

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1313 Unidentified Persons in Hospitals

SPONSOR(S): Barnaby

TIED BILLS: **IDEN./SIM. BILLS:** SB 900

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--------------------------------------|-----------|---------|--|
| 1) Finance & Facilities Subcommittee | 15 Y, 0 N | Guzzo | Lloyd |
| 2) Judiciary Committee | | | |
| 3) Health & Human Services Committee | | | |

SUMMARY ANALYSIS

Hospitals keep directories of their patients to help front desk staff communicate with visitors. The directories generally include the names and room numbers of all of their patients. Some hospitals include unidentified patients in their directories by giving them an alias. However, the potential exists for unidentified patients to be left off of directories because there is no standardized requirement for documentation of such individuals. This can often make a difficult situation more difficult for the family of an unidentified patient who is searching for their missing family member.

Typically, unidentified hospital patients are pedestrians or cyclists who left their house without their ID. Other instances often involve a patient who is indigent or homeless, has a cognitive impairment or psychosis, or a patient who is presenting for a drug overdose.

To help a missing individual's family and friends find them and to help hospitals learn the identity of persons in their care, the bill requires hospitals to maintain publicly available directories of all unidentified patients. The bill requires the directories to include certain identifying details, including:

- The location in the hospital where the unidentified person is admitted or being treated;
- The type of injury suffered by the unidentified person; and
- A description of distinguishing physical characteristics of the unidentified person, including height, weight, gender, race, hair and eye color, and any facial hair, scars, and tattoos.

Prior to entering an unidentified patient's information into the directory, a hospital must inform the unidentified patient that the information may be disclosed to the public. Hospitals also must provide the unidentified patient the opportunity to restrict or prohibit the inclusion of any of the above identifying information in the directory or the disclosure of such information.

A hospital must include an unidentified patient's personal identifying information in the directory in the event the hospital cannot reasonably inform the patient of the inclusion of their information because the patient is incapacitated or because of the emergent nature of the patient's injuries. Upon the patient becoming fit and no longer incapacitated, the hospital must inform the patient of their inclusion in the directory and provide them the option to restrict or prohibit continued inclusion in the directory or the disclosure of their personal identifying information.

The bill has no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Hospital Licensure

Hospitals are regulated by the Agency for Health Care Administration (AHCA) under chapter 395, F.S., and the general licensure provisions of part II, of chapter 408, F.S. Hospitals offer a range of health care services with beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care.¹ Hospitals must make regularly available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment.²

AHCA has authority to impose an administrative fine of up to \$1,000 per violation, per day, for a violation of any provision of part I of s. 395, F.S. AHCA is required to consider certain factors in determining the amount of a fine to be levied for a violation, including:

- The severity of the violation, including the probability that death or serious harm to the health or safety of an individual will result or has resulted, the severity of the actual or potential harm, and the extent of the violations;
- Actions taken by the licensee to correct the violations or to remedy complaints; and
- Any previous violations of the licensee.

Hospitals are required to develop written comprehensive emergency management plans to be used during an internal or external disaster or emergency.³ They must review and update the plan annually and must include a process for the individual identification of patients.⁴ Current law does not require hospitals to have a process for documenting unidentified individuals who are treated in the hospital.

Unidentified Persons in Hospitals

As of December 31, 2000, there were 8,284 unidentified person records in the National Crime Information Center's Unidentified Person File. Of those people, 159 were living unidentified and 8,088 were deceased unidentified.⁵

Typically, unidentified hospital patients are pedestrians or cyclists who left their house without their ID.⁶ Other instances often involve a patient who is indigent or homeless, has a cognitive impairment or psychosis, and patients presenting for drug overdoses. When a patient is unidentified, the hospital has no access to their medical history, which places the patient at risk for treatment complications arising from unknown medication allergies or pre-existing conditions among other things.

Hospitals keep directories of their patients, usually listing a name and a room number to help front desk staff communicate with family and friends.⁷ Some hospitals will give an alias to an unidentified patient that begins with an M or F for their gender followed by a number.⁸ However, the potential exists

¹ S. 395.002(12), F.S.

² Id.

³ Rule 59A-3.078, F.A.C.

⁴ Id.

⁵ National Crime Information Center, *2020 National Crime Information Center Missing Person and Unidentified Persons Statistics*, available at <https://www.fbi.gov/file-repository/2020-ncic-missing-person-and-unidentified-person-statistics.pdf/view> (last accessed January 31, 2022).

⁶ Susan Abram and Heidi de Marco, *John Doe Patients Sometimes Force Hospital Staff to Play Detective*, KHN (May 13, 2019), available at <https://khn.org/news/john-doe-patients-sometimes-force-hospital-staff-to-play-detective-2/> (last accessed January 31, 2022).

⁷ U.S. Health & Human Services Office for Civil Rights, *Summary of the HIPAA Privacy Rule*, available at <https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/summary/privacysummary.pdf> (last accessed January 31, 2022).

⁸ *Supra* at note 6.

for unidentified patients to be left off of directories because there is no standardized requirement for documentation of such individuals.

This can often make a difficult situation more difficult for the family of an unidentified patient who is searching for their missing family member.⁹

In April of 2021, a pedestrian, Anthony Mejias, was struck by a car in a hit-and-run crash in Orlando, Florida. He had no ID on him, so the hospital was unable to identify him after using all means available to them, including running a search on his fingerprints. He died the next day without his family there.

For six days, Vivian Blanco desperately searched the streets of Orlando for her son, Anthony Mejias. The harsh reality was that she was just steps away from him and didn't realize it. "I actually came to this same hospital." Back in April, Anthony was on a cross-state bus trip from Tallahassee to his home in South Florida, with a connection in Orlando. During that stop, Anthony disappeared without a trace. The frantic mother started searching for her son. Her first stop, Orlando Regional Medical Center. "I go directly into the emergency room. I let them know it's a John Doe." She then showed a front desk worker a picture of her son and described him. The front desk worker looked at a patient log and told her they didn't have anyone that matches her son's description. But it turns out Anthony was at that hospital. "At his worse time, I couldn't be there, while I was steps away from him. I do feel like the system has failed."¹⁰

Health Insurance Portability and Accountability Act

The Health Insurance Portability and Accountability Act of 1996 (HIPAA)¹¹ is a federal law that required the creation of national standards to protect sensitive patient health information from being disclosed without the patient's consent or knowledge. The U.S. Department of Health and Human Services (HHS) issued the HIPAA Privacy Rule¹² to implement the requirements of HIPAA.

HIPAA's Privacy Rule protects all individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule refers to this information as protected health information (PHI) and, with certain exceptions, prohibits it from being disclosed without the patient's consent or knowledge.¹³

PHI is information that relates to the:

- Individual's past, present or future physical or mental health or condition,
- Provision of health care to the individual, or
- Past, present, or future payment for the provision of health care to the individual.¹⁴

PHI also includes certain common identifiers, including an individual's:

- Name and address;
- Date and place of birth;
- Social security number;
- Blood type;
- Type of injury;
- Date and time of treatment;
- Date and time of death, if applicable;

⁹ Id.

¹⁰ Valerie Boey, *Mother Seeks Changes in Identifying Victims After Son Dies Alone Following Hit and Run*, Fox 35 Orlando (May 24, 2021), available at <https://www.fox35orlando.com/news/mother-asking-for-changes-in-identifying-john-does-after-son-dies-alone> (last accessed January 31, 2022).

¹¹ 42 U.S.C. § 1320.

¹² 45 C.F.R. §§ 160 and 164.

¹³ Id.

¹⁴ 45 C.F.R. § 160.103.

- Distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars, and tattoos.¹⁵

The Privacy Rule authorizes hospitals to disclose PHI to a patient's family, relatives, friends, or other individuals authorized by the patient as necessary to identify, locate, or notify them of the patient's location, condition, or death. Hospitals must inform the patient that they are legally authorized to do so and must provide the patient with the opportunity to restrict or prohibit the disclosure of some or all of their PHI.¹⁶ If the opportunity to agree or object to the disclosure of PHI cannot practicably be provided because of the individual's incapacity, the hospital may share the PHI if, in their professional judgement, doing so is in the patient's best interest.¹⁷

Effect of the Bill

The bill requires hospitals to maintain directories of all unidentified patients and requires the directories to be available to the public upon request. The bill requires the directory to include certain identifying details, including:

- The location in the hospital where the unidentified person is admitted or being treated;
- The type of injury suffered by the unidentified person; and
- A description of distinguishing physical characteristics of the unidentified person, including height, weight, gender, race, hair and eye color, and any facial hair, scars, and tattoos.

Prior to entering a patient's information into the directory, the bill requires a hospital to inform the unidentified patient that the information may be disclosed to the public. The bill also requires the hospital to provide the unidentified patient the opportunity to restrict or prohibit the inclusion of any of the above identifying information or the disclosure of such information.

The bill requires a hospital to include an unidentified patient's personal identifying information in the directory in the event the hospital cannot reasonably inform the patient of the inclusion of their information because the patient is incapacitated or because of the emergent nature of the patient's injuries. Upon the patient becoming fit and no longer incapacitated, the bill requires the hospital to inform the patient of their inclusion in the directory and provide them the option to restrict or prohibit continued inclusion in the directory or the disclosure of their personal identifying information.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Creates s. 395.1013, F.S., relating to unidentified persons.

Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.¹⁸

¹⁵ *Supra* at note 6.

¹⁶ 45 C.F.R. § 164.510(a).

¹⁷ 45 C.F.R. § 164.510(b).

¹⁸ Florida Agency for Health Care Administration, Agency Analysis of 2022 HB 1313 (January 28, 2022).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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 affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rules are not necessary to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES