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Indicates New Matter

AMENDED

May 4, 2017

**S. 234**

Introduced by Senator Massey

S. Printed 5/4/17--H.

Read the first time February 15, 2017.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced January 10, 2017**

**Local Expenditure**

This bill requires the identities of patients and emergency medical technicians, as well as, information and data collected or prepared by emergency medical services to be subject to subpoena in any administrative, civil, or criminal proceeding. Further, this data may be released by court order. The Revenue and Fiscal Affairs Office contacted all forty-six county governments and the Municipal Association of South Carolina. We received four responses from the surveyed counties. These counties indicate that this bill would have no impact on county governments. The Municipal Association of South Carolina indicates that the expenditure impact on municipal governments would be dependent upon the volume of requests and the amount of work involved to release the data. Therefore, the expenditure impact of this bill on local governments is undetermined.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 44‑61‑160(A) OF THE 1976 CODE, RELATING TO THE CONFIDENTIALITY OF THE DATA COLLECTED OR PREPARED BY EMERGENCY MEDICAL SERVICES, TO PROVIDE THAT THE IDENTITIES OF PATIENTS AND EMERGENCY MEDICAL TECHNICIANS MENTIONED, REFERENCED, OR OTHERWISE APPEARING IN INFORMATION AND DATA COLLECTED OR PREPARED BY EMERGENCY MEDICAL SERVICES ARE SUBJECT TO SUBPOENA IN ANY ADMINISTRATIVE, CIVIL, OR CRIMINAL PROCEEDING.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 44‑61‑160(A) of the 1976 Code is amended to read:

“Section 44‑61‑160. (A) The identities of patients and emergency medical technicians mentioned, referenced, or otherwise appearing in information and data collected or prepared by emergency medical services must be treated as confidential. The identities of these persons are not available to the public under the Freedom of Information Act ~~nor are they subject to subpoena in any administrative, civil, or criminal proceeding, and they are not otherwise available except pursuant to court order~~. However, the identities of patients and emergency medical technicians and information and data collected or prepared by emergency medical services are subject to subpoena in any administrative, civil, or criminal proceeding and may be released by court order. An individual in attendance at a proceeding must not be required to testify as to the identity of a patient except pursuant to court order. A person, medical facility, or other organization providing or releasing information in accordance with this article must not be held liable in a civil or criminal action for divulging confidential information unless the individual or organization acted in bad faith or with malicious purpose. However, the name of emergency medical technicians, and information and data collected or prepared by emergency medical services must be released to the patient upon his request. In the event the patient is incapacitated or deceased, the name of emergency medical technicians, information, and data collected or prepared by emergency medical services must be released to the patient’s immediate family, the patient’s legal guardian, or the patient’s legal representative upon their request.”

SECTION 2. Section 44-61-340 of the 1976 Code is amended to read:

“Section 44‑61‑340. (A) The identities of patients and emergency medical technicians mentioned, referenced, or otherwise appearing in information or data collected or prepared by the EMSC Program must be treated as confidential. The identities of these persons are not available to the public under the Freedom of Information Act ~~nor are they subject to subpoena in any administrative, civil, or criminal proceeding, and they are not otherwise available except pursuant to court order~~. However, the identities of patients and emergency medical technicians and information and data collected or prepared by emergency medical services are subject to subpoena in any administrative, civil, or criminal proceeding and may be released by court order. An individual in attendance at a proceeding shall not be required to testify as to the identity of a patient except pursuant to court order. A person, medical facility, or other organization providing or releasing information in accordance with this article ~~shall~~ must not be held liable in a civil or criminal action for divulging confidential information unless the individual or organization acted in bad faith or with malicious purpose. However, the name of emergency medical technicians, and information and data collected or prepared by emergency medical services must be released to the patient or the patient's legal guardian upon request. In the event the patient is incapacitated or deceased, the name of emergency medical technicians, information, and data collected or prepared by emergency medical services must be released to the patient's immediate family, the patient's legal guardian, or the patient's legal representative upon their request.”

SECTION 3. A. Whereas, the Department of Health and Human Services issues personal emergency response system (PERS) devices to select Medicaid recipients pursuant to a Medicaid Home and Community‑based waiver; and

Whereas, the current PERS device the department issues provides recipients with twenty‑four hour monitoring and live phone contact for emergencies; and

Whereas, although PERS emergency response services are intended to respond to true emergency situations, it is not uncommon for a recipient to be transported by ambulance to a hospital emergency room for a nonemergency condition when an emergency response is the only available PERS option; and

Whereas, at many times in our communities there are outbreaks of dangerous and highly contagious diseases and conditions and sending a Medicaid recipient to the emergency room for a nonemergency condition can potentially expose the recipient, who likely is a high health risk, to potentially life threatening conditions and diseases. Having the ability to assess nonemergency situations by having access to a nurse triage service is an invaluable health consideration for Medicaid recipients as well as for the State; and

Whereas, it has been demonstrated that if a person is able to speak with a health care professional who can medically assess the person’s situation and provide assistance, the person is less likely to utilize emergency room care and more likely to be able to manage a nonemergency situation in the home; and

Whereas, some PERS devices provide twenty‑four hour live phone access to experienced nursing personnel, comparable in cost to emergency response PERS devices, which allow a person to consult with a nurse about the person’s medical concern, possible solutions, and available options, including in‑home management of the situation, if appropriate, likely producing a more efficient and effective result.

Article 1, Chapter 6, Title 44 of the 1976 Code is amended by adding:

“Section 44‑6‑55. (A)(1) The Department of Health and Human Services shall issue, pursuant to its Medicaid Home and Community‑based waiver, Personal Emergency Response Systems (PERS) devices to Medicaid recipients that include, in addition to emergency response services, unlimited twenty‑four hour, seven‑day a week live phone contact with experienced registered nurses for triage services.

(2) A PERS nurse triage call center must be accredited and must be separate from the PERS emergency response call center.

(B) A PERS device, as provided for in subsection (A), must have a wireless radio transmitter and a console that is cellular and does not require a traditional land line.

(C) A PERS device that includes nurse triage services also must:

(1) comply with the requirements of Federal Communications Commission rules, 47 C.F.R. Part 68; and

(2) be Underwriters Laboratory or Equipment Testing Laboratories‑approved as a health care signaling product.”

B. The Department of Health and Human Services shall apply for any waiver necessary under the department’s Medicaid Home and Community‑based waiver to implement the provisions of this act.

C. This act applies to Personal Emergency Response System (PERS) devices initially issued by the Department of Health and Human Services to Medicaid recipients, pursuant to the department’s Medicaid Home and Community‑based waiver, on or after the waiver’s effective date and to Medicaid recipients for whom it is necessary to replace their previously issued PERS devices on or after the waiver’s effective date.

SECTION 4. This act takes effect upon approval by the Governor.

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