

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.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 474

INTRODUCER: Senator Grimsley

SUBJECT: Hospice Care

DATE: March 24, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Looke | Stovall | HP | Pre-meeting |
| 2. | | | BI | |
| 3. | | | CF | |
| 4. | | | RC | |

I. Summary:

SB 474 amends and creates several sections of the Florida Statutes related to the provision of hospice care to allow hospice providers to offer palliative care to seriously ill persons as well as serving terminally ill patients. The bill:

- Defines the term “seriously ill” to include all persons with persistent medical conditions that adversely affect their quality of life, that is burdensome, and that may be managed through palliative care;
- Allows hospice providers to provide palliative care to seriously ill persons and their family;
- 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; and
- Creates new requirements for hospices that choose to assist in the disposal of prescribed controlled substances after a patient’s death in his or her home.

II. Present Situation:

Hospice Care

Hospice care is a continuum of care for the terminally ill¹ patient and his or her family members.² Hospice care is provided by a hospice team which includes physicians, nurses, medical social workers, spiritual/pastoral counselors, home health aides, therapists, bereavement

¹ “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.

² Fla. Admin. Code R. 59C-1.0355.

counselors, and specially trained volunteers.³ 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.⁴

Currently there are 45 licensed hospice providers in Florida.⁵

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 class II drugs upon the patient's death. Similarly, federal Medicare standards require hospices to dispose of controlled drugs in accordance with state and federal law.⁶

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;⁷
- Patient and family satisfaction including:
 - Whether or not the patient received the right amount of medicine for pain; and
 - 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

³ Florida Hospice and Palliative Care Association, *About Hospice* <http://www.floridahospices.org/hospice-palliative-care/about-hospice/> (last visited Mar. 23, 2017).

⁴ Id.

⁵ Agency for Health Care Administration, *Senate Bill 474 Analysis* (January 27, 2017) (on file with the Senate Committee on Health Policy).

⁶ Id.

⁷ 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.

- The number of discharges by disposition.⁸

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 elements must take into consideration all aspects of care related to hospice and palliation. Additionally, the data elements 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.⁹

Palliative Care

According to the Federal Centers for Medicare and Medicaid Services (CMS), palliative care:

- Focuses on relief from physical suffering. The patient may be being treated for a disease or may be living with a chronic disease, and may or may not be terminally ill.
- Addresses the patient's physical, mental, social, and spiritual well-being, is appropriate for patients in all disease stages, and accompanies the patient from diagnosis to cure.
- Uses life-prolonging medications.
- Uses a multi-disciplinary approach using highly trained professionals. Is usually offered where the patient first sought treatment.¹⁰

Palliative care is different from hospice care in that it is not focused solely on terminally ill patients and does offer life-prolonging treatments. Hospice care in Florida may only be provided to patients whose prognosis is a life expectancy is one year or less.¹¹

III. Effect of Proposed Changes:

Section 1 amends s. 400.6005, F.S., to include the legislative intent that a seriously ill person and his or her family should have the opportunity to select a support system that provides palliative care and supportive care and that allows him or her to exercise maximum independence while receiving such care. The bill also amends current language to indicate that the Legislature intends that hospices may provide services to seriously ill persons as well as terminally ill patients.

Section 2 amends s. 400.601, F.S., to:

- Revise the definition of "hospice" to include seriously ill persons as a recipient of care;
- Define "seriously ill" to mean a person that has a persistent medical condition that:
 - Materially and adversely affects the person's quality of life;

⁸ 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 Mar. 23, 2017).

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

¹⁰ CMS, *Palliative Care vs. Hospice Care: Similar but Different* (June 2015) available at <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/infograph-PalliativeCare-June-20151.pdf> (last visited on Mar. 23, 2017).

¹¹ Supra note 1.

- That is burdensome in its symptoms, pain, or caregiver stress; and
- That may be managed through palliative care; and
- Add a definition for “hospice program” to mean a program offered by a hospice which provides a continuum of palliative care and supportive care for a patient (defined as a terminally ill person) and his or her family or a seriously ill person and his or her family.

Section 3 amends s. 400.60501, F.S., to require that 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 4 creates s. 400.6093, F.S., to allow a hospice to provide palliative care services to a seriously ill person and his or her family members. The bill specifies that:

- Such care may be provided directly by the hospice or by providers under contract with the hospice;
- The section does not preclude palliative care services from being provided by any other health care provider or health care facility otherwise authorized to provide such services; and
- The section does not mandate additional Medicaid coverage.

Section 5 amends s. 400.6095, F.S., to conform its provisions to other parts of the bill that allow hospice programs to admit seriously ill persons.

Section 6 creates s. 400.6096, F.S., to establish requirements for a hospice if the hospice 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. The bill specifies that hospice programs are not required to assist with the disposal of controlled substances and are not required to adopt policies and procedures for disposal if not assisting with the disposal of controlled substances.

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:

SB 474 may have an indeterminate positive fiscal impact on hospices due to the bill permitting them to provide palliative care services to seriously ill persons.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.6005, 400.601, 400.60501, and 400.6095.

This bill creates sections 400.6093 and 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.)

None.

B. Amendments:

None.