/or information to better identify, detect, prevent,

the DOH may use the reports to maximize the utilization of funding programs for basic and advanced life support service providers, and to disseminate available federal, state and, private funds for local substance abuse treatment services. The quarterly report must also be available to law enforcement, public health, fire rescue, and EMS agencies in each county.

The bill is effective October 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:

None.

C. Government Sector Impact:

Any costs to the DOH to implement the provisions of this bill are indeterminate at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The information collected by the DOH, and being made available to law enforcement, public health, fire rescue and emergency medical services agencies in each county may require a separate bill for a public records exception to protect the information from being obtained by other third parties.

The bill requires the DOH to adopt by rule the programs to which overdose reports must be made.

#### **VIII. Statutes Affected:**

This bill amends section 395.1041 of the Florida Statutes.

This bill creates section 401.253 of the Florida Statutes.

This bill creates an undesignated section of Florida law.

#### **IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

##### **CS/CS by Criminal Justice on April 17, 2017:**

The CS:

- Requires, in s. 395.1041, F.S., that hospitals with an emergency department develop a best practices policy, which may include the use of Screening, Brief Intervention, and Referral to Treatment protocols in the emergency department, to promote the prevention of drug overdoses.
- Reorganizes the term “overdose” as used in s. 401.253, F.S.

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

The CS:

- Deletes mandatory reporting requirements for certain health care professionals, institutions, and their employees;
- Limits reporting to basic and advanced life support services who respond to an emergency call for a suspected or actual overdose;
- Makes reporting voluntary, and encourages reporting within 120 hours;
- Specifies the data elements to be reported;
- Deletes criminal penalties for failure to report;
- Provides that the failure to report is not grounds for licensure discipline;
- Reassigns the responsibility for receiving the reported data to the DOH rather than the county’s chief law enforcement officer;
- Authorizes the DOH to identify the reporting system in rule; and
- Requires the DOH to disseminate raw data received within 120 hours to specified entities and a summary report quarterly.

- B. **Amendments:**

None.