

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1159 Health Care Facilities

**SPONSOR(S):** Health & Human Services Committee; Health Innovation Subcommittee; O'Toole

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1482

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	7 Y, 5 N, As CS	Guzzo	Shaw
2) Health & Human Services Committee	12 Y, 7 N, As CS	Guzzo	Calamas

### SUMMARY ANALYSIS

The bill allows specialty licensed children's hospitals that have licensed neonatal intensive care beds and are located in a county with a population of 1,750,000 or more, to provide obstetrical services, including labor and delivery care, up to 10 patients, under the following conditions:

- The services must be restricted to the diagnosis, care, and treatment of pregnant women of any age;
- The patient must have documentation by an examining physician, including information regarding;
  - At least one fetal characteristic or condition that would characterize the pregnancy or delivery as high risk; or
  - Medical advice or a diagnosis indicating that the fetus may require at least one perinatal intervention.

In addition, the bill provides an exemption from certificate of need (CON) requirements for the construction of a skilled nursing facility and the addition of skilled nursing home beds within a retirement community that meets certain qualifying specifications.

In 2001, the legislature enacted a moratorium on the issuance of new CONs for skilled nursing beds. In 2006, and again in 2011, the legislature extended the moratorium, but provided that the moratorium will expire on June 30, 2016, or upon the statewide implementation of Medicaid managed care, whichever is earlier.

Specifically, the bill provides a CON exemption for the construction of a skilled nursing facility, not to exceed 240 beds, within a retirement community that:

- Is located in a county that has 25 percent or more of its population consisting of persons aged 65 and older;
- Is located in a county that has a rate of no more than 16.1 community skilled nursing home beds per thousand persons aged 65 and older;
- Is deed restricted for older persons; and
- Has a population of at least 8,000 residents within the county.

The bill limits the number of community nursing home beds that can be approved under each application for exemption to 120, subject to the cap of 240 beds total under the exemption. Further, the bill provides that all nursing homes authorized under the exemption can be no closer than one mile from an existing nursing home, as measured along public roadways

The bill has does not appear to have a fiscal impact on state or local government.

The bill provides an effective date upon becoming law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

#### Specialty-Licensed Hospitals

Section 395.003, F.S., states that a specialty hospital may not provide any service or regularly serve any population group beyond those that are specified in its license. However, a specialty-licensed children's hospital may treat certain adult patients with cardiovascular issues that the hospital treated as children.

The Agency for Health Care Administration (AHCA) licenses all hospital types in Florida. Hospitals with a class II specialty license must be designated as either a women's hospital or a children's hospital. To offer services to women and children, a hospital must be licensed as a class I general acute care hospital. Currently, a licensed children's hospital wanting to offer services outside of their previously defined patient base would be required to obtain a Certificate of Need to establish a new hospital or apply to change their classification to a class I general acute care hospital. Currently, three hospitals<sup>1</sup> in Florida qualify as specialty-licensed children's hospitals, but only one, Miami Children's Hospital is located in a county with a population of 1,750,000 or more.<sup>2,3</sup>

Hospital obstetrical departments are regulated pursuant to AHCA Rule 59A-3.2085(8), F.A.C. The rule requires that if a hospital provides obstetrical services, the services must include labor and delivery. The hospital must have nursery facilities and must be formally organized and operated to provide complete and effective care for each patient. Also, except for in hospitals with 75 beds or less, the obstetrical department must be separated from other patient care rooms and have a separate nursing staff. The rule also includes provisions for ensuring that infants are identified at birth.

#### High-Risk Pregnancy

A high-risk pregnancy is one of greater risk to the mother or her fetus as compared to an uncomplicated pregnancy.<sup>4</sup> Factors contributing to high-risk pregnancies are existing health conditions, age, lifestyle, and conditions of pregnancy. The more risk factors a woman has, the more likely she and her fetus will be at risk during pregnancy and birth.

#### The American College of Obstetricians and Gynecologists

The National Guideline Clearinghouse (NGC) is an initiative of the Agency for Healthcare Research and Quality, within the U.S. Department of Health and Human Services. The NGC is a publicly available database of evidence-based practice guidelines and related documents.<sup>5</sup> Updated weekly with new content, the NGC provides physicians and other health care professionals an accessible mechanism for obtaining detailed information on clinical practice guidelines.<sup>6</sup> The American College (College) of Obstetricians and Gynecologists is an organization that provides guidelines to the NGC

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<sup>1</sup> The three specialty-licensed children's hospitals are: All Children's Hospital in Saint Petersburg, Miami Children's Hospital in Miami and Nemours Children's Hospital in Orlando.

<sup>2</sup> US Census Bureau, 2012 Population Estimates, found at:

[http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP\\_2012\\_PEPANNRES&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2012_PEPANNRES&prodType=table), last visited on April 3, 2013.

<sup>3</sup> Nemours Children's Hospital is located in Orange County which had a population of 1,202,234 in 2012, and All Children's Hospital is located in Pinellas County which had a population of 921,319 in 2012. Id.

<sup>4</sup> The National Institute of Child Health and Human Development, *High-Risk Pregnancy Condition Information*, available at <http://www.nichd.nih.gov/health/topics/high-risk/conditioninfo/Pages/default.aspx> (last visited April 18, 2013).

<sup>5</sup> The National Guideline Clearinghouse, available at <http://guideline.gov/about/index.aspx> (last visited April 18, 2013).

<sup>6</sup> Id.

relating to women's health and pregnancy.<sup>7</sup> Currently, the College provides guidelines for 68 different topic areas relating to women's health and pregnancy.<sup>8</sup>

### The Voluntary Review of Quality of Care Program

The Voluntary Review of Quality of Care Program (Program) provides peer consultations to departments of obstetrics and gynecology, assesses the quality of care provided, and provides suggestions for improvement.<sup>9</sup> Program reviews are voluntary and consist of a facility tour, interviews, and review of medical records. Upon completion of a review, the Program will issue the hospital a final report with findings and recommendations based on the College's guidelines. The hospital may not use any portion of the report for promotional purposes. It is the responsibility of the hospital to determine which recommendations, if any, to implement. Hospitals are charged a fee of \$40,000 for a Program review.<sup>10</sup>

### **Skilled Nursing Facilities**

A certificate of need (CON) is a written statement issued by the Agency for Health Care Administration (AHCA) evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice.<sup>11</sup> Under this regulatory program, the Agency must provide approval through the CON review and approval process prior to a provider establishing a new nursing home or adding nursing home beds.

Florida's CON program has been in operation since July 1973. From 1974 through 1986, the specifics of the program were largely dictated by the federal National Health Planning and Resources Development Act, which established minimum requirements regarding the type of services subject to CON review, review procedures, and review criteria. Each state was required to have a CON program in compliance with those standards as a condition for obtaining federal funds for health programs. The federal health planning legislation was repealed in 1986.

In 2001, the Legislature enacted the first moratorium on the issuance of CONs for additional community nursing home beds until July 1, 2006.<sup>12</sup> In 2006, the Legislature extended the moratorium until July 1, 2011.<sup>13</sup> In 2011, the legislature again extended the moratorium, but provided that the moratorium will expire on June 30, 2016, or upon the statewide implementation of Medicaid managed care, whichever is earlier.<sup>14</sup> In addition, the Legislature provided for additional exceptions to the moratorium to address occupancy needs that might arise.

The Florida CON program has three levels of review: full, expedited, and the granting of an exemption.<sup>15</sup>

### Projects Subject to Full Comparative Review

The following projects are required to undergo a full comparative review under the statute:

- Adding beds in community nursing homes; and
- Constructing or establishing new health care facilities, which include skilled nursing facilities (SNFs).<sup>16</sup>

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<sup>7</sup> American College of Obstetricians and Gynecologists, *Guidelines*, available at <http://guideline.gov/browse/by-organization.aspx?orgid=85> (last visited April 18, 2013).

<sup>8</sup> *Id.*

<sup>9</sup> The Voluntary Review of Quality of Care Program, *VRQC Program Overview*, available at [http://www.acog.org/About\\_ACOG/ACOG\\_Departments/VRQC\\_and\\_SCOPE/VRQC\\_Pr](http://www.acog.org/About_ACOG/ACOG_Departments/VRQC_and_SCOPE/VRQC_Pr) (last visited April 18, 2013)

<sup>10</sup> *Id.*

<sup>11</sup> S. 408.032(3), F.S.

<sup>12</sup> S. 52, Ch. 2001-45, L.O.F.

<sup>13</sup> Chapter 2006-161, L.O.F.

<sup>14</sup> S. 4, Ch. 2011-135, L.O.F.

<sup>15</sup> S. 408.036, F.S.

## Expedited Reviews

Certain exceptions to the moratorium allow existing nursing home beds to be moved from one facility to another within small geographic regions. Section 408.036(2), F.S., provides expedited review of applications for nursing home replacement and relocation of beds from one nursing home to another, as follows:

- Replacing a nursing home within the same district, if the proposed project site is located within a geographic area that contains at least 65 percent of the facility's current residents and is within a 30-mile radius of the replaced nursing home.
- Relocating a portion of a nursing home's licensed beds to a facility within the same district.

## Exemptions

Section 408.036(3), F.S., provides several exemptions to CON review for skilled nursing facility projects, including:

- Combining licensed beds from two or more licensed nursing homes within a district into a single nursing home within that district if 50 percent of the beds are transferred from the only nursing home in a county and that nursing home had less than a 75 percent occupancy rate;<sup>17</sup>
- State veteran's nursing homes operated by or on behalf of the Florida Department of Veterans' Affairs;
- Combining into one nursing home, the beds or services authorized by two or more CONs issued in the same planning subdistrict;
- Separating into two or more nursing homes in the subdistrict, the beds or services that are authorized by one CON;
- Adding the greater of no more than 10 total beds or 10 percent of the number of licensed nursing home beds if:<sup>18</sup>
  - The facility has not had any class I or class II deficiencies within the 30 months preceding the request for addition;
  - The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 96 percent;
  - The prior 12-month occupancy rate for the nursing home beds in the subdistrict is 94 percent or greater; and
  - Any beds authorized for the facility under this exception in a prior request have been licensed and operational for at least 12 months.<sup>19</sup>
- Replacing a licensed nursing home on the same site, or within 3 miles, if the number of licensed beds does not increase.
- Adding the greater of no more than 10 total beds or 10 percent of the licensed nursing home beds of a nursing home located in a county having up to 50,000 residents, if:<sup>20</sup>
  - The nursing home has not had any class I or class II deficiencies<sup>21</sup> within the 30 months preceding the request for addition;

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<sup>16</sup> S. 408.032(16), F.S., defines an SNF as an institution, or a distinct part of an institution, which is primarily engaged in providing, to inpatients, skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

<sup>17</sup> This exemption is repealed upon the expiration of the moratorium by operation of s. 408.036(3)(f), F.S.

<sup>18</sup> S. 408.036(3)(k), F.S.

<sup>19</sup> The request to add beds under the exception to the moratorium is subject to the procedures related to an exemption to the CON requirements.

<sup>20</sup> S. 408.0435(5), F.S.

<sup>21</sup> Deficiencies in nursing homes are classified according to the nature and scope of the deficiency. A class I deficiency is a deficiency that the Agency determines presents a situation in which immediate corrective action is necessary because the facility's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility. A class II deficiency is a deficiency that the Agency determines has compromised a resident's ability to maintain or reach his or her highest practicable physical, mental, and psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. See s. 400.23(8), F.S.

- The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility has not had any class I or class II deficiencies since its initial licensure; and
- The prior 6-month average occupancy rate for the nursing home beds, at a facility that has been licensed for less than 24 months, meets or exceeds 94 percent and the facility has not had any class I or class II deficiencies since its initial licensure.

### Determination of Need

A CON is predicated on a determination of need. The future need for community nursing home beds is determined twice a year and published by the agency as a fixed bed need pool for the applicable planning horizon. The planning horizon for CON applications is 3 years. Need determinations are calculated for subdistricts within AHCA's 11 service districts<sup>22</sup> based on estimates of current and projected population as published by the Executive Office of the Governor.

The need formula<sup>23</sup> links the projected subdistrict need to a projected increase in the district need for nursing home beds. The district increase is based on the expected increase in the district population age 65 to 74 and age 75 and over, with the age group 75 and over given 6 times more weight in projecting the population increase. The projected district bed need total is then allocated to its subdistricts. The result for a given subdistrict is adjusted to reflect the current subdistrict occupancy of beds, and a desired standard of 94 percent occupancy. The subdistrict net need is the excess of the allocated beds over the licensed or approved beds in the subdistrict. If current occupancy of licensed beds is less than 85 percent, the net need in the subdistrict is zero regardless of whether the formula otherwise shows a net need.

AHCA is required to issue a CON to the holder of a provisional certificate of authority to construct nursing home beds for the exclusive use of the prospective residents of the proposed continuing care facility under a different bed-need assessment scheme.<sup>24</sup> AHCA is required to approve at least one sheltered nursing home bed<sup>25</sup> for every four proposed residential units. Additional sheltered nursing home beds must be approved based on actual utilization and demand by current residents. Sheltered nursing home beds are not included in the need formula for community nursing home beds.

### Application Process

Nursing home bed projects subject to competitive review are included in the batching cycle for "other beds and programs." The review process takes approximately 120 days.<sup>26</sup> The fixed bed need determination is published in the Florida Administrative Weekly. A letter of intent describing the applicant, the project type including the number of beds, and its location must be submitted to AHCA at least 30 days prior to the applicable batching cycle application due date.<sup>27</sup> A grace period after the initial letter of intent deadline provides an opportunity for other applicants to compete with an initial letter of intent. The grace period extends this initial phase by an additional 16 days for the submission of a competitor's letter of intent.

The CON application must be submitted to AHCA by the date published for that batching cycle. AHCA must perform a completeness review of the application within 15 calendar days of the application submission deadline.<sup>28</sup> The applicant has 21 calendar days after receiving a request from AHCA for

<sup>22</sup> The nursing home subdistricts are set forth in Rule 59C-2.200, F.A.C.

<sup>23</sup> Rule 59C-1.036, F.A.C.

<sup>24</sup> S. 651.118, F.S.

<sup>25</sup> A sheltered nursing home bed is a nursing home bed located within a continuing care facility for which a CON is issued pursuant to s. 651.118(2), F.S. Generally these beds must be used for residents of the continuing care facility. However, the beds may be used for persons who are not residents of the continuing care facility for a period of up to 5 years after the date of issuance of the initial nursing home license. A continuing care community may request an extension of this timeframe for up to 30 percent of the sheltered nursing home beds based on demonstrated financial need.

<sup>26</sup> Presentation by AHCA on Florida CONs to the House Health Quality Subcommittee on October 4, 2011, (on file with the Health Innovation Subcommittee).

<sup>27</sup> Rule 59C-1.008, F.A.C.

<sup>28</sup> Rule 59C-1.010, F.A.C.

additional information, to provide the information, otherwise the application is withdrawn from further consideration. AHCA must determine whether the application is complete or withdrawn within 7 calendar days after receipt of the requested information.

AHCA will conduct public hearings on the applications, if requested, to determine that a proposed project involves issues of great local public interest.<sup>29</sup>

AHCA reviews CON applications for additional nursing home beds in context with the need for the health care facilities and health services being proposed.<sup>30</sup> An application for nursing facility beds will not be approved in the absence or insufficiency of a numeric need unless the absence or insufficiency of numeric need is outweighed by other information presented in a CON application showing special circumstances consistent with the following additional criteria;<sup>31</sup>

- The availability, quality of care, accessibility, and extent of utilization of existing health care facilities and health services in the service district of the applicant;
- The ability of the applicant to provide quality of care and the applicant's record of providing quality of care;
- The availability of resources, including health personnel, management personnel, and funds for capital and operating expenditures, for project accomplishment and operation;
- The extent to which the proposed services will enhance access to health care for residents of the service district;
- The immediate and long-term financial feasibility of the proposal;
- The extent to which the proposal will foster competition that promotes quality and cost-effectiveness;
- The costs and methods of the proposed construction, including the costs and methods of energy provision and the availability of alternative, less costly, or more effective methods of construction;
- The applicant's past and proposed provision of health care services to Medicaid patients and the medically indigent; and
- The applicant's designation as a Gold Seal Program nursing facility pursuant to s. 400.235, F.S., when the applicant is requesting additional nursing home beds at that facility.

AHCA issues a State Agency Action Report which states the intent to grant or deny a CON for projects in their entirety or for identifiable portions thereof and states the conditions required, if any, of the CON holder. If there is no challenge to all or any part of the decision embodied in the State Agency Action Report within 21 days after publication in the Florida Administrative Weekly, the decision becomes final and the CON is issued.<sup>32</sup>

Applicants in the same batching cycle and exiting health care facilities in the same district that will be substantially affected by the issuance of any CON may challenge the issuance or denial of a CON. The Division of Administrative Hearings conducts the hearing, which must commence within 60 days after the administrative law judge has been assigned except upon unanimous consent of the parties or pursuant to a motion of continuance granted by the administrative law judge.<sup>33</sup> A party to an administrative hearing for an application for a CON may seek judicial review of the final order issued by the administrative law judge to the District Court of Appeal.

### **Effect of Proposed Changes**

The bill allows specialty-licensed children's hospitals that have licensed neonatal intensive care beds, and are located in a county with a population of 1,750,000 or more, to provide obstetrical services, including labor and delivery care, up to 10 patients, under the following conditions:

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<sup>29</sup> S. 408.039, F.S.

<sup>30</sup> S. 408.035, F.S.

<sup>31</sup> Rule 59C-1.036, F.A.C.

<sup>32</sup> *Supra* fn. 12.

<sup>33</sup> *Supra* fn. 13.

- The services must be restricted to the diagnosis, care, and treatment of pregnant women of any age;
- The patient must have documentation by an examining physician, including information regarding:
  - At least one fetal characteristic or condition that would characterize the pregnancy or delivery as high risk; or
  - Medical advice or a diagnosis indicating that the fetus may require at least one perinatal intervention.

In addition, the bill requires qualifying hospitals to provide obstetrical services, as follows:

- In accordance with the pertinent guidelines promulgated by the American College of Obstetricians and Gynecologists;
- With verification of guidelines and compliance with internal safety standards by the Voluntary Review for Quality of Care Program of the American College of Obstetricians and Gynecologists; and
- In compliance with AHCA rules.

The bill creates s. 408.0362, F.S., to provide an exemption from CON review for the addition of a skilled nursing home in one or more of the state's retirement communities that is deed-restricted for older persons.<sup>34</sup> In addition, the retirement community must meet the following criteria to be eligible for the exemption:

- The retirement community must be located in a county that has 25 percent or more of its population consisting of persons aged 65 and older;
- The retirement community is located in a county that has no more than 16.1 community skilled nursing home beds per thousand persons aged 65 and older;
- The retirement community has a population of at least 8,000 residents within the county.

The bill caps the total number of community skilled nursing beds that may be approved pursuant to the exemption in any single deed-restricted community at 240. The bill limits the number of community nursing home beds approved under each application for exemption to no more than 120, subject to the cap of 240 beds under the exemption. To determine the exact number of beds to be approved, AHCA must ensure that the rate of beds to thousand persons aged 65 and older does not exceed 16.1. In determining the number of beds to approve, the bill requires AHCA to use a prospective county population estimate three years into the future to demonstrate that the population of persons aged 65 and older will be at least 25 percent and that the rate of beds to thousand persons aged 65 and older will be no more than 16.1.

The bill requires a retirement community that qualifies for the exemption and intends to use the exemption to provide a written request for the exemption to AHCA. Also, the retirement community must include with the written request evidence that it meets all of the eligibility criteria.

It appears that the exemption may apply to two retirement communities, *The Villages and Top of the World*.<sup>35</sup>

Finally, the bill establishes that the provisions of the bill are severable. If any provision of the bill or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the bill which can be given effect without the invalid provision or application.

<sup>34</sup> S. 760.29(3)(b), F.S., "housing for older persons" means housing: Intended for, and solely occupied by, persons 62 years of age or older; or Intended and operated for occupancy by persons 55 years of age or older where at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

<sup>35</sup> Testimony provided by a representative of: Top of the World Retirement Community, Health and Human Services Committee (April 18, 2013).

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 395.003, F.S., relating to licensure; denial, suspension, and revocation.

**Section 2:** Creates s. 408.0362, F.S., relating to skilled nursing facility in retirement community; exempt from review.

**Section 3:** Provides severability for the provisions of the bill.

**Section 4:** Provides an effective date upon becoming law.

**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.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill will have an insignificant negative fiscal impact on specialty-licensed children's hospitals seeking to provide obstetrical services pursuant to the provisions of this bill as a result of the requirement to comply with the internal safety standards by the Voluntary Review for Quality of Care Program of the American College of Obstetricians and Gynecologists. The fee associated with this mandatory review is \$40,000.<sup>36</sup>

**D. FISCAL COMMENTS:**

None.

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<sup>36</sup> See supra, FN 9.  
**STORAGE NAME:** h1159c.HHSC  
**DATE:** 4/22/2013



### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

##### 2. Other:

A general law operates universally throughout the state, or uniformly upon subjects as they may exist throughout the state, or uniformly within permissible classifications by population of counties or otherwise, or is a law relating to a state function or instrumentality.<sup>37</sup> Conversely, special and local laws operate within a very narrow classification of persons or on a limited geographic region of the state. The Florida Supreme Court defines special and local laws as:

[A] special law is one relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal; a local law is one relating to, or designed to operate only in, a specifically indicated part of the state, or one that purports to operate within classified territory when classification is not permissible or the classification adopted is illegal.<sup>38</sup>

General laws are enacted through the ordinary legislative process. A “special or local” law however is required to meet additional notification requirements before it can be validly enacted. Specifically, Article III, s. 10 of the Florida Constitution states:

No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law.<sup>39</sup> Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

The bill provides that a skilled nursing facility for the addition of skilled nursing homes beds may be constructed if it is located in a retirement community which meets all of the following criteria:

1. Is located in a county that has 25 percent or more of its population consisting of persons aged 65 and older;
2. Is located in a county that has a rate of no more than 16.1 community skilled nursing home beds per thousand persons aged 65 and older;
3. Is deed restricted for older persons; and
4. Has a population of at least 8,000 residents.

In addition, the bill allows specialty-licensed children’s hospitals that have licensed neonatal intensive care beds, and are located in a county with a population of 1,750,000 or more, to provide obstetrical services, including labor and delivery care, up to 10 patients, under certain conditions.

Given the specific nature of these criteria it is unclear as to how many retirement communities or hospitals currently qualify, or who may have a reasonable possibility to qualify in the future<sup>40</sup>, for the exemption. As such, it is unclear whether the bill creates a general or special law.

<sup>37</sup> See *St. Vincent's Medical Center, Inc. v. Memorial HealthCare Group, Inc.*, 967 So.2d 794 (Fla. 2007).

<sup>38</sup> *Id.*; Additionally, Article X, s. 10 of the Florida Constitution defines “special law” as “a special or local law.”

<sup>39</sup> S. 11.02, F.S., establishes the notice requirements for special laws.

<sup>40</sup> See *supra*, FN 24 (any determination of possible future applications of a statute must be done with a realistic and reasonable assessment).

The Florida Constitution provides that every law must “embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.”<sup>41</sup> The primary purpose of this provision is to prevent “logrolling,” which occurs when several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue.<sup>42</sup> If logrolling were allowed, legislators would be forced to vote for provisions they did not support in order to gain passage of unrelated provisions.<sup>43</sup> An act may be as broad as the Legislature chooses, provided the matters included in the act have a natural or logical connection.<sup>44</sup>

The Florida Supreme Court has defined the single subject requirement of Article III, Section 6, as:

“...the single subject clause contains three requirements. First, each law shall ‘embrace’ only ‘one subject.’ Second, the law may include any matter that is ‘properly connected’ with the subject. The third requirement, related to the first, is that the subject shall be ‘briefly expressed in the title.’<sup>45</sup>

The subject matter which should be considered when determining whether an act embraces a single subject is the subject expressed in the title.<sup>46</sup> The test is whether the bill is designed to accomplish separate objectives which have no natural or logical connection to each other.<sup>47</sup> Where an act contains two subjects that “are designed to accomplish separate and disassociated objects of legislative effort,” the act violates single subject.<sup>48</sup>

The bill contains provisions related to an exemption to the CON project review requirements to allow the addition of skilled nursing home beds in retirement communities that meet certain criteria. The bill also contains provisions related to the establishment of adult beds for treatment in a licensed specialty children’s hospital if the hospital meets certain criteria. It is unclear whether these two provisions have a natural or logical connection so as to meet the single subject requirements.

#### B. RULE-MAKING AUTHORITY:

AHCA has sufficient rule-making authority to implement the provisions of the bill.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

As part of the criteria that must be met to qualify for the exemption from the CON project review for constructing a new nursing home in a retirement community, the bill requires the retirement community to have a population of at least 8,000 residents in the county where the facility will be located. The largest retirement communities in Florida may straddle county lines and have legal subdivisions, which may individually qualify as retirement communities. Based on the language of the bill, a large retirement community comprised of multiple subdivisions in different counties could potentially be considered multiple retirement communities and each subdivision could potentially qualify for up to 240 beds each.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2013, the Health Innovation Subcommittee adopted a strike-all amendment to House Bill 1159. The strike-all amendment made the following changes to the bill:

- Created the exemption to the project review requirements of s. 408.036, F.S., in a new section of law.

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<sup>41</sup> Article III, s. 6, Fla. Const.

<sup>42</sup> See *In re Advisory Op. to Att’y Gen.-Save Our Everglades*, 636 So.2d 1336, 1339 (Fla.1994).

<sup>43</sup> See *Department of Educ. v. Lewis*, 416 So.2d 455, 459 (Fla. 1982).

<sup>44</sup> See *Chenoweth v. Kemp*, 396 So.2d 1122, 1124 (Fla. 1981).

<sup>45</sup> See *Franklin v. State*, 887 So.2d 1063, 1072 (Fla. 2004).

<sup>46</sup> See *Ex parte Knight*, 41 So. 786, 786 (Fla. 1906).

<sup>47</sup> See *Board of Pub. Instruction v. Doran*, 224 So.2d 693, 698-99 (Fla. 1969).

<sup>48</sup> See *State ex rel. Landis v. Thompson*, 163 So. 270, 283 (Fla. 1935).

- Revised the eligibility criteria that must be met by a retirement community to apply for the exemption.
- Established a rate of 16.1 community skilled nursing home beds per thousand persons aged 65 and older as the standard for determining the number of beds that can be added under the exemption.
- Required AHCA to use a prospective county population estimate three years in the future to demonstrate that the county is expected to meet certain criteria to support the approval of community skilled nursing home beds under the exemption.
- Required a retirement community seeking to use the exemption to provide a written request to AHCA and provide certain evidence to support the request.
- Capped the total number of beds that may be approved under the exemption at 240.
- Required any skilled nursing facility constructed pursuant to the exemption and the community skilled nursing home beds they contain to be certified by both the Medicaid and Medicare programs.

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

On April 18, 2013, the Health and Human Services Committee adopted three amendments to House Bill 1159. The amendments made the following changes to the bill:

- Changed the title of the bill to “health care facilities”;
- Revised the criteria that must be met by a retirement community to qualify for a nursing home certificate-of-need (CON) exemption to include the following:
  - The retirement community has a population of at least 8,000 residents within the county;
  - The number of community nursing home beds approved under each application for exemption cannot exceed 120, subject to the cap of 240 beds total under the exemption; and
  - All nursing homes authorized under the exemption can be no closer than one mile from an existing nursing home, as measured along public roadways.
- Allows specialty-licensed children’s hospitals with neonatal intensive care beds, located in a county with a population of 1,750,000 or more, to provide obstetrical services, including labor and delivery care, for up to 10 patients, if:
  - The services are restricted to diagnosis, care, and treatment of pregnant women;
  - The patient must have documentation by an examining physician with information regarding:
    - At least one fetal characteristic or condition that would characterize the pregnancy or delivery as high risk; or
    - Medical advice or a diagnosis indicating that the fetus may require at least one perinatal intervention.
- Provided a severability clause to allow all other provisions of the bill to remain in effect if any provision is declared invalid; and
- Required specialty-licensed children’s hospitals that qualify to provide obstetrical services to do so in accordance with the pertinent guidelines promulgated by the American Congress of Obstetricians and Gynecologists.

This analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.