

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 1144

INTRODUCER: Senator Brodeur

SUBJECT: Certificates of Public Convenience and Necessity

DATE: February 1, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Brown	HP	Pre-meeting
2.			CA	
3.			AP	

I. Summary:

SB 1144 creates an exemption from certificate of public convenience and necessity (COPCN) requirements for licensure as an advanced life support service for a governmental entity that maintains a fire rescue infrastructure that dispatches first responders. The bill requires such a governmental entity who applies for licensure to implement the minimum medical standards of any countywide common medical protocol, if such a protocol is instituted. The bill provides exclusions from the COPCN exemption and prohibits a county from limiting, prohibiting, or preventing a governmental entity who is exempted from COPCN requirements from providing non-transport advanced life support services.

The bill authorizes paramedics to administer medical countermeasures in a nonemergency environment, within the scope of their training, and under the direction of a medical director. The bill specifies that a medical director would be liable for any act or omission of a paramedic or emergency medical technician when the paramedic or emergency medical technician is administering medical countermeasures in a nonemergency environment under the medical director's supervision.

The bill provides that there must be a written agreement between a paramedic's medical director and the Department of Health (DOH) or the county health department located within each county in which the paramedic administers immunizations or medical countermeasures, rather than just the county health department. The bill clarifies that an independent special fire control district may allow its paramedics and emergency medical technicians to perform blood pressure screenings or health promotion and wellness activities or administer immunizations or medical countermeasures in accordance with s. 401.272, F.S.

The bill creates the Florida Certificate of Public Convenience and Necessity Task Force within the DOH to evaluate the need to continue the COPCN requirement. The bill provides the duties

and membership of the task force and requires the task force to submit a report of its findings and recommendations to the Governor and the Legislature.

The bill takes effect upon becoming a law.

II. Present Situation:

Basic and Advanced Life Support Services

Part III of ch. 401, F.S., consisting of ss. 401.2101-401.465, F.S., provides for the regulation of emergency medical services by the DOH. The DOH website reflects that its Emergency Medical Services Section is responsible for the licensure and oversight of over 60,000 emergency medical technicians and paramedics, 270+ advanced and basic life support agencies, and over 4,500 EMS vehicles.¹ The DOH licenses three types of emergency medical services: air ambulance,² basic life support, and advanced life support services.

A basic life support service is an emergency medical service that uses *only* basic life support techniques.³ In contrast, an advanced life support service is an emergency medical transport or non-transport service that uses advanced life support techniques.⁴ Similarly, an emergency medical technician (EMT) is certified to perform basic life support,⁵ but a paramedic is certified to perform basic and advanced life support.⁶

“Basic life support” is the assessment or treatment through the use of techniques described in the EMT-Basic National Standard Curriculum or the National EMS Education Standards of the United States Department of Transportation and approved by the DOH. The term includes the administration of oxygen and other techniques that have been approved by the DOH.⁷ When transporting a person who is sick, injured, wounded, incapacitated, or helpless, each basic life support ambulance must be occupied by at least two persons:

- One patient attendant who is a certified EMT, certified paramedic, or licensed physician; and
- One ambulance driver who meets the requirements of s. 401.281, F.S.⁸

“Advanced life support” is the assessment or treatment through the use of techniques such as endotracheal intubation, the administration of drugs or intravenous fluids, telemetry, cardiac monitoring, cardiac defibrillation, and other techniques described in the EMT-Paramedic National Standard Curriculum or the National EMS Education Standards, pursuant to DOH rules.⁹ When transporting a person who is sick, injured, wounded, incapacitated, or helpless, each advanced life support ambulance must be occupied by at least two persons:

- One certified paramedic or licensed physician; and

¹ Florida Department of Health, Emergency Medical Services System, *available at* <http://www.floridahealth.gov/licensing-and-regulation/ems-system/index.html> (last visited Jan. 28, 2022).

² Sections 401.23(3)-(4) and 401.251, F.S.

³ Section 401.23(8), F.S.

⁴ Section 401.23(2), F.S.

⁵ Section 401.23(11), F.S.

⁶ Section 401.23(17), F.S.

⁷ Section 401.23(7), F.S.

⁸ Section 401.25(7)(a), F.S.

⁹ Section 401.23(1), F.S.

- One certified EMT, certified paramedic, or licensed physician who also meets the requirements of s. 401.281, F.S., for drivers.¹⁰

The person occupying the advanced life support ambulance with the highest medical certifications is in charge of patient care.¹¹

Each basic life support transportation service or advanced life support service must employ or contract with a medical director.¹² A medical director must be a licensed physician; a partnership of physicians; or physicians employed by any hospital that delivers in-hospital emergency medical services and employs or contracts with physicians specifically for that purpose. Such a hospital, physician, or partnership must designate one physician from that organization to be medical director at any given time.¹³ The medical director must supervise and assume direct responsibility for the medical performance of the emergency medical technicians and paramedics operating for that emergency medical services system.¹⁴

Section 401.25, F.S., provides requirements for licensure as basic and advanced life support services. Every licensee must possess a valid permit for each vehicle in use.¹⁵

Certificate of Public Convenience and Necessity Requirement

Section 401.25(2)(d), F.S., requires an applicant for licensure to obtain a COPCN from each county in which the applicant will operate. In issuing the COPCN, the governing body of each county must consider the recommendations of municipalities within its jurisdiction.

DOH Rule 64J-1.001, Florida Administrative Code, defines a “certificate of public convenience and necessity” as “a written statement or document, issued by the governing board of a county, granting permission for an applicant or licensee to provide services authorized by a license issued under ch. 401, part III, F.S., for the benefit of the population of that county or the benefit of the population of some geographic area of that county. No certificate of public need from one county may interfere with the prerogatives asserted by another county regarding certificate of public need.”

An applicant that is an active first responder agency is exempt from the COPCN requirement for licensure if it meets all of the following requirements:¹⁶

- Is a faith-based, not-for-profit charitable corporation registered under ch. 617, F.S., which has been responding to medical emergencies in this state for at least 10 consecutive years.
- Is not a parent, subsidiary, or affiliate of, or related to, any for-profit entity.
- Provides basic life support services or advanced life support services solely through at least 50 unpaid licensed emergency medical technician or paramedic volunteers.
- Is not operating for pecuniary profit or financial gain.

¹⁰ Section 401.25(7)(b), F.S.

¹¹ *Id.*

¹² Section 401.265(1), F.S.

¹³ *Id.*

¹⁴ Section 401.265(3), F.S.

¹⁵ Section 401.26, F.S.

¹⁶ Section 401.25(2)(d), F.S.

- Does not distribute to or inure to the benefit of its directors, members, or officers any part of its assets or income.
- Does not receive any government funding. However, the volunteer ambulance service may receive funding from specialty license plate proceeds.
- Has never had a license denied, revoked, or suspended.
- Provides services free of charge.
- As part of its application for licensure, provides to the DOH a management plan that includes a training program, dispatch protocols, a complaint management system, an accident or injury handling system, a quality assurance program, and proof of adequate insurance coverage to meet state or county insurance requirements, whichever requirements are greater.
- Provides a disclaimer on all written materials that the volunteer ambulance service is not associated with the state's 911 system.

The exemption above may be granted to no more than four counties.¹⁷

Suspension of COPCN requirements during Covid-19 Public Health Emergency

COPCN requirements were suspended for over a year during the height of Florida's declared Covid-19 public health emergency. On May 31, 2020, Surgeon General Scott Rivkees executed DOH Emergency Order 20-010¹⁸ which suspended s. 401.25(2)(d), F.S., and rules adopted thereunder, to the extent that the statute and rules would limit basic life support, advanced life support, and air ambulance service providers in emergency and nonemergency services and transportation in permitted vehicles and aircraft. The emergency order authorized those vehicles and aircrafts to provide service and transportation in any county without obtaining a COPCN. This suspension operated until the expiration of Executive Order No. 20-52 and extensions thereof on June 26, 2021.¹⁹

DOH Emergency Order 20-010 also suspended ss. 401.25(4) and 401.26(5)(a), F.S., and rules adopted thereunder to the extent that the statutes and rules would require the renewal of basic life support, advanced life support, and air ambulance service providers, and the associated vehicle and aircraft permits before July 31, 2020. The emergency order extended the deadline until August 31, 2020.

Insurance Requirement

Section 401.25(2)(c), F.S., requires an applicant for licensure as a basic life support service or an advanced life support service to furnish evidence of adequate insurance coverage for claims arising out of injury to or death of persons and damage to the property of others resulting from any cause that the owner of such service would be liable. In lieu of such insurance, the applicant may furnish a certificate of self-insurance evidencing that the applicant has established an

¹⁷ *Id.*

¹⁸ Department of Health, State of Florida, *Emergency Order DOH No. 20-010* (May 31, 2020) available at <https://floridahealthcovid19.gov/wp-content/uploads/2020/05/DOH-Emergency-Order-20-010.pdf> (last visited Jan. 28, 2022).

¹⁹ Under s. 252.36(2), F.S., no state of emergency declared pursuant to the Florida Emergency Management Act, may continue for more than 60 days unless renewed by the Governor. The state of emergency declared in Executive Order 20-52, was extended by Executive Orders 20-114, 20-166, 20-192, 20-213, 20-276, 20-316, 21-45, and 21-94. Executive Order 21-94 expired on June 26, 2021 and the state of emergency therefore expired.

adequate self-insurance plan to cover such risks and that the plan has been approved by the Office of Insurance Regulation of the Financial Services Commission.

DOH Rule 64J-1.002, Florida Administrative Code, requires each non-government-operated ground ambulance vehicle to be insured for the sum of at least \$100,000 for injuries to or death of any one person arising out of any one accident; the sum of at least \$300,000 for injuries to or death of more than one person in any one accident; and for the sum of at least \$50,000 for damage to property arising from any one accident. The rule requires government-operated service vehicles to be insured for the sum of at least \$100,000 for any claim or judgment and the sum of \$200,000 total for all claims or judgments arising out of the same occurrence.

Some counties and municipal governments throughout the state have minimum insurance limits within their ordinances that exceed those required by the DOH rule.

Basic and Advanced Life Support Services through Florida through Telehealth

In 2019, the Legislature passed and the Governor approved CS/CS/HB 23, which created s. 456.47, F.S. The bill became effective on July 1, 2019.²⁰ It authorized Florida-licensed health care providers, including physicians who are licensed under ch. 458 and 459 and emergency medical technicians and paramedics who are certified under part III of ch. 401,²¹ to use telehealth to deliver health care services within their respective scopes of practice.

The bill also authorized out-of-state health care providers to use telehealth to deliver health care services to Florida patients if they register with the DOH or the applicable board²² and meet certain eligibility requirements.²³ A registered out-of-state telehealth provider may use telehealth, within the relevant scope of practice established by Florida law and rule, to provide health care services to Florida patients.

Florida-licensed providers may not provide health care services through telehealth to clients located in other states without express authorization from each state.

III. Effect of Proposed Changes:

New Exemption from COPCN Licensure Requirements

Section 1 of the bill creates s. 401.25(8)(a), F.S., to require the DOH to issue a license to provide advanced life support services to a governmental entity without requiring it to obtain a COPCN if the governmental entity maintains a fire rescue infrastructure that dispatches first responders as defined in s. 112.1815(1), F.S., and meets all other licensure requirements of this statutory section.

²⁰ Chapter 2019-137, s. 6, Laws of Fla.

²¹ Section 456.47(1)(b), F.S.

²² Under s. 456.001(1), F.S., the term “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the DOH’s Division of Medical Quality Assurance.

²³ Section 467.47(4), F.S.

A governmental entity issued a license under these terms must require its medical director to issue standing orders or protocols to implement the minimum medical standards of the applicable countywide common medical protocol if such a protocol is instituted. An entity must submit an affidavit with its licensure application certifying that its medical director has issued such standing orders or protocols. For purposes of this provision, the bill defines the term “countywide common medical protocol” as “minimum medical standards issued by a county’s medical director or a council created by county ordinance which specify protocols for the provision of basic and advanced life support services in that county.” These standards must be based on whether the procedures are being performed by an emergency medical technician or a paramedic and not based on the employer of, or type of response vehicle used by, such emergency medical personnel.

A governmental entity is eligible under the bill to apply only for an advanced life support transport vehicle permit and not a basic life support transport vehicle permit without obtaining the COPCN that would be required under current law. The governmental entity receiving a permit under the bill may provide only non-transport advanced life support services within its jurisdictional boundaries and areas that it serves in accordance with a closest unit response agreement or mutual or automatic aid agreement.

This exemption from COPCN requirements does not apply to a governmental entity that is located within a county in which there is a countywide emergency medical services authority created by special act (such as Pinellas County), is located within a county that has more than 35 municipalities (such as Palm Beach County), or that contracts with a private entity to provide emergency medical services.

The bill prohibits a county from limiting, prohibiting, or preventing a governmental entity that has been issued a license through the COPCN exemption created in the bill from limiting, prohibiting, or preventing a governmental entity that has been issued a license through the COPCN exemption created in the bill from providing non-transport advanced life support services, including, but not limited to, requiring the governmental entity to obtain a license, certificate, or vehicle permit or to pay a fee to provide such services in that county. See Related Issues section of this analysis.

Finally, this section of the bill provides that the bill may not be construed to exempt an applicant from any other requirement for licensure or to exempt a licensee from otherwise complying with this part or DOH rules.

Administration of Medical Countermeasures

Section 2 of the bill amends s. 401.26, F.S., to reiterate and clarify that a governmental entity issued a license under s. 401.25(8), F.S. is eligible only for an advanced life support non-transport vehicle permit.

Section 3 of the bill amends s. 401.265, F.S., to provide that a medical director is liable for any act or omission of a paramedic or EMT when the paramedic or EMT is administering medical countermeasures in a nonemergent environment and acting under the medical director’s supervision pursuant to a protocol.

Section 4 of the bill amends s. 401.272, F.S., to authorize paramedics to administer medical countermeasures in a nonemergency environment, within the scope of their training, and under the direction of a medical director. The bill defines the term “medical countermeasures” as “lifesaving medication or medical supplies regulated by the United States Food and Drug Administration which can be used to diagnose, prevent, protect from, or treat conditions associated with chemical, biological, radiological, or nuclear threats, emerging infectious diseases, or natural disasters.”

The bill provides that there must be a written agreement between the paramedic’s medical director and the DOH or the county health department located within each county in which the paramedic administers immunizations or medical countermeasures. Under current law, the written agreement must be between the paramedics medical director and the county health department located within each county for the paramedic to administer immunizations in this county.

As with paramedics administering immunizations, the bill requires each medical director under whose direction a paramedic administers medical countermeasures must verify and document (on forms developed by the DOH) that the paramedic has received sufficient training to administer them. Such verification must be maintained at the service location of the licensee and made available to the DOH upon request.

This section of the bill clarifies that an independent special fire control district as defined in s. 191.003, F.S.,²⁴ may allow its paramedics and emergency medical technicians to perform blood pressure screenings or health promotion and wellness activities or administer immunizations or medical countermeasures in accordance with this section of statute.

The bill also relocates the definition of “health promotion and wellness” and re-names it as “health promotion and wellness activities.”

The DOH has authority to adopt and enforce all rules necessary to enforce provisions relating to certain services performed by a paramedic or emergency medical technician pursuant in a nonemergency environment pursuant to this statutory section.

Creation of Florida COPCN Task Force

Section 5 of the bill creates the Florida Certificate of Public Convenience and Necessity Task Force²⁵ within the DOH to evaluate the need to continue the COPCN requirement imposed under s. 401.25(2)(d), F.S. The task force must:

²⁴ “Independent special fire control district” means an independent special district as defined in s. 189.012, F.S., created by special law or general law of local application, providing fire suppression and related activities within the jurisdictional boundaries of the district. The term does not include a municipality, a county, a dependent special district as defined in s. 189.012, F.S., a district providing primarily emergency medical services, a community development district established under ch. 190, F.S., or any other multiple-power district performing fire suppression and related services in addition to other services.

²⁵ Pursuant to s. 20.03(8), F.S., a “task force” is an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific

- Review the state’s licensure of emergency medical service providers to determine if changes are necessary;
- Analyze how the COPCN process and provision of emergency medical services operate within each county;
- Identify challenges to the state’s licensure of emergency medical services providers at the state and county levels;
- Identify how the COPCN process benefits and restricts the provision of emergency services within a county, including impacts to rural areas;
- Analyze the positive and negative impacts of the suspension of the COPCN requirement during the pandemic;
- Identify how the COPCN process ensures the delivery of quality medical services;
- Develop recommendations on how to improve the existing licensure of emergency medical services providers, including the COPCN process, and address any identified challenges or gaps in the state’s regulation of these services;
- Review or analyze and other information the task force deems relevant.

The bill provides for the membership of the task force and designates the State Surgeon General or his or her designee to serve as the chair. The bill specifies that task force members serve without compensation and are not entitled to reimbursement for per diem or travel expenses. The task force is required to meet within 60 days after the act takes effect, subject to public meeting and notice requirements.

The task force must submit a report of its findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative committees having jurisdiction within 180 days after the first meeting of the task force. The task force dissolves 30 days after submitting the report.

Section 6 of the bill provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Section 6, Article III of the State Constitution requires every law to “embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” The subject as expressed in the title circumscribes the one subject to which the act must relate. SB 1144 is titled “An act relating to certificates of public convenience and necessity,” but sections 3 and 4 of the bill (pertaining to paramedics and emergency medical technicians administering immunizations and medical countermeasures) do not, or do not necessarily, relate to COPCNs.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Definitions for part III of chapter 401, F.S., are listed in s. 401.23, F.S. Section 4 of the bill amends s. 401.272, F.S., to formally define “health promotions and wellness activities” and “medical countermeasures” for purposes of that section. These terms are also mentioned in s. 401.265(4), F.S., as amended by section 3 of this bill. For consistency and clarity, those definitions should be moved to s. 401.23, F.S., for purposes of the entire chapter.

VII. Related Issues:

Lines 98-103 of the bill prohibit a county from limiting, prohibiting, or preventing a governmental entity that has been issued a license through the COPCN exemption created in the bill from providing non-transport advanced life support services, including, but not limited to, requiring the governmental entity to obtain a license, certificate, or vehicle permit or to pay a fee to provide such services in that county. Some counties have adopted ordinances requiring advanced life support services to carry insurance in excess of what is required by the DOH rule. Lines 98-103 of the bill could be interpreted to prevent the enforcement of such ordinances.

Lines 128-137 of the bill provide that a medical director is liable for any act or omission of a paramedic or emergency medical technician when the paramedic or emergency medical technician is administering medical countermeasures in a nonemergent environment and acting

under the medical director's supervision pursuant to a protocol. However, under the bill, only paramedics are authorized to administer medical countermeasures under such conditions, not emergency medical technicians. This inconsistency could lead to differing interpretations of the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 401.25, 401.26, 401.265, and 401.272.

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.