HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 61 Emergency Services for an Unintentional Drug Overdose
SPONSOR(S): Health & Human Services Committee; Health Innovation Subcommittee, Lee, Jr.
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	12 Y, 0 N, As CS	Royal	Poche
2) Health & Human Services Committee	16 Y, 0 N, As CS	Royal	Calamas

SUMMARY ANALYSIS

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.

Section 395.1041, F.S. requires all hospitals offering emergency services to provide care to every person seeking 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. Hospitals cannot refuse to accept a person with an emergency medical condition if the service is within that hospital's capability and capacity. Persons requiring care beyond the hospital's capability or capacity must be transferred to another facility that can provide the needed services.

CS/HB 61 amends s. 395.1041, F.S., to require a hospital with an emergency department to develop a best practices policy to promote the prevention of unintentional drug overdoses by connecting patients who have experienced unintentional overdoses with substance abuse treatment services. The bill allows hospitals to determine what should be included in the policy, but the bill provides express authority to include several items in the policy.

The bill does not appear to have a 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:

Background

Substance Abuse

Substance abuse affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[1] 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.[2] 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.[3] 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, memory, and behavior control.[4]

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.[5] The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[6]

Opioid Abuse

Opioids are commonly abused, with an estimated 15 million people worldwide suffering from opioid dependence.[7] Drug overdose is now the leading cause of injury-related death in the United States.[8] Florida is in the midst of an opioid crisis.[9] In 2015, Florida ranked fourth in the nation with 3,228 deaths from drug overdoses[10], and at least one opioid caused 2,530 of those deaths.[11] 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% statewide when compared with 2014.[12]

Drug overdose deaths doubled in Florida from 1999 to 2012.[13] Over the same time period, drug overdose deaths occurred at a rate 13.2 deaths per 100,000 persons.[14] The crackdown on "pill mills"

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[1] World Health Organization. *Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited March 1, 2017).
[2] Substance Abuse and Mental Health Services Administration, *Substance Use Disorders,* available at: http://www.samhsa.gov/disorders/substance-use (last visited March 1, 2017).
[3] National Institute on Drug Abuse*, Drugs, Brains, and Behavior: The Science of Addiction*, available at: https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last visited March 1, 2017).
[4] Id.
[5] Supra, FN 2.
[6] Id.
[7] WORLD HEALTH ORGANIZATION, *Information Sheet on Opioid Overdose*, November 2014. http://www.who.int/substance_abuse/information-sheet/en/ (last visited March 13, 2107).
[8] Trust for America's Health, *The Facts Hurt: A State-by-State Injury Prevention Policy Report 2015,* available at: http://healthyamericans.org/reports/injuryprevention15/ (last visited March 11, 2017).
[9] *Palm Beach County Sober Homes Task Force Report 2017*, Jan. 1, 2017, available at: http://www.sa15.state.fl.us/stateattorney/SoberHomes/_content/SHTFReport2017.pdf (last visited March 1, 2017).
[10] Centers for Disease Control and Prevention. *Drug Overdose Death Data*, available at: https://www.cdc.gov/drugoverdose/data/statedeaths.html (last visited March 11, 2017).
[11] Florida Department of Law Enforcement. *Drugs Identified in Deceased Persons by Florida Medical Examiners-2015 Annual Report,* 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 on March 11, 2017).
[12] Id. at pg. 3.
[13] 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 March 11,2017).

dispensing prescription opioid drugs, such as oxycodone and hydrocodone, reduced the rate of death attributable to prescription drugs[15], but may have generated a shift to heroin use, contributing to the rise in heroin addiction.[16]

Opioid overdose can occur when an individual deliberately misuses a prescription opioid or an illicit drug such as heroin.[17] 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.[18] Opioid overdose is life threatening and requires immediate emergency attention.[19]

Between 2004 and 2009, emergency department visits nationally involving the nonmedical use of pharmaceuticals increased 98.4%, from 627,291 visits to 1,244,679 visits.[20] In 2009, almost one million emergency room visits nationally involved illicit drugs, either alone or in combination with other drugs.[21] 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[22], antipyretics[23], and antirheumatics[24] or sedatives, hypnotics, tranquilizers, and other psychotropic agents.[25] Opiates or related narcotics, including heroin and methadone, accounted for 14% of emergency department visits nationally for unintentional drug poisoning from 2008 to 2011.[26] In Florida, there were approximately 21,700 opioid-related emergency department visits in 2014.[27]

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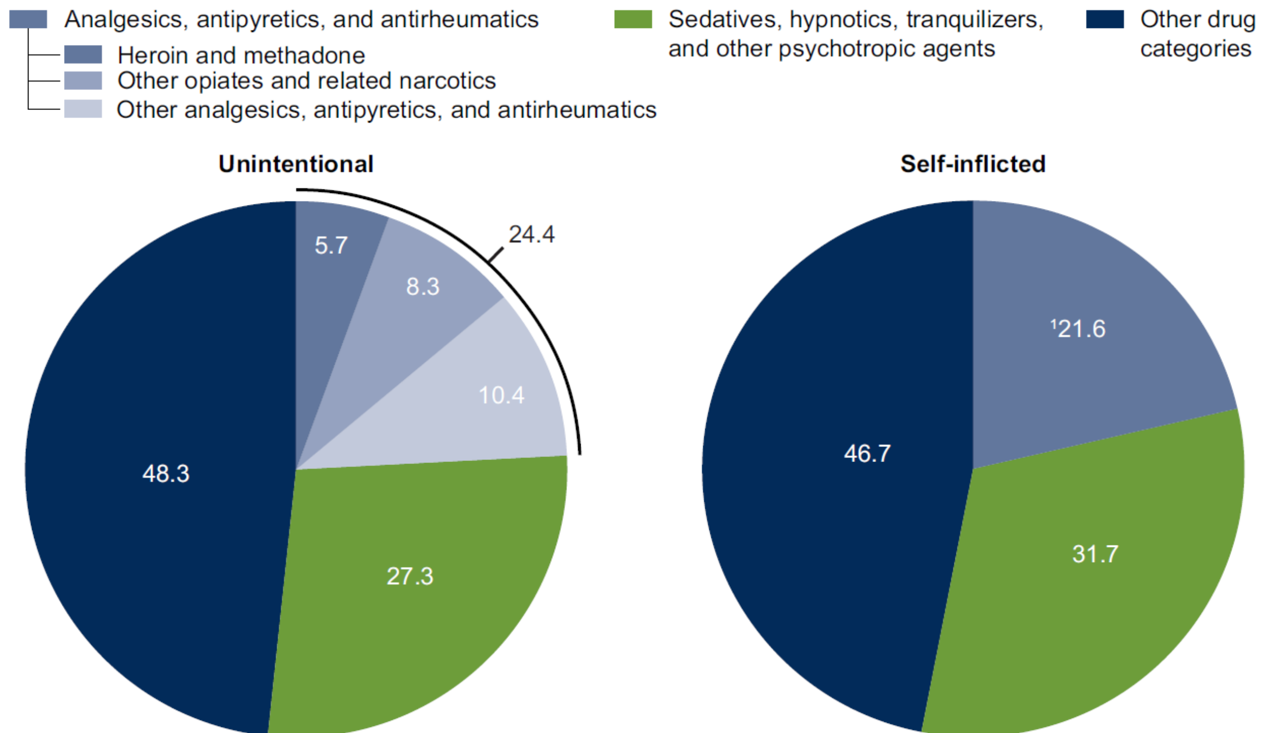
[14] Id.
[15] Supra, FN 11 at pg. 1.
[16] Supra, FN 9, at pg. 1.
[17] SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, *Opioid Overdose Prevention Toolkit*, Rev. 2016, *available at*, http://store.samhsa.gov/shin/content//SMA16-4742/SMA16-4742.pdf (last visited March 13, 2017).
[18] Id.
[19] Id.
[20] National Institute on Drug Abuse, *Drug-Related Hospital Emergency Room Visits,* available at: https://www.drugabuse.gov/publications/drugfacts/drug-related-hospital-emergency-room-visits (last visited March 9, 2017).
[21] Id.
[22] Analgesics are drugs that produce insensibility to pain.
[23] Antipyretics are drugs that reduce fever.
[24] Antirheumatics are drugs that alleviate or prevent inflammation or pain in muscles, joints, or fibrous tissue.
[25] 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
[26] Id.
[27] Weiss, A.J., et al*., Opioid-Related Inpatient Stays and Emergency Department Visits by State, 2009-20014*, HCUP Statistical Brief #219, January 2017, available at: https://www.hcup-us.ahrq.gov/reports/statbriefs/sb219-Opioid-Hospital-Stays-ED-Visits-by-State.pdf



SOURCE: CDC/NCHS, National Hospital Ambulatory Medical Care Survey, 2008–2011.[28]

Substance Abuse Treatment in Florida

In the early 1970s, the federal government furnished grants to states to a develop continuum of care for individuals and families affected by substance abuse.[29] The grants provided separate funding streams and requirements for alcoholism and drug abuse. In response, the Florida Legislature enacted Chapters 396, F.S., (alcohol) and 397, F.S. (drug abuse).[30] In 1993, legislation combined Chapters 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act ("the Marchman Act").[31] The Marchman Act supports substance abuse prevention and remediation through a system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

Licensed Service Components

The Department of Children and Families (DCF) licenses substance abuse treatment components under ch. 397, F.S., which include prevention, intervention, and clinical treatment services.[32] Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-

[28] Id.
[29] Department of Children and Families, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5 (on file with the Health Innovation Subcommittee).
[30] Id.
[31] S. 2, ch. 93-39, Laws of Fla., codified in ch. 397, F.S.
[32] S. 397.311(25), F.S.

free lifestyle. “Clinical treatment services” include, but are not limited to, the following service components:

- Addictions receiving facility services;
- Day or night treatment, with or without community housing;
- Detoxification;
- Intensive inpatient treatment or outpatient treatment;
- Medication-assisted treatment for opiate addiction;
- Non-intensive outpatient treatment; and
- Residential treatment.[33]

All private and publicly-funded entities providing substance abuse services must be licensed, unless exempt. Exemptions are available for:

- Hospitals or hospital-based components licensed under ch. 395, F.S.;
- Nursing facilities, as defined in s. 400.021, F.S.;
- Substance abuse education programs established pursuant to s. 1003.42, F.S.;
- Facilities or institutions operated by the federal government;
- Physicians or physician assistants licensed under ch. 458 or ch. 459, F.S.;
- Psychologists licensed under ch. 490, F.S.;
- Social workers, marriage and family therapists, or mental health counselors licensed under ch. 491, F.S.;
- Facilities licensed under ch. 393, F.S., which, in addition to providing services to persons with developmental disabilities, also provide services to persons developmentally at-risk as a consequence of exposure to alcohol or legal or illegal drugs while in utero; and
- Crisis stabilization facilities licensed under s. 394.875, F.S.[34]

Rights of Individuals Receiving Substance Abuse Treatment

Section 397.501, F.S., establishes statutory rights of individuals receiving substance abuse services, including the right to dignity, non-discriminatory services, quality services, confidentiality, counsel and habeas corpus. In particular, s. 397.501(7) prohibits service providers from disclosing records containing the identity, diagnosis, and prognosis of and services provided to any individual without written consent of the individual. The law provides certain exceptions to the disclosure of such information without consent.[35] The law makes service providers who violate these rights liable for damages, unless acting in good faith, reasonably, and without negligence.

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.[36]

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[33] S. 397.311(25)(a), F.S.
[34] S. 397.405, F.S.
[35] Disclosure is permitted to:

- Health service providers in cases of medical emergency if the information is necessary to provide services to the individual;
- 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 staff;
- Federal, state or local governments for audit purposes; or
- Third party payors providing financial assistance or reimbursement.

[36] Substance Abuse and Mental Health Services Administration. http://www.integration.samhsa.gov/clinical-practice/sbirt (last visited on March 9, 2017).

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.[37]

SBIRT consists of three major components[38]:

- 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.

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. AHCA must maintain a list of hospital providing emergency services and care and the services that the hospital is capable of providing.[39] 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.[40]

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. 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.[41]

In addition, hospitals participating in the Medicare program must comply with the requirements of the federal Emergency Medical Treatment and Labor Act (EMTALA) to provide emergency services to anyone regardless of their insurance status or ability to pay.[42] EMTALA also requires hospitals that do not have the capability to treat the patient's medical condition to transfer the patient to a hospital with the capability to treat the patient. Florida's state law regarding access to emergency services and care is closely aligned with EMTALA.

Effect of Proposed Changes

CS/HB 61 amends s. 395.1041, F.S to require a hospital with an emergency department to develop a best practices policy to promote the prevention of unintentional drug overdoses. The goal of the policy is to connect patients that experience unintentional drug overdoses with substance abuse treatment services.

[37] Substance Abuse and Mental Health Services Administration. SBIRT Factsheet. Available at: http://www.integration.samhsa.gov/sbirt/SBIRT_Factsheet_ICN904084.pdf (last visited on March 9,2017).
[38] Supra, FN 36.
[39] Section 395.1041(2), F.S.
[40] Section 395.002(9), F.S.
[41] Section 395.1041(5), F.S.
[42] 42 U.S. Code § 1395dd

The bill allows hospitals to determine what should be included in its best practices policy. However, bill expressly authorizes several items that may be included in the policy:

- A process for obtaining patient consent to disclose to patient's next of kin and the primary care physician or practitioner who prescribed a controlled substance of the patient's overdose, 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 promote the prevention of unintentional drug overdoses are subject to discipline by AHCA.[43]

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

B. SECTION DIRECTORY:

Section 1: Amends s. 394.1041, F.S., relating to access to emergency services and care.
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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[43] Supra, FN 41.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   Hospitals may incur costs associated with developing the best practices policy. The bill may also create more demand for substance abuse treatment services.

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:

   Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2017, the Health and Human Services Committee adopted an amendment that changed the purpose of the best practice policy from reducing readmission rates for unintentional drug overdoses to promoting the prevention of unintentional drug overdoses.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.