CHAPTER 2001-222

Committee Substitute for
Committee Substitute for Senate Bill No. 2092

An act relating to health care; amending s. 154.306, F.S.; providing procedures for computing the maximum amount that specified counties must pay for the treatment of an indigent resident of the county at a hospital located outside the county; providing for the exclusion of active-duty military personnel and certain institutionalized county residents from state population estimates when calculating a county's financial responsibility for such hospital care; requiring the county of residence to accept the hospital's documentation of financial eligibility and county residence; requiring that the documentation meet specified criteria; amending s. 381.0403, F.S.; transferring the community hospital education program from the Board of Regents to the Department of Health; prescribing membership of a committee reporting on graduate medical education; amending s. 409.908, F.S.; revising provisions relating to the reimbursement of Medicaid providers to conform to the transfer of the Community Hospital Education Program from the Board of Regents to the Department of Health; providing for the certification of local matching funds; providing requirements for the distribution of federal funds earned as a result of local matching funds; requiring an impact statement; providing rulemaking authority to the Department of Health; amending s. 409.911, F.S.; redefining the term "charity care" or "uncompensated charity care" for purposes of the disproportionate share program; amending s. 409.9117, F.S.; revising eligibility criteria for payments under the primary care disproportionate share program; amending s. 409.912, F.S.; extending the duration of certain demonstration projects to test Medicaid direct contracting; providing legislative findings and intent; amending s. 456.057, 395.3025, 400.1415, F.S.; prohibiting the use of a patient's medical records for purposes of solicitation and marketing without specific written release or authorization; providing for criminal penalties; creating s. 626.9651, F.S.; requiring the Department of Insurance to adopt rules governing the use of a consumer's nonpublic personal financial and health information; providing standards for the rules; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (3) and (4) of section 154.306, Florida Statutes, are redesignated as subsections (4) and (5), respectively, and a new subsection (3) is added to that section, to read:

154.306 Financial responsibility for certified residents who are qualified indigent patients treated at an out-of-county participating hospital or regional referral hospital.—Ultimate financial responsibility for treatment received at a participating hospital or a regional referral hospital by a qualified indigent patient who is a certified resident of a county in the State

of Florida, but is not a resident of the county in which the participating hospital or regional referral hospital is located, is the obligation of the county of which the qualified indigent patient is a resident. Each county shall reimburse participating hospitals or regional referral hospitals as provided for in this part, and shall provide or arrange for indigent eligibility determination procedures and resident certification determination procedures as provided for in rules developed to implement this part. The agency, or any county determining eligibility of a qualified indigent, shall provide to the county of residence, upon request, a copy of any documents, forms, or other information, as determined by rule, which may be used in making an eligibility determination.

(3) For the purpose of computing the maximum amount that a county having a population of 100,000 or less may be required to pay, the agency must reduce the official state population estimates by the number of inmates and patients residing in the county in institutions operated by the Federal Government, the Department of Corrections, the Department of Health, or the Department of Children and Family Services, and by the number of active-duty military personnel residing in the county, all of whom shall not be considered residents of the county. However, a county is entitled to receive the benefit of such a reduction in estimated population figures only if the county accepts as valid and true, and does not require any reverification of, the documentation of financial eligibility and county residency which is provided to it by the participating hospital or regional referral hospital. The participating hospital or regional referral hospital must provide documentation that is complete and in the form required by s. 154.3105.

Section 2. Subsections (3), (4), (5), (6), (7), and (9) of section 381.0403, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

381.0403 The Community Hospital Education Act.—

(3) PROGRAM FOR COMMUNITY HOSPITAL EDUCATION; STATE AND LOCAL PLANNING.—

(a) There is established under the Department of Health ~~Board of Regents~~ a program for statewide graduate medical education. It is intended that continuing graduate medical education programs for interns and residents be established on a statewide basis. The program shall provide financial support for primary care specialty interns and residents based on policies recommended and approved by the Community Hospital Education Council, herein established, and the Department of Health ~~Board of Regents~~. Only those programs with at least three residents or interns in each year of the training program are qualified to apply for financial support. Programs with fewer than three residents or interns per training year are qualified to apply for financial support, but only if the appropriate accrediting entity for the particular specialty has approved the program for fewer positions. Programs added after fiscal year 1997-1998 shall have 5 years to attain the requisite number of residents or interns. When feasible and to the extent allowed through the General Appropriations Act, state funds shall be used to generate federal matching funds under Medicaid, or other federal

programs, and the resulting combined state and federal funds shall be allocated to participating hospitals for the support of graduate medical education. The department may spend up to $75,000 of the state appropriation, for administrative costs associated with the production of the annual report as specified in subsection (9), and for administration of the program ~~council~~.

(b) For the purposes of this section, primary care specialties include emergency medicine, family practice, internal medicine, pediatrics, psychiatry, obstetrics/gynecology, and combined pediatrics and internal medicine, and other primary care specialties as may be included by the council and Department of Health ~~Board of Regents~~.

(c) Medical institutions throughout the state may apply to the Community Hospital Education Council for grants-in-aid for financial support of their approved programs. Recommendations for funding of approved programs shall be forwarded to the Department of Health ~~Board of Regents~~.

(d) The program shall provide a plan for community clinical teaching and training with the cooperation of the medical profession, hospitals, and clinics. The plan shall also include formal teaching opportunities for intern and resident training. In addition, the plan shall establish an off-campus medical faculty with university faculty review to be located throughout the state in local communities.

(4) PROGRAM FOR GRADUATE MEDICAL EDUCATION INNOVATIONS.—

(a) There is established under the Department of Health ~~Board of Regents~~ a program for fostering graduate medical education innovations. Funds appropriated annually by the Legislature for this purpose shall be distributed to participating hospitals or consortia of participating hospitals and Florida medical schools or to a Florida medical school for the direct costs of providing graduate medical education in community-based clinical settings on a competitive grant or formula basis to achieve state health care workforce policy objectives, including, but not limited to:

1. Increasing the number of residents in primary care and other high demand specialties or fellowships;

2. Enhancing retention of primary care physicians in Florida practice;

3. Promoting practice in medically underserved areas of the state;

4. Encouraging racial and ethnic diversity within the state's physician workforce; and

5. Encouraging increased production of geriatricians.

(b) Participating hospitals or consortia of participating hospitals and Florida medical schools or a Florida medical school providing graduate medical education in community-based clinical settings may apply to the Community Hospital Education Council for funding under this innovations program, except when such innovations directly compete with services or pro-

grams provided by participating hospitals or consortia of participating hospitals, or by both hospitals and consortia. Innovations program funding shall provide funding based on policies recommended and approved by the Community Hospital Education Council and the Department of Health ~~Board of Regents~~.

(c) Participating hospitals or consortia of participating hospitals and Florida medical schools or Florida medical schools awarded an innovations grant shall provide the Community Hospital Education Council and Department of Health ~~Board of Regents~~ with an annual report on their project.

(5) FAMILY PRACTICE RESIDENCIES.—In addition to the programs established in subsection (3), the Community Hospital Education Council and the Department of Health ~~Board of Regents~~ shall establish an ongoing statewide program of family practice residencies. The administration of this program shall be in the manner described in this section.

(6) COUNCIL AND DIRECTOR.—

(a) There is established the Community Hospital Education Council, hereinafter referred to as the council, which shall consist of 11 members, as follows:

1. Seven members must be program directors of accredited graduate medical education programs or practicing physicians who have faculty appointments in accredited graduate medical education programs. Six of these members must be board certified or board eligible in family practice, internal medicine, pediatrics, emergency medicine, obstetrics-gynecology, and psychiatry, respectively, and licensed pursuant to chapter 458. No more than one of these members may be appointed from any one specialty. One member must be licensed pursuant to chapter 459.

2. One member must be a representative of the administration of a hospital with an approved community hospital medical education program;

3. One member must be the dean of a medical school in this state; and

4. Two members must be consumer representatives.

All of the members shall be appointed by the Governor for terms of 4 years each.

(b) Council membership shall cease when a member's representative status no longer exists. Members of similar representative status shall be appointed to replace retiring or resigning members of the council.

(c) The Secretary of the Department of Health ~~Chancellor of the State University System~~ shall designate an administrator to serve as staff director. The council shall elect a chair from among its membership. Such other personnel as may be necessary to carry out the program shall be employed as authorized by the Department of Health ~~Board of Regents~~.

(7) DEPARTMENT OF HEALTH ~~BOARD OF REGENTS~~; STANDARDS.—

(a) The Department of Health ~~Board of Regents~~, with recommendations from the council, shall establish standards and policies for the use and expenditure of graduate medical education funds appropriated pursuant to subsection (8) for a program of community hospital education. The Department of Health ~~board~~ shall establish requirements for hospitals to be qualified for participation in the program which shall include, but not be limited to:

1. Submission of an educational plan and a training schedule.

2. A determination by the council to ascertain that each portion of the program of the hospital provides a high degree of academic excellence and is accredited by the Accreditation Council for Graduate Medical Education of the American Medical Association or is accredited by the American Osteopathic Association.

3. Supervision of the educational program of the hospital by a physician who is not the hospital administrator.

(b) The Department of Health ~~Board of Regents~~ shall periodically review the educational program provided by a participating hospital to assure that the program includes a reasonable amount of both formal and practical training and that the formal sessions are presented as scheduled in the plan submitted by each hospital.

(c) In years that funds are transferred to the Agency for Health Care Administration, the Department of Health ~~Board of Regents~~ shall certify to the Agency for Health Care Administration on a quarterly basis the number of primary care specialty residents and interns at each of the participating hospitals for which the Community Hospital Education Council and the department ~~board~~ recommends funding.

(9) ANNUAL REPORT ON GRADUATE MEDICAL EDUCATION; COMMITTEE.—The ~~Board of Regents, the~~ Executive Office of the Governor, the Department of Health, and the Agency for Health Care Administration shall collaborate to establish a committee that shall produce an annual report on graduate medical education. The committee shall be comprised of 11 members: five members shall be deans of the medical schools or their designees; the Governor shall appoint two members, one of whom must be a representative of the Florida Medical Association who has supervised or currently supervises residents or interns and one of whom must be a representative of the Florida Hospital Association; the Secretary of Health Care Administration shall appoint two members, one of whom must be a representative of a statutory teaching hospital and one of whom must be a physician who has supervised or is currently supervising residents or interns; and the Secretary of Health shall appoint two members, one of whom must be a representative of a statutory family practice teaching hospital and one of whom must be a physician who has supervised or is currently supervising residents or interns. With the exception of the deans, members shall serve 4-year terms. In order to stagger the terms, the Governor's appointees shall serve initial terms of 4 years, the Secretary of Health's appointees shall serve initial terms of 3 years, and the Secretary of Health Care Administration's appointees shall serve initial terms of 2 years. A member's term shall

be deemed terminated when the member's representative status no longer exists. Once the committee is appointed, it shall elect a chair to serve for a 1-year term. ~~To the maximum extent feasible, the committee shall have the same membership as the Graduate Medical Education Study Committee, established by proviso accompanying Specific Appropriation 191 of the 1999-2000 General Appropriations Act.~~ The report shall be provided to the Governor, the President of Senate, and the Speaker of the House of Representatives by January 15 annually. Committee members shall serve without compensation. ~~From the funds provided pursuant to subsection (3), the committee is authorized to expend a maximum of $75,000 per year to provide for administrative costs and contractual services.~~ The report shall address the following:

(a) The role of residents and medical faculty in the provision of health care.

(b) The relationship of graduate medical education to the state's physician workforce.

(c) The costs of training medical residents for hospitals, medical schools, teaching hospitals, including all hospital-medical affiliations, practice plans at all of the medical schools, and municipalities.

(d) The availability and adequacy of all sources of revenue to support graduate medical education and recommend alternative sources of funding for graduate medical education.

(e) The use of state and federal appropriated funds for graduate medical education by hospitals receiving such funds.

(10) RULEMAKING.—The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

Section 3. All statutory powers, duties, and functions and the records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Community Hospital Education Program are transferred from the Board of Regents to the Department of Health by a type two transfer as defined in section 20.06, Florida Statutes.

Section 4. Paragraph (a) of subsection (1) of section 409.908, Florida Statutes, is amended to read:

409.908 Reimbursement of Medicaid providers.—Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or direc-

tions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, provided the adjustment is consistent with legislative intent.

(1) Reimbursement to hospitals licensed under part I of chapter 395 must be made prospectively or on the basis of negotiation.

(a) Reimbursement for inpatient care is limited as provided for in s. 409.905(5), except for:

1. The raising of rate reimbursement caps, excluding rural hospitals.

2. Recognition of the costs of graduate medical education.

3. Other methodologies recognized in the General Appropriations Act.

During the years funds are transferred from the Department of Health ~~Board of Regents~~, any reimbursement supported by such funds shall be subject to certification by the Department of Health ~~Board of Regents~~ that the hospital has complied with s. 381.0403. The agency is authorized to receive funds from state entities, including, but not limited to, the Department of Health, ~~the Board of Regents,~~ local governments, and other local political subdivisions, for the purpose of making special exception payments, including federal matching funds, through the Medicaid inpatient reimbursement methodologies. Funds received from state entities or local governments for this purpose shall be separately accounted for and shall not be commingled with other state or local funds in any manner. The agency may certify all local governmental funds used as state match under Title XIX of the Social Security Act, to the extent that the identified local health care provider that is otherwise entitled to and is contracted to receive such local funds is the benefactor under the state's Medicaid program as determined under the General Appropriations Act and pursuant to an agreement between the Agency for Health Care Administration and the local governmental entity. The local governmental entity shall use a certification form prescribed by the agency. At a minimum, the certification form shall identify the amount being certified and describe the relationship between the certifying local governmental entity and the local health care provider. The agency shall prepare an annual statement of impact which documents the specific activities undertaken during the previous fiscal year pursuant to this paragraph, to be submitted to the Legislature no later than January 1, annually. Notwithstanding this section and s. 409.915, counties are exempt from contributing toward the cost of the special exception reimbursement for hospitals serving a disproportionate share of low-income persons and providing graduate medical education.

(b) Reimbursement for hospital outpatient care is limited to $1,500 per state fiscal year per recipient, except for:

1. Such care provided to a Medicaid recipient under age 21, in which case the only limitation is medical necessity.

2. Renal dialysis services.

3. Other exceptions made by the agency.

The agency is authorized to receive funds from state entities, including, but not limited to, the Department of Health, the Board of Regents, local governments, and other local political subdivisions, for the purpose of making payments, including federal matching funds, through the Medicaid outpatient reimbursement methodologies. Funds received from state entities and local governments for this purpose shall be separately accounted for and shall not be commingled with other state or local funds in any manner.

(c) Hospitals that provide services to a disproportionate share of low-income Medicaid recipients, or that participate in the regional perinatal intensive care center program under chapter 383, or that participate in the statutory teaching hospital disproportionate share program may receive additional reimbursement. The total amount of payment for disproportionate share hospitals shall be fixed by the General Appropriations Act. The computation of these payments must be made in compliance with all federal regulations and the methodologies described in ss. 409.911, 409.9112, and 409.9113.

(d) The agency is authorized to limit inflationary increases for outpatient hospital services as directed by the General Appropriations Act.

Section 5. Paragraph (d) of subsection (1) of section 409.911, Florida Statutes, is amended to read:

409.911 Disproportionate share program.—Subject to specific allocations established within the General Appropriations Act and any limitations established pursuant to chapter 216, the agency shall distribute, pursuant to this section, moneys to hospitals providing a disproportionate share of Medicaid or charity care services by making quarterly Medicaid payments as required. Notwithstanding the provisions of s. 409.915, counties are exempt from contributing toward the cost of this special reimbursement for hospitals serving a disproportionate share of low-income patients.

(1) Definitions.—As used in this section and s. 409.9112:

(d) "Charity care" or "uncompensated charity care" means that portion of hospital charges reported to the Agency for Health Care Administration for which there is no compensation, other than restricted or unrestricted revenues provided to a hospital by local governments or tax districts regardless of the method of payment, for care provided to a patient whose family income for the 12 months preceding the determination is less than or equal to 200 ~~150~~ percent of the federal poverty level, unless the amount of hospital charges due from the patient exceeds 25 percent of the annual family income. However, in no case shall the hospital charges for a patient whose family income exceeds four times the federal poverty level for a family of four be considered charity.

Section 6. Paragraph (c) of subsection (2) of section 409.9117, Florida Statutes, is amended to read:

409.9117 Primary care disproportionate share program.—

(2) In the establishment and funding of this program, the agency shall use the following criteria in addition to those specified in s. 409.911, payments may not be made to a hospital unless the hospital agrees to:

(c) Coordinate and provide primary care services free of charge, except copayments, to all persons with incomes up to 100 percent of the federal poverty level who are not otherwise covered by Medicaid or another program administered by a governmental entity, and to provide such services based on a sliding fee scale to all persons with incomes up to 200 percent of the federal poverty level who are not otherwise covered by Medicaid or another program administered by a governmental entity, except that eligibility may be limited to persons who reside within a more limited area, as agreed to by the agency and the hospital.

Section 7. Paragraph (d) of subsection (3) of section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services.

(3) The agency may contract with:

(d) No more than four provider service networks for demonstration projects to test Medicaid direct contracting. The demonstration projects may be reimbursed on a fee-for-service or prepaid basis. A provider service network which is reimbursed by the agency on a prepaid basis shall be exempt from parts I and III of chapter 641, but must meet appropriate financial reserve, quality assurance, and patient rights requirements as established by the agency. The agency shall award contracts on a competitive bid basis and shall select bidders based upon price and quality of care. Medicaid recipients assigned to a demonstration project shall be chosen equally from those who would otherwise have been assigned to prepaid plans and MediPass. The agency is authorized to seek federal Medicaid waivers as necessary to implement the provisions of this section. A demonstration project awarded pursuant to this paragraph shall be for 4 ~~2~~ years from the date of implementation.

Section 8. The Legislature finds that personally identifying information, name, age, diagnosis, address, bank account numbers, and debit and credit card numbers contained in the records relating to an individual's personal

health or eligibility for health-related services made or received by the individual's physician and public or private health facility should be held confidential. Furthermore, the Legislature finds that every person has an expectation of and a right to privacy in all matters concerning her or his personal health when medical services are provided. Matters of personal health are traditionally private and confidential concerns between the patient and the health care provider. The private and confidential nature of personal health matters pervades both the public and private sectors. For these reasons, it is the expressed intent of the Legislature to protect confidential information and the individual's expectations of and right to privacy in all matters regarding her or his personal health, and to not have such information exploited for purposes of solicitation or marketing the sale of goods and services.

Section 9. Subsection (5) of section 456.057, Florida Statutes, is amended to read:

456.057 Ownership and control of patient records; report or copies of records to be furnished.—

(5)(a) Except as otherwise provided in this section and in s. 440.13(4)(c), such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient. However, such records may be furnished without written authorization under the following circumstances:

1.~~(a)~~ To any person, firm, or corporation that has procured or furnished such examination or treatment with the patient's consent.

2.~~(b)~~ When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff.

3.~~(c)~~ In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records.

4.~~(d)~~ For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative.

(b) Absent a specific written release or authorization permitting utilization of patient information for solicitation or marketing the sale of goods or services, any use of that information for those purposes is prohibited.

Section 10. Subsection (7) of section 395.3025, Florida Statutes, is amended to read:

395.3025 Patient and personnel records; copies; examination.—

(7)(a) If the content of any record of patient treatment is provided under this section, the recipient, if other than the patient or the patient's representative, may use such information only for the purpose provided and may not further disclose any information to any other person or entity, unless expressly permitted by the written consent of the patient. A general authorization for the release of medical information is not sufficient for this purpose. The content of such patient treatment record is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Absent a specific written release or authorization permitting utilization of patient information for solicitation or marketing the sale of goods or services, any use of that information for those purposes is prohibited.

Section 11. Subsection (1) of section 400.1415, Florida Statutes, is amended to read:

400.1415 Patient records; penalties for alteration.—

(1) Any person who fraudulently alters, defaces, or falsifies any medical record or releases medical records for the purposes of solicitation or marketing the sale of goods or services absent a specific written release or authorization permitting utilization of patient information; or other nursing home record, or causes or procures any of these offenses to be committed, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 12. Section 626.9651, Florida Statutes, is created to read:

626.9651 Privacy.—The department shall adopt rules consistent with other provisions of the Florida Insurance Code to govern the use of a consumer's nonpublic personal financial and health information. These rules must be based on, consistent with, and not more restrictive than the Privacy of Consumer Financial and Health Information Regulation, adopted September 26, 2000, by the National Association of Insurance Commissioners, however, the rules must permit the use and disclosure of nonpublic personal health information for scientific, medical, or public policy research, in accordance with federal law. In addition, these rules must be consistent with, and not more restrictive than, the standards contained in Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102. If the department determines that a health insurer or health maintenance organization is in compliance with, or is actively undertaking compliance with, the consumer privacy protection rules adopted by the United States Department of Health and Human Services, in conformance with the Health Insurance Portability and Affordability Act, that health insurer or health maintenance organization is in compliance with this section.

Section 13. This act shall take effect July 1, 2001.

Approved by the Governor June 13, 2001.

Filed in Office Secretary of State June 13, 2001.