

STORAGE NAME: h1999.hcs

DATE: April 14, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1999

RELATING TO: Certificate of Need

SPONSOR(S): Committee on Health Care Services, Reps. Albright, Lippman, and Peadar

STATUTE(S) AFFECTED: Amends ss. 186.003, 186.503, 240.5121, 395.604, 400.602, 408.032, 408.033, 408.035, 408.036, 408.037, 408.038, 408.039, 408.040, 408.042, 408.043, 408.0455, 408.702, 641.60, F.S., and repeals ss. 408.0365 and 408.0366, F.S.

COMPANION BILL(S): SB 238 (Similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE SERVICES YEAS 11 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

This bill repeals or exempts specified projects from requirements for certificate of need (CON) review. It deregulates cost overruns of 20% or less, capital expenditures, acquisitions of major medical equipment, reductions in licensed bed capacity, acquisition of land, construction of medical office buildings, research, education and training programs, donations, emergency projects, and unforeseen major public health hazards. The bill also exempts from CON review the following: the establishment of adult inpatient diagnostic cardiac catheterization services, termination of health services, and expenditures for outpatient services. A regulatory program is established to ensure quality of care for cardiac catheterization programs.

Regulation of Medicare-certified home health agencies is continued until 90 days after the adjournment of the next regular session of the Legislature occurring after the Legislature receives a report from the director of the Agency for Health Care Administration that the federal government has implemented a per-episode prospective pay system for Medicare-certified home health agencies.

The bill revises requirements for CON applications and letters of intent and establishes procedures to be followed during CON-related administrative hearings. Finally, the bill provides that CON fees are totally or partially refundable under certain circumstances.

The impact of the bill resulting from the project exemptions and deregulations is estimated by the Agency for Health Care Administration (AHCA) to be a reduction of approximately \$497,819 in revenues to the Health Care Trust Fund in each of FYs 1997-98 and 1998-99.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Certificate of Need (CON) program requires prior approval of specified health care related projects and, as such, controls entry into and development within the health care marketplace by restricting the initiation or expansion of certain health facilities, providers, and services. By controlling supply, the CON program is a means to help prevent some of the costs of excess supply, non-price competition, and premature introduction of new technology. In addition to controlling costs, the CON program is intended to promote equal service and geographic access to quality health care, assure and reward quality care, and encourage responsiveness to community interests.

The Agency for Health Care Administration (agency) administers the CON program. Currently, the following types of facilities are subject to CON review: hospitals, nursing homes, health maintenance organizations, intermediate care facilities, hospices, and home health agencies. Before one of these entities may offer a specified project, it must apply for a certificate of need. Only those projects that demonstrate need based upon a set of statutory review criteria are awarded CONs.

Pursuant to current statutes, the following projects, among others, are subject to review:

- ♦ a capital expenditure over \$1,294,000;
- ♦ addition of new beds;
- ♦ a change in licensed bed capacity or a change in the number of psychiatric or rehabilitation beds;
- ♦ conversion of one type of health facility to another;
- ♦ establishment of a new health care facility, hospice, or home health agency;
- ♦ establishment of an inpatient institutional health service or tertiary health service; and
- ♦ the purchase of major medical equipment that has been approved by the United States Food and Drug Administration for less than 3 years and costs over \$1 million.

According to the most recent data available from the agency, the total amount of capital expenditures proposed in 1996 was \$920 million statewide. Proposed hospital capital expenditures totaled \$289 million, for 74 hospitals. Of the \$289 million proposed, the agency approved \$144 million. In addition to this \$643 million, hospitals also proposed \$48 million to establish or expand hospital based skilled nursing facility beds. Proposed expenditures for community nursing home projects totaled \$619 million of which \$130 million was approved.

Applications for CON are evaluated on either a batched or expedited basis. Currently, the agency reviews applications requiring batched review twice per year. Expedited review may be initiated by the applicant at any time. Of the projects affected by this bill, only major medical equipment, home health agencies, and adult, inpatient cardiac catheterization are currently subject to batched, comparative review. Projects relating to capital expenditures, acquisition of land, termination of health services, shared services contracts or projects, and emergency projects and unforeseen major public health hazards are subject to expedited review.

Based on Legislative action in 1993, CON review of Medicare-certified home health agencies was scheduled for repeal on July 1, 1995. The 1995 Legislature extended this repeal until July 1, 1997.

The process of reviewing and determining eligibility for a CON is an extensive one and requires substantial documentation from the applicant. Initially, a letter of intent must be filed with the local health council and the agency at least 30 days prior to applying for a CON. The letter of intent must describe the proposed project with specificity, including proposed capital expenditures, number of beds sought, specific location, and detailed information on the applicant. The letter of intent must also contain a certified copy of a resolution by the board of directors of the applicant or other authority if not a corporation, authorizing among other things, the filing of the application and the intention to incur expenditures necessary to accomplish the project. Applicants are required to publish a notice of filing in a local newspaper within 14 days after filing the letter of intent.

Within thirty days of filing the letter of intent, an application must be filed in accordance with agency requirements. The application must include extensive information regarding the project, its purpose, financial resources needed, and a certified copy of a resolution by the applicant's board of directors authorizing the project expenditures.

Subsections 408.039(3) and (4), F.S., establish the conditions and time line for agency processing of applications. The agency's review and final action on applications must be in accordance with the district plan, statutory criteria, and the implementing of administrative rules. Within 60 days after all the applications in a review cycle are determined to be complete, the agency must issue a State Agency Action Report and a Notice of Intent which either grants a CON for the entire or partial project, or denies the project. Within 14 days after issuing the Notice of Intent, the agency must publish its proposed decision in the Florida Administrative Weekly.

Subsection 408.039(5), F.S., provides for a process of challenging a proposed issuance or denial of a CON. Within 21 days after publication of the Notice of Intent, authorized persons may file a request for an administrative hearing. The agency must assign proceedings requiring hearings to the Division of Administrative Hearings (DOAH) of the Department of Management Services within 10 days after the time has run to request a hearing.

Legal standing to participate in a final hearing regarding a CON application is provided in s. 408.039(5), F.S. Other than an applicant, only existing health care facilities with established programs may initiate or intervene in such a hearing. Prior to 1995, hospices were not defined as health care facilities, and it had been determined that existing hospices did not have legal standing to initiate or intervene in CON hearings even if they were substantially affected by another. In 1995, the Legislature amended the hospice licensure statute to state that a licensed hospice is a health care facility, as that term is used in s. 408.039(5), F.S., and is entitled to initiate or intervene in an administrative hearing (see s. 400.606(4), F.S.). However, in making that change, the Legislature failed to amend s. 408.039(5), F.S.

Currently, accreditation by private organizations for the issuance or maintenance of a certificate of need is not required in statute. However, in administrative rules, the agency requires applicants for certain projects to be accredited.

Section 408.038, F.S., establishes fees for the CON applications. These fees are used for the purpose of funding the functions of the local health councils and the administrative activities of the agency related to CON. CON fees include a minimum base fee of \$5,000 plus 0.015 of each dollar of proposed expenditure, except that a fee may not exceed \$22,000.

Statewide Health Council. Subsection 408.033(2), Florida Statutes, establishes the Statewide Health Council, which is composed of 28 members, to advise the Governor, the Legislature, and HRS on state health policy issues, state and local health planning activities, and state health regulation programs. The council is required to review district health plans for consistency with the State Comprehensive Plan, prepare a state health plan, consult with local health councils, conduct public forums along with local health councils, and conduct "any other functions or studies and analyses" consistent with its listed duties. Due to a lack of funding, the Statewide Health Council disbanded in 1994.

B. EFFECT OF PROPOSED CHANGES:

A CON will no longer be required for: the establishment of adult inpatient diagnostic cardiac catheterization services; termination of health services; expenditures for outpatient services; cost overruns of 20% or less; capital expenditures; acquisitions of major medical equipment; reductions in licensed bed capacity; acquisition of land; construction of medical office buildings; research, education and training programs; and donations, emergency projects, and unforeseen major public health hazards. The establishment of a Medicare-certified home health agency will continue to require a CON. The process for submitting CON applications and letters of intent will be streamlined as will procedures to be followed during CON-related administrative hearings. Hospitals which open an adult, inpatient diagnostic cardiac catheterization program under the exemption contained in the bill will have to meet standards or terminate the program. Certain applicants for a CON will have some or all of their fees refunded.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

The bill will decrease the agency's rule making authority since fewer projects will be subject to CON review. However, the agency will have increased rule making authority related to adult inpatient cardiac catheterization.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None. The projects are deregulated.

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

Yes, some application fees will be eliminated by the deregulation of certain projects and certain CON fees will be refundable.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes, by deregulating certain projects from CON review.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No, except it does continue to regulate the establishment of Medicare-certified home health agencies, the regulation of which would otherwise expire.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 408.032, F.S., providing definitions, to: define "agency"; revise the definition of "capital expenditure,"; include hospice and long-term care hospital within the term "health care facility,"; add a definition of "home health agency," "long-term care hospital," and "respite care" (language moved from the exemption section of the CON law); and delete definitions of the terms "health maintenance organization" and "major medical equipment."

Section 2. Amends s. 408.033, F.S., relating to local and state health planning, to repeal reference to the Statewide Health Council and correct references to the agency.

Section 3. Amends s. 408.035, F.S., providing review criteria, to require the Agency for Health Care Administration to consider alternatives to replacement construction in evaluating capital expenditure proposals for new inpatient health services, to make technical and conforming revisions, and to delete an obsolete reference to approval of certain applications filed prior to December 31, 1984.

Section 4. Amends subsection 408.036(1), F.S., relating to projects subject to comparative (full, batched) review, to: require regulation of replacement facilities relocated from an existing site; eliminate review of capital expenditures (including annual threshold adjustments); eliminate from review a reduction in licensed bed capacity; save from repeal the regulation of Medicare-certified home health agencies; eliminate review of major medical equipment acquisitions; and raise the cost overrun thresholds from 10 percent to 20 percent of the annual operating cost threshold relating to the obligation of capital expenditures for offering or substantially changing inpatient institutional health services or of the originally approved project cost, whichever is less, and increase from \$10,000 to \$20,000 the "floor" of the threshold amount that requires a review for cost overruns.

Subsection 408.036(2), F.S., relating to expedited review, is amended to authorize expedited review of: cost overruns under the threshold levels that trigger comparative review; all research, education, and training programs that are not subject to comparative review; and replacement facilities located in the same district and within a 1-mile radius of the replaced health care facility. This subsection also eliminates expedited review of donations; land acquisitions; termination of a health service (placed under the exemption provision in this bill); and emergency projects and unforeseen major public health hazards.

Subsection 408.036(3), F.S., providing for exemption from CON comparative review, is amended to repeal exemption review of any expenditure by or on behalf of a health care facility for any part of the physical plant that is ancillary to providing health services or housing health care providers such as parking garages, research buildings, meeting rooms, cafeterias, administrative data processing facilities, and similar projects, but not expenditures for office facilities for health care providers; repeal exemption regulation of any expenditure to eliminate or prevent safety hazards as defined by federal, state, and local codes; repeal exemption review of any expenditure to replace any part of a facility or equipment destroyed as a result of fire, civil disturbance, or storm or any other act of God; and repeal exemption regulation of any expenditure to acquire replacement major medical equipment. This subsection is further amended to add to the remaining list of exempted projects and services: 1) establishment of a Medicare-certified home health agency by continuing care facilities, certain retirement communities, or certain military residential facilities [this provision was moved from s. 408.0366, F.S., which is repealed in section 13 of this bill]; 2) future, contingent review of Medicare-certified home health agencies following federal adoption of a per-episode prospective payment reimbursement methodology; 3) inmate health care facilities built by or for the exclusive use of the Department of Corrections, but the exemption expires when such facility is converted to other uses [this provision was moved from s. 408.0365, F.S., which is repealed in section 13 of this bill]; 4) any expenditure by or on behalf of a health care facility to provide a health service exclusively on an outpatient basis; 5) the termination of a health service, which is currently subject to expedited review; 6) delicensure of beds [applications for this exemption must identify the number, the classification, and the

name of the facility in which the beds to be delicensed are located]; and 7) provision of adult inpatient diagnostic cardiac catheterization services.

The agency is directed to adopt by rule new regulatory standards for a hospital which desires to establish an adult inpatient diagnostic cardiac catheterization program. These standards include a requirement that such programs meet minimal licensure requirements, and provide at least 2 percent of care to Medicaid and charity patients. Compliance monitoring must be conducted by the agency. The exemption for a program expires immediately when the program fails to comply with the standards beginning 18 months after a program first begins treating patients. If a hospital's exemption expires due to a failure to meet standards, the hospital is prohibited from opening another cardiac catheterization program for two years. The subsection which creates the exemption for cardiac catheterization takes effect upon the adoption of rules by the agency, or on March 1, 1998, whichever is earlier. If the rules are not adopted by March 1, 1998, the agency is directed to use its proposed rules for granting exemptions until final rules are adopted.

Section 5. Amends section 408.037, F.S., providing CON application content requirements, to: 1) revise requirements for the detailed project description and financial projection to delete the requirement that the application contain a statement of the need for the proposed project in relation to the applicant's long-range plan and delete a requirement for a statement of the applicant's projected revenue and expenses for the period of construction; 2) require that applicants for a CON certify that they will license and operate the health care facility and require that, for an existing health care facility, the applicant for a CON must be the license holder of the facility; and 3) delete the requirement that a certified copy of a resolution by an applicant's board of directors, or other governing authority, if the applicant is not a corporation, authorizing the applicant to incur the expenditures necessary to accomplish the proposed project be included in the application package.

Section 6. Amends s. 408.038, F.S., relating to fees, to require that CON fees are fully refundable when the application is not accepted by the agency or when an application is accepted and deemed incomplete and withdrawn as a result of an admissions review. Fees are refundable, except for the \$5,000 base fee, when an accepted application is deemed incomplete as a result of a legal challenge or is deemed complete and is voluntarily withdrawn by the applicant.

Section 7. Amends subsections 408.039(1), (2), and (5), F.S., specifying the CON review process, to: delete reference to equipment for purposes of CON review, which conforms this provision to the deregulation of major medical equipment under section 3 of the bill; eliminate the requirement that letters of intent be submitted to local health councils; delete the requirement that the letters of intent name those with controlling interest in the applicant and contain a certified copy of the resolution required under subsection 408.037(4), F.S.; increase from 14 days to 21 days the period of time within which AHCA must publish notice of the filing of letters of intent; and delete a local publication requirement noticing to the public the filing of a letter of intent.

The administrative hearing process is revised to: 1) require all parties, except AHCA, to bear the cost of preparing a transcript; 2) move the language providing for standing to administratively challenge the issuance or denial of a CON from paragraph 408.039(2)(b), F.S., to 408.039(2)(c), F.S., and deleting language denying standing to

initiate or intervene in an administrative hearing relating to CON review of a capital expenditure and deleting language that requires AHCA to issue its final order within 45 days after receipt of the administrative law judge's recommended order; 3) provide that it is not cause for dismissal of the application when applicants fail to strictly comply with certain specified requirements relating to the contents of applications and letters of intent, unless the failure to comply impairs the fairness of the proceeding or affects the correctness of the action taken by AHCA; and 4) require the agency to issue its final order within 45 days after receipt of the recommended order.

Section 8. Amends s. 408.040, F.S., relating to conditions on CONs and the monitoring of CONs, to: increase the validity period for a CON from 1 year to 18 months; delete language that provides for AHCA to extend the validity period of a CON for up to 6 months upon the applicant demonstrating good cause; and to revise cross references and make other technical changes.

Section 9. Amends s. 408.042, F.S., providing limitations on transfer of a CON, to delete an obsolete date and delete language that clarifies that the provisions of this section shall not be construed to prevent or alter the value of a transfer or sale of a CON obtained before June 17, 1987, by an existing facility when such facility is transferred with the CON.

Section 10. Amends s. 408.043, F.S., relating to special provisions applicable to CON regulation, to delete obsolete language and to clarify that accreditation by any private organization is not a prerequisite for the issuance or maintenance of a CON.

Section 11. Amends s. 408.0455, F.S., providing for the effectiveness of the provisions comprising CON statutory regulations, to revise the effectiveness date and provide for the continued applicability of certain statutory provisions that are pending administrative or judicial action on July 1, 1997.

Section 12. Amends s. 240.5121, F.S., relating to cancer control and research, to delete a reference to the State Health Plan and the Statewide Health Council.

Section 13. Amends s. 395.604, F.S., relating to other rural hospital programs, to correct a cross reference.

Section 14. Amends s. 408.702, F.S., relating to establishment of community health purchasing alliances, to conform a cross reference relating to CON regulation as modified by this bill.

Section 15. Amends s. 400.602, F.S., relating to hospice licensure, to correct a cross reference.

Section 16. Amends s. 641.60, 1996 Supplement, relating to the Statewide Managed Care Ombudsman Committee, to conform a cross reference.

Section 17. Repeals subsection (9) of s. 186.003, F.S., which defines "Statewide Health Council; subsection (9) of s. 186.503, F.S., which defines "Statewide Health Council; s. 408.0365, F.S., relating to the Department of Corrections, exempting inmate health care facilities from review under certificate-of-need regulation. This exemption was moved to the exemption section of the CON law, s. 408.036(3), F.S., in section 4 of

the bill. Also repealed under this section of the bill is s. 408.0366, F.S., relating to continuing care and other type residential facilities, exempting continuing care facilities regulated under chapter 651, F.S.; retirement communities defined in paragraph 400.404(2)(e), F.S.; or residential facilities that serve only retired military personnel, their dependents, and surviving dependents of deceased military personnel from CON review of Medicare-certified home health agencies established by such facilities for the exclusive use of their residents.

Section 18. Provides for prospective application of all revisions and modifications contained in the bill. Additional clarification of the bill's applicability provides that changes to paragraphs 408.036(1)(b), F.S., relating to CON review of certain replacement construction, and 408.039(5)(c), F.S., relating to standing to participate in administrative hearings, contained in the bill are made inapplicable to final orders of the Florida Supreme Court pertaining to replacement applications that are filed with AHCA prior to or pending before the Division of Administrative Hearings as of April 1, 1997.

Section 19. Provides a July 1, 1997, effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The agency anticipates a reduction in CON fees of \$497,819 for FY 1997-98 and 1998-99 as a result of the deregulation of projects contained in this bill. The refund of CON fees will result in an estimated reduction in CON fee collections by an amount ranging from \$575,000 to \$965,000 annually.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Same as recurring effects.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

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

1. Direct Private Sector Costs:

Persons who wish to establish a Medicare-certified home health agency will be required to apply for a CON.

2. Direct Private Sector Benefits:

Numerous health care projects currently subject to CON regulation will be deregulated. This should make these projects more widely available but whether the costs and quality of these services will increase or decrease is unknown. Applicants for a CON will be able to get all or part of their funds returned if the application is determined to be incomplete or is withdrawn.

3. Effects on Competition, Private Enterprise and Employment Markets:

The demand for legal services related to the CON process should decrease.

D. **FISCAL COMMENTS:**

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues.

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C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:

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Michael P. Hansen

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