

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 1253	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Rights and Responsibilities of Patients	117	Y's 0	N's
SPONSOR(S):	Health & Human Services Committee; Harrison	GOVERNOR'S ACTION:		Approved
COMPANION BILLS:	CS/SB 1206			

SUMMARY ANALYSIS

CS/HB 1253 passed the House on April 20, 2017, and subsequently passed the Senate on May 5, 2017.

Section 381.026, F.S., the Patient's Bill of Rights and Responsibilities, establishes patient rights to dignity, treatment and financial information, and non-discriminatory access to health care, from certain health care providers and facilities. Health care facilities and providers must provide a summary of these rights and responsibilities to a patient upon request.

CS/HB 1253 adds a new right to the Patient's Bill of Rights and Responsibilities which allows a patient to bring any person of the patient's 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 the health care provider. The bill allows a health care facility or provider to prohibit patients from exercising this right if doing so cannot be reasonably or safely accommodated.

The bill also 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 was approved by the Governor on June 23, 2017, ch. 2017-152, L.O.F., and will become effective on July 1, 2017.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Patient's Bill of Rights and Responsibilities

Section 381.026, F.S., the Patient's Bill of Rights and Responsibilities, requires health care facilities licensed under chapter 395¹ and physicians licensed under chapter 458, 459, and 461² 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.³
- **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.⁴
- **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.⁵
- **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 to any mode of treatment that is, in the patient's or health care practitioner's judgment, in the best interests of the patient.⁶
- **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 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.⁷
- **Patient's knowledge of rights and responsibilities:** In receiving health care, patients have the right to know their rights and responsibilities.⁸

The Department of Health (DOH) must provide a summary of these rights and responsibilities on its website and health care facilities and providers must provide a summary to a patient upon request.

Enforcement

The Agency for Health Care Administration (AHCA) 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

¹ Hospitals, ambulatory surgical centers, and mobile surgical facilities.

² Allopathic, osteopathic, and podiatric physicians.

³ S. 381.026(4)(a), F.S.

⁴ S. 381.026(4)(b), F.S.

⁵ S. 381.026(4)(c), F.S.

⁶ S. 381.026(4)(d), F.S.

⁷ S. 381.026(4)(e), F.S.

⁸ S. 381.026(4)(f), F.S.

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.⁹

Regulatory boards may fine physicians when they fail to make the summary of rights available to their patients.¹⁰ For initial unintentional violations, a health care provider would be subject to corrective action.¹¹ 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.¹²

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 2002.¹³ 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.¹⁴

HIPAA allows a covered entity to use or disclose protected health information if an individual is informed of the use or disclosure and has the opportunity to agree or disagree.¹⁵ It also allows a health care provider, using professional judgment, to 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.¹⁶ 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.¹⁷

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.¹⁸ The National 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.¹⁹ 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.²⁰

⁹ S. 381.0261(4)(a), F.S.

¹⁰ SS. 458.331, F.S., 459.015, F.S., and 461.013, F.S.

¹¹ S. 381.0261(4)(b), F.S.

¹² Id.

¹³ 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).

¹⁴ 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).

¹⁵ 45 C.F.R. § 164.510.

¹⁶ Id.

¹⁷ 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).

¹⁸ National Network of Libraries of Medicine, *Health Literacy*, available at <https://nnlm.gov/professional-development/topics/health-literacy> (last visited March 19, 2017).

¹⁹ 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 (last visited March 18, 2017).

²⁰ Id.

The Office of Disease Prevention and Health Promotion recommends that individuals volunteer to go with a family member or a friend to medical appointments, and help the patient ask questions and keep track of important notes to improve communication among health care providers and patients.²¹

Effect of Proposed Changes

CS/HB 1253 adds a new element to the Florida Patient's Bill of Rights and Responsibilities. The new provision allows 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, including 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 provide to patients upon request.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²¹ Id.