

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 863 Hospice Services  
**SPONSOR(S):** Health & Human Services Committee, Roth  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 414

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	10 Y, 2 N	Langston	Poche
2) Health & Human Services Committee	15 Y, 0 N, As CS	Langston	Calamas

### SUMMARY ANALYSIS

The certificate of need (CON) program, administered by the Agency for Health Care Administration (AHCA), requires certain health care facilities, including hospices, to obtain authorization from the state before offering certain new or expanded services.

Hospice is a program of care and support for terminally ill patients. A specially trained team of professionals and caregivers provide care for the terminally ill patient's physical, emotional, social, and spiritual needs, as well as provide support to the patient's family caregivers. In Florida, AHCA and the Department of Elder Affairs regulate hospices. As of March 23, 2017, there are 45 licensed hospice providers in Florida.

CS/HB 863 creates a CON exemption for a hospice program established by an entity that shares a controlling interest with a not-for-profit retirement community that offers independent living, assisted living, and skilled nursing services in a facility located on the same premises as a teaching nursing home for a minimum of five years. The bill limits the CON exemption to one hospice program per teaching nursing home.

There are two designated teaching nursing homes that meet the criteria: Miami Jewish Health Systems, in Miami-Dade County, and the Joseph L. Morse Health Center, in Palm Beach County. An entity that shares a controlling interest with a not-for-profit retirement community that offers the required services in a facility located on the same premises as one of these two teaching nursing homes will be eligible to request an exemption from CON with AHCA to provide hospice services to their residents and patients.

The bill is expected to have negative, insignificant fiscal impact on AHCA resulting from the loss of CON application fees.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Hospice

Hospice is a program of care and support for terminally ill patients, which helps them to live comfortably.<sup>1</sup> A specially trained team of professionals and caregivers provide care for the terminally ill patient's physical, emotional, social, and spiritual needs, as well as provide support to family caregivers of the terminally ill patient.<sup>2</sup>

The team that provides hospice services includes physicians, nurses, medical social workers, spiritual/pastoral counselors, home health aides, therapists, bereavement counselors, and specially trained volunteers.<sup>3</sup> Hospices can be for-profit or non-profit and provide four levels of care:

- **Routine care** provides the patient with hospice services at home or in a home-like setting. The patient's family provides the primary care with the assistance of the hospice team.
- **Continuous care** provides the patient with skilled nursing services in his or her home during a crisis.
- **Inpatient care** is provided in a healthcare facility for symptoms of a crisis that cannot be managed in the patient's home. Inpatient care is provided on a temporary basis as determined by the patient's physician and the hospice team.
- **Respite care** is provided in a healthcare facility and is primarily to provide the patient's family members and caretakers with a period of relief.<sup>4</sup>

A hospice provides a continuum of palliative<sup>5</sup> and supportive care for a terminally ill<sup>6</sup> patient and his or her family members.<sup>7</sup> Hospice care may be provided to a patient in an inpatient hospice facility, with licensed beds;<sup>8</sup> it may also be provided to the patient in the patient's home or in another facility, such as a hospital or a nursing home. Hospice includes:

- Nursing care;
- Physical or occupational therapy, or speech-language pathology services;
- Medical social services;
- Services of a home health aide and homemaker services;
- Provision of medical supplies (including prescription drugs and biologicals) and the use of medical appliances;
- Physician services;
- Short-term inpatient care; and

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<sup>1</sup> CENTERS FOR MEDICARE AND MEDICAID SERVICES, *Medicare Hospice Benefits*, available at <https://www.medicare.gov/Pubs/pdf/02154.pdf> (last visited March 23, 2017).

<sup>2</sup> Id.

<sup>3</sup> FLORIDA HOSPICE AND PALLIATIVE CARE ASSOCIATION, *About Hospice*, <http://www.floridahospices.org/hospice-palliative-care/about-hospice/>, (last visited March 23, 2107).

<sup>4</sup> Id.

<sup>5</sup> Palliative care means services or interventions which are not curative but are provided for the reduction or abatement of pain and human suffering. S. 400.601(7), F.S.

<sup>6</sup> Rule 59C-1.0355, F.A.C.; s. 400.601(10), F.S. In Florida, a "terminally ill" patient, for hospice purposes, is as a patient with a medical prognosis that his or her life expectancy is one year or less if the patient's illness runs its normal course.

<sup>7</sup> S. 400.601(4), F.S.

<sup>8</sup> A hospice must obtain a Certificate of Need (CON) to increase the number of licensed beds in an inpatient facility, see the discussion of CON below.

- Counseling.<sup>9</sup>

The Agency for Health Care Administration (AHCA) and the Department of Elder Affairs (DOEA) regulate hospices pursuant to part IV of ch. 400, F.S., and part II of ch. 408, F.S. Hospices are subject to the Certificate of Need program, discussed below.

As of March 23, 2017, there are 45 licensed hospice providers in Florida, with 1,031 licensed beds.<sup>10</sup>

### Skilled Nursing Facilities

A nursing home is a facility that provides 24-hour nursing care, personal care, or custodial care for three or more persons who by reason of illness, physical infirmity, or advanced age require nursing services outside of a hospital.<sup>11</sup> Nursing care consists of services or acts that may be provided by licensed nurses.<sup>12</sup> Nursing home services include:

- Nursing care that is available 24-hours a day;
- Help with personal care;
- Nutritional meals and special diets;
- Physical, occupational, speech, and respiratory therapy;
- Case management, health monitoring, and supervision;
- Social and creative activities; and
- Respite care.<sup>13</sup>

A nursing home can be a freestanding facility or it can be part of a continuing care retirement community (CCRC).<sup>14</sup> A CCRC allows residents to move from one level of care to another, as needed, and can include independent living, an assisted living facility, and a nursing home.<sup>15</sup> Additionally, a hospital can have a skilled nursing unit which includes designated beds within the facility that serve patients who need short-term care and rehabilitation services.<sup>16</sup>

Florida nursing homes are regulated under part II of ch. 400, F.S. AHCA develops rules related to the operation of nursing homes.

As of March 23, 2017, there are 682 nursing homes in Florida, with 83,590 licensed beds.<sup>17</sup>

### *Teaching Nursing Home Pilot Project*

In 1999, the Legislature enacted a “Teaching Nursing Home Pilot Project” to implement a comprehensive multidisciplinary program of geriatric education and research in a nursing home facility designated by AHCA as a teaching nursing home.<sup>18</sup> A teaching nursing home is a nursing home facility licensed under ch. 400, F.S., which:

- Contains a minimum of 170 licensed nursing home beds;

<sup>9</sup> 42 U.S.C. s. 1395x(dd).

<sup>10</sup> AGENCY FOR HEALTH CARE ADMINISTRATION, *Facility/Provider Search Results – Hospice*, <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited March 23, 2017)

<sup>11</sup> S. 400.021(7), F.S.

<sup>12</sup> S. 400.021(13), F.S., nursing homes are licensed in Florida under ch. 400, part II, F.S.

<sup>13</sup> AGENCY FOR HEALTH CARE ADMINISTRATION, *Nursing Home Care in Florida*, <http://www.floridahealthfinder.gov/reports-guides/NursingHomesFL.aspx> (last visited March 23, 2017)

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> AGENCY FOR HEALTH CARE ADMINISTRATION, *Facility/Provider Search Results – Nursing Homes*, <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited March 23, 2017)

<sup>18</sup> Ch. 99-394, L.O.F., creating s. 430.80, F.S.

- Has access to a resident senior population of sufficient size to support education, training, and research relating to geriatric care; and
- Has a contractual relationship with a federally funded, accredited geriatric research center<sup>19</sup> or operates its own geriatric research center.<sup>20</sup>

To be designated as a teaching nursing home, a nursing home licensee must, at a minimum:

- Provide a comprehensive program of integrated senior services that include institutional services and community-based services;
- Participate in a nationally recognized accrediting program and hold a valid accreditation, such as the accreditation awarded by the Joint Commission, or, at the time of initial designation, possess a Gold Seal Award;<sup>21</sup>
- Have been in business in this state for a minimum of 10 consecutive years;
- Demonstrate an active program in multidisciplinary education about and research into gerontology;
- Have a formalized contractual relationship with at least one accredited Florida health profession education program;
- Have senior staff members who hold formal faculty appointments at universities, which must include at least one accredited health profession education program; and
- Maintain insurance coverage as required for nursing home licensure<sup>22</sup> or proof of financial responsibility in a minimum amount of \$750,000.<sup>23</sup>

Additionally, in order to qualify as a teaching nursing home and to be eligible for an annual legislative appropriation,<sup>24</sup> the nursing home must:

- Primarily establish and operate a comprehensive multidisciplinary program of geriatric education and research for residents of the state; and
- Annually certify to AHCA the name, address, and educational history of each trainee approved and accepted for enrollment in the institution.<sup>25</sup>

There are only two teaching nursing homes in the state: Miami Jewish Health Systems, in Miami-Dade County, and the Joseph L. Morse Health Center, located in Palm Beach County.<sup>26</sup>

### Certificate of Need in Florida

CON laws require approval by a state health planning agency before a health care facility may construct a new facility or expand an existing facility, offer a new service, or purchase equipment

<sup>19</sup> Geriatric research centers contain education, research, and clinical component. They conduct research on the origins of aging and the diseases commonly associated with it, as well as research how care is delivered to elders and the effects of rehabilitation in order to increase the basic knowledge of aging, transmit this knowledge to health care providers, and improve the quality of care delivered to elders.

<sup>20</sup> S. 430.80(1), F.S.

<sup>21</sup> The Gold Seal Program was established in 1999 to develop an award and recognition program for nursing homes that demonstrate excellence in long-term care over a sustained period of time. Ch. 99-394, Laws of Fla. To be considered for the Award, a nursing home must have a letter of recommendation from AHCA, a nursing home industry organization, a consumer, the State Long-Term Care Ombudsman Program, or a member of the community where the nursing home is located. Only nursing homes with a quality of care ranking within the top 15 percent of facilities regionally, or top 10 percent of facilities statewide, and that have a five-star facility designation overall are considered. SS. 400.191, F.S., and 400.235, F.S., and Rule 59A-4.202, F.A.C.

<sup>22</sup> General and professional liability insurance coverage must be in force at all times. S. 400.141, F.S.

<sup>23</sup> S. 430.80(3), F.S.

<sup>24</sup> While s. 430.80, F.S., provides authority for these facilities to receive a legislative appropriation, no such appropriation has ever been made. Email from Orlando Prior, Legislative Affairs Director, Agency for Health Care Administration, RE: Teaching Nursing Home Question (Mar. 28, 2017) (on file with Health and Human Services Committee Staff).

<sup>25</sup> S. 430.80(5)-(6), F.S.

<sup>26</sup> Agency for Health Care Administration, *2017 Agency Analysis of House Bill 863*, pg. 2 (Jan. 23, 2017) (on file with Health and Human Services Committee staff).

exceeding a certain cost.<sup>27</sup> In Florida, a CON is a written statement issued by AHCA evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility or health service. The CON program has three levels of review: full, expedited, and exempt.<sup>28</sup> Under a full review, AHCA reviews CON applications based on the following criteria:

- The need for the facility or service being proposed;
- The availability, quality of care, accessibility, and extent of utilization of existing facilities and 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, if the applicant is requesting additional nursing home beds at that facility.<sup>29</sup>

Expedited review is primarily targeted towards nursing home projects. Applicants for expedited review are not subject to the application deadlines associated with full comparative review and may submit an application at any time. Projects subject to an expedited review include:

- Transfer of a CON;
- Replacement of a nursing home within the same district;
- Replacement of a nursing home if the proposed site is within a 30-mile radius of the existing nursing home;
- Relocation of a portion of a nursing home's beds to another facility or to establish a new facility in the same district, or a contiguous district, if the relocation is within a 30-mile radius of the existing facility and the total number of nursing home beds in the state does not increase; and
- Construction of a new community nursing home in a retirement community under certain conditions.<sup>30</sup>

Section 408.036(3), F.S., provides exemptions to CON review for certain projects, including the following that apply to hospice services and nursing homes:

- Adding hospice services or swing beds<sup>31</sup> in a rural hospital, the total of which does not exceed one-half of its licensed beds.
- Adding nursing home beds at a skilled nursing facility that is part of a retirement community offering a variety of residential settings and services.<sup>32</sup>

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<sup>27</sup> NATIONAL CONFERENCE OF STATE LEGISLATORS, *CON-Certificate of Need State Laws*, available at <http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx> (last visited March 23, 2017).

<sup>28</sup> S. 408.036, F.S.

<sup>29</sup> S. 408.035(1), F.S.

<sup>30</sup> S. 408.036(2), F.S.

<sup>31</sup> S. 395.602(2)(g), F.S., defines "swing bed" as a bed which can be used interchangeably as a hospital, skilled nursing facility, or intermediate care facility bed pursuant to 42 C.F.R. parts 405, 435, 440, 442, and 447.

<sup>32</sup> S. 408.036(3)(c), F.S. This exemption is limited to a retirement community that had been incorporated in Florida and operating for at least 65 years as of July 1, 1994.

- Adding nursing home beds in a number not exceeding 30 total beds or 25 percent of the number of beds licensed in the facility being replaced in certain circumstances.
- Combining within one nursing home facility of the beds or services authorized by two or more certificates of need issued in the same planning subdistrict.
- Dividing into two or more nursing home facilities of beds or services authorized by one certificate of need issued in the same planning subdistrict.
- Adding nursing home beds licensed in a number not exceeding 10 total beds or 10 percent of the number of beds licensed in the facility being expanded, whichever is greater; or, for adding nursing home beds licensed at a facility that has been designated as a Gold Seal nursing home in a number not exceeding 20 total beds or 10 percent of the number of licensed beds in the facility being expanded, whichever is greater.
- Replacing a licensed nursing home on the same site, or within 5 miles of the same site if within the same subdistrict, if the number of licensed beds does not increase, except in certain circumstances.
- Consolidating or combining of licensed nursing homes or transfer of beds between licensed nursing homes within the same planning district, by nursing homes with any shared controlled interest within that planning district, if there is no increase in the planning district total number of nursing home beds and the site of the relocation is not more than 30 miles from the original location.

Hospice projects must undergo a full comparative CON review for the establishment of a hospice or hospice inpatient facility.<sup>33</sup> The addition of beds in community nursing homes is also subject to a full CON review. However, pursuant to s. 408.0436, F.S., there is a moratorium on the addition of new nursing home beds in the state. The moratorium was originally implemented in 2001, extended in 2006, and further extended in 2011. In 2014, facing the expiration of the moratorium in 2016, the Legislature passed, and the Governor signed, HB 287, which lifted the moratorium until AHCA reached the 3,750 bed approval threshold specified in statute. Once the threshold was reached in February 2016, the moratorium was reinstated. The current moratorium will expire on June 30, 2017.

### *CON Determination of Need and Application and Review Process*

A CON is predicated on a determination of need. The future need for services and projects is known as the “fixed need pool”<sup>34</sup>, which AHCA publishes for each batching cycle. A batching cycle is a means of grouping CON applications for comparative review. The CON review process consists of four batching cycles each year, including two batching cycles each year for each of two project categories: hospital beds and facilities, and other beds and programs.<sup>35</sup> The “other beds and programs” batching cycle includes nursing home beds, hospice programs, and hospice inpatient facilities.<sup>36</sup>

### *CON Fees*

An applicant for CON review must pay a fee to AHCA when the application is submitted. The minimum CON application filing fee is \$10,000.<sup>37</sup> In addition to the base fee, an applicant must pay a fee of 1.5 percent of each dollar of the proposed expenditure; however, the total fee may not exceed \$50,000.<sup>38</sup> A request for a CON exemption must be accompanied by a \$250 fee.<sup>39</sup>

<sup>33</sup> S. 408.036(1)(b), F.S.

<sup>34</sup> Rule 59C-1.002(19), F.A.C., defines “fixed need pool” as the identified numerical need, as published in the Florida Administrative Register, for new beds or services for the applicable planning horizon established by AHCA in accordance with need methodologies which are in effect by rule at the time of publication of the fixed need pools for the applicable batching cycle.

<sup>35</sup> Rule 59C-1.008(1)(g), F.A.C.

<sup>36</sup> Id.

<sup>37</sup> S. 408.038, F.S.

<sup>38</sup> Id.

<sup>39</sup> S. 408.036(4), F.S., and Rule 59C-1.005(2)(g), F.A.C.

The average hospice application over the past three fiscal years is \$17,500, and ranges from approximately \$11,250 to \$38,000.<sup>40</sup>

### **Effect of Proposed Changes**

CS/HB 863 creates a CON exemption for a hospice program established by an entity that shares a controlling interest with a not-for-profit retirement community that offers independent living, assisted living, and skilled nursing services in a facility located on the same premises as a teaching nursing home for a minimum of five years. The bill limits the CON exemption to one hospice program per teaching nursing home.

There are two designated teaching nursing homes, pursuant to s. 430.80 F.S.: Miami Jewish Health Systems, in Miami-Dade County, and the Joseph L. Morse Health Center, located in Palm Beach County.<sup>41</sup> An entity that shares a controlling interest with a not-for-profit retirement community that offers the required services in a facility located on the same premises as one of these two teaching nursing homes will be eligible to request an exemption from CON with AHCA to provide hospice services to their residents and patients. Each request for exemption from the CON program must include the \$250 fee.

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

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 408.036, F.S., relating to projects subject to review; exemptions.

**Section 2:** Provides an effective date of July 1, 2017.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

Based on the average hospice application fee of \$17,500, AHCA will lose approximately \$34,500 in CON revenues if both of the eligible teaching nursing homes apply for the CON exemption.<sup>42</sup>

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

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<sup>40</sup> Supra, note 26.

<sup>41</sup> Id.; In February 2017, AHCA denied a CON application for a new hospice program from a not-for-profit retirement community with a controlling interest in The Joseph L. Morse Health Center. The applicant filed a petition on March 10, 2017 to challenge the Agency's initial denial of its application. Notice of the petition was published in the Florida Administrative Register on March 15, 2017.

<sup>42</sup> Supra, note 26, at 4.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Each not-for-profit retirement community that meet the statutory requirements with respect to its' relationship with a teaching nursing home will now be eligible to file a request with AHCA for an exemption from the CON program, and will realize financial savings from not having to pay the CON application fees or incur the costs associated with obtaining a CON to establish new hospice services. The residents and patients of each not-for-profit retirement community will have access to hospice services in the same setting where they reside or are receiving treatment.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 30, 2017, the Health and Human Services Committee adopted an amendment that revised the criteria for eligibility for the CON exemption. The amendment granted a CON exemption for a hospice program established by an entity that shares a controlling interest with a not-for-profit retirement community that offers independent living, assisted living, and skilled nursing services in a facility located on the same premises as a teaching nursing home for a minimum of five years. It also limited the CON exemption to one hospice program per teaching nursing home. The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Health & Human Services Committee.