

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1253 Rights and Responsibilities of Patients  
**SPONSOR(S):** Health & Human Services Committee, Harrison  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	9 Y, 0 N	Perdomo	McElroy
2) Health & Human Services Committee	14 Y, 0 N, As CS	Perdomo	Calamas

### SUMMARY ANALYSIS

The Patient's Bill of Rights and Responsibilities, codified in s. 381.026, F.S., was created to promote better communication among patients and their health care providers and facilities while protecting patients' interests and well-being. This law requires health care providers to provide patients a general understanding of the procedures to be performed on them and with information concerning their health care so that they may make informed decisions. The Patient's Bill of Rights and Responsibilities also provides patients with a general understanding of their responsibilities toward health care providers and health care facilities.

Florida law requires health care facilities and health care providers to recognize the rights in the Patient's Bill of Rights and Responsibilities, and provide the patient with a summary of these rights if the patient requests a copy. Failure to do so can result in administrative fines imposed by the Agency for Health Care Administration, the Department of Health, or the appropriate regulatory board.

CS/HB 1253 adds to the Patient's Bill of Rights and Responsibilities, to allow a patient to bring any person of his or her choosing to patient-accessible areas of a health care facility or a health care provider's office to accompany the patient while the patient is receiving inpatient or outpatient treatment or is consulting with his or her health care provider. The bill allows the facility or provider to prohibit patients from exercising this right if doing so would risk the safety or health of the patient, other patients, or staff of the facility or office or cannot be reasonably accommodated.

In addition, the bill requires health care providers and health care facilities to include this new provision in the summary of rights and responsibilities provided to patients.

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

The bill provides an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Patient's Bill of Rights and Responsibilities

The Patient's Bill of Rights and Responsibilities, codified in s. 381.026, F.S., was created to promote better communication among patients and responsible health care providers and facilities while protecting patients' interests and well-being.<sup>1</sup> By understanding their rights and responsibilities, patients can make informed decisions concerning their health.<sup>2</sup> Section 381.026(1), F.S. requires the Department of Health (DOH) to provide a summary of these rights on its website.<sup>3</sup>

The Patient's Bill of Rights and Responsibilities applies to health care facilities licensed under chapter 395 (hospitals, ambulatory surgical centers, and mobile surgical facilities)<sup>4</sup> and physicians licensed under chapter 458, 459, and 461 (allopathic, osteopathic, and podiatric physicians).<sup>5</sup> Health care facilities and health care providers are required to observe the following patient rights.

- **Individual dignity:** A patient has the right to be respected at all times, retains certain rights to privacy, and has a right to a prompt and reasonable response to a question or request. A health care facility shall respond in a reasonable manner to the request of a patient's health care provider for medical services to the patient. A patient also has a right in a health care facility to retain and use personal clothing or possessions as space permits.<sup>6</sup>
- **Information:** A patient has the right to know certain information like what patient support services are available in the facility, information concerning diagnosis, planned course of treatment, alternatives, risks, and prognosis, and the health care provider's or health care facility's procedures for expressing a grievance.<sup>7</sup>
- **Financial information and disclosure:** A patient has the right to certain financial information and disclosure like full information and necessary counseling on the availability of known financial resources for the patient's health care, access to a schedule of charges for the medical services that the provider offers to patients, and a copy of an itemized statement or bill upon request with an explanation upon request.<sup>8</sup>
- **Access to health care:** A patient has the right to impartial access to medical treatment or accommodations, regardless of race, national origin, religion, handicap, or source of payment. A patient also has the right to treatment for any emergency medical condition that will deteriorate from failure to provide such treatment as well as access any mode of treatment that is, in his or her own judgment and the judgment of his or her health care practitioner, in the best interests of the patient.<sup>9</sup>
- **Experimental research:** A patient has the right to know if medical treatment is for purposes of experimental research and to consent prior to participation in such experimental research. For any patient, regardless of ability to pay or source of payment for his or her care, participation

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<sup>1</sup> S. 381.026, F.S.

<sup>2</sup> Id.

<sup>3</sup> S. 381.026(1), F.S.

<sup>4</sup> S. 381.026(2)(b), F.S.

<sup>5</sup> S. 381.026(2)(c), F.S.

<sup>6</sup> S. 381.026(4)(a), F.S.

<sup>7</sup> S. 381.026(4)(b), F.S.

<sup>8</sup> S. 381.026(4)(c), F.S.

<sup>9</sup> S. 381.026(4)(d), F.S.

must be a voluntary matter; and a patient has the right to refuse to participate. The patient's consent or refusal must be documented in the patient's care record.<sup>10</sup>

- **Patient's knowledge of rights and responsibilities:** In receiving health care, patients have the right to know what their rights and responsibilities are.<sup>11</sup>

Florida law requires that health care facilities and health care providers provide a patient with a summary of these rights if the patient requests a copy.

### *Enforcement*

The Agency for Health Care Administration may impose an administrative fine against a health care facility when a health care facility fails to make the summary of rights available to its patients. For a first unintentional violation, the health care facility would not receive an administrative fine but would be subject to corrective action. AHCA may impose a fine against a health care facility of up to \$5,000 for unintentional violations and a fine of up to \$25,000 for willful and intentional violations.<sup>12</sup>

Regulatory boards may fine physicians when they fail to make the summary of rights available to their patients.<sup>13</sup> For initial unintentional violations, a health care provider would not receive an administrative fine but would be subject to corrective action.<sup>14</sup> A regulatory board or DOH may impose a fine of up to \$100 against a health care provider for unintentional violations and a fine of up to \$500 for willful violations.<sup>15</sup>

### Health Insurance Portability and Accountability Act

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects personal health information. Privacy rules were initially issued in 2000 by the U.S. Department of Health and Human Services and later modified in 2002.<sup>16</sup> The rules address the use and disclosure of an individual's personal health information and create standards for information security. 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 personal health information. These "covered entities" include health plans, health care providers, health care clearinghouses, and business associates of any the preceding.<sup>17</sup>

HIPAA allows a covered entity to use or disclose protected health information, given that the individual is informed of the use or disclosure and has the opportunity to agree or disagree.<sup>18</sup> Under this section, a health care provider, using professional judgment, may discuss the patient's health information with a family member, friend or other person identified by the patient when the individual is not present, the individual does not have the opportunity to agree or disagree due to the individual's incapacity or an emergency circumstance, or the individual is deceased.<sup>19</sup> For example, an emergency room doctor may discuss a patient's treatment in front of the patient's friend if the patient asks that her friend come into the treatment room.<sup>20</sup>

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<sup>10</sup> S. 381.026(4)(e), F.S.

<sup>11</sup> S. 381.026(4)(f), F.S.

<sup>12</sup> S. 381.0261(4)(a), F.S.

<sup>13</sup> SS. 458.331, F.S., 459.015, F.S., and 461.013, F.S.

<sup>14</sup> S. 381.0261(4)(b), F.S.

<sup>15</sup> Id.

<sup>16</sup> U.S. Department of Health and Human Services, *The Privacy Rule*, available at <http://www.hhs.gov/ocr/privacy/hipaa/administrative/privacyrule/> (last visited on March 18, 2017).

<sup>17</sup> U.S. Department of Health and Human Services, *For Covered Entities and Business Associates*, available at <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/> (last visited on March 18, 2017).

<sup>18</sup> 45 C.F.R. § 164.510.

<sup>19</sup> Id.

<sup>20</sup> U.S. Department of Health and Human Services, *Disclosures to Family and Friends*, available at <https://www.hhs.gov/hipaa/for-professionals/faq/disclosures-to-family-and-friends> (last visited March 19, 2017).

## Alternative Decision Making

Current Florida law authorizes several ways for health care decisions to be made by someone other than the patient. Chapter 765 allows a competent individual to create a health care advance directive which allows the individual to designate a specific person to make health care decisions on his or her behalf if the individual were to become incapacitated. An advance directive can be executed by a witnessed written document or an oral statement with instructions regarding aspects of the individual's health care or health information.<sup>21</sup>

### *Surrogate*

A surrogate is a competent adult who has been expressly designated to receive health information and make health care decisions by a principal, who is a competent adult executing a health care advance directive.<sup>22</sup> A surrogate can act on behalf of the principal regarding all health care decisions, provide informed or written consent, and receive access to appropriate health information.<sup>23</sup>

### *Durable Power of Attorney*

A durable power of attorney can serve as an alternative to a health care surrogate. An agent (a person granted authority to act on behalf of the principal) can only act within the scope of authority granted.<sup>24</sup> The power of attorney is considered *durable* when it does not terminate by later incapacity of the principal.<sup>25</sup>

### *Proxy*

A proxy is a competent adult who has not been specifically chosen to make health care decisions for a particular incapacitated patient but who is authorized to do so pursuant to s. 765.401.<sup>26</sup> The following individuals, in the following order of priority, would be authorized to serve as a proxy for an incapacitated or developmentally disabled patient:

- Judicially appointed guardian or guardian advocate.
- The patient's spouse.
- An adult child of the patient.
- A parent of the patient.
- An adult sibling of the patient.
- An adult relative of the patient who has demonstrated special concern and care for the patient.
- A close friend of the patient.
- A licensed clinical social worker pursuant to chapter 491.<sup>27</sup>

A proxy can make health care decisions on behalf of the patient based on what the proxy reasonably believes the patient would have decided under those given circumstances.<sup>28</sup>

## National Action Plan to Improve Health Literacy

Health literacy is the degree to which individuals have the capacity to obtain, process, and understand basic health information and services needed to make appropriate health decisions.<sup>29</sup> The National

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<sup>21</sup> S. 765.101(1), F.S.

<sup>22</sup> S. 765.101(21), F.S.

<sup>23</sup> S. 765.205, F.S.

<sup>24</sup> S. 709.2114, F.S.

<sup>25</sup> S. 709.2104, F.S.

<sup>26</sup> S. 765.101(19), F.S.

<sup>27</sup> S. 765.401, F.S.

<sup>28</sup> Id.

<sup>29</sup> Id.

Action Plan to Improve Health Literacy (Plan) is an initiative by the U.S. Office of Disease Prevention and Health Promotion within the U.S. Department of Health and Human Services.<sup>30</sup> Among its seven goals and strategies to improve health literacy, the Plan seeks to promote changes in the health care system that improve health information, communication, informed decision-making, and access to health services.<sup>31</sup>

To improve communication among health care providers and patients, the Office of Disease Prevention and Health Promotion recommends that individuals volunteer to go with a family member or a friend to medical appointments, if possible, and help the patient ask questions and keep track of important notes.<sup>32</sup>

### **Effect of Proposed Changes**

CS/HB 1253 adds a new element to the Florida Patient's Bill of Rights and Responsibilities. The new provision would allow a patient to bring in any person of his or her choosing to patient-accessible areas of a health care facility or provider's office when the patient is receiving inpatient or outpatient treatment, or is consulting with his or her health care provider. The bill also requires health care facilities and health care providers to include this new element in the statement of rights and responsibilities made available to patients. The bill does not define "patient-accessible areas," so this could include any area the patient enters, like operating rooms.

The bill also allows the facility or provider to prohibit patients from bringing in any person of the patients' choosing if doing so would risk the safety or health of the patient, other patients, or staff of the facility or office or cannot be reasonably accommodated.

As with the current provisions of the Patient's Bill of Rights and Responsibilities, this new element must be included in the summary required by s. 381.026(6), F.S., which hospitals, ambulatory surgery centers, and physicians must give to patients on request.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s.381.026, relating to patient's bill of rights and responsibilities.

**Section 2:** Provides an effective date of July 1, 2017.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

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<sup>30</sup> U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, *National Action Plan to Improve Health Literacy*, [https://health.gov/communication/HLActionPlan/pdf/Health\\_Literacy\\_Action\\_Plan.pdf](https://health.gov/communication/HLActionPlan/pdf/Health_Literacy_Action_Plan.pdf) (last visited March 18, 2017).

<sup>31</sup> Id.

<sup>32</sup> Id.

**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:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 30, 2017, the Health and Human Services Committee adopted an amendment that:

- Eliminated a health care provider's authority to restrict a person or entity that may have a fiduciary interest affected by the patient's course of treatment from attending a consultation; and
- Provided an exception for the facility or provider to prohibit patients from bringing in any person of the patients' choosing if doing so would create a safety risk or cannot be reasonably accommodated.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.