

**STORAGE NAME:** h1517.hcl

**DATE:** March 28, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
HEALTH CARE LICENSING & REGULATION  
ANALYSIS**

**BILL #:** HB 1517

**RELATING TO:** Certificates of Need

**SPONSOR(S):** Representative Minton

**COMPANION BILL(S):** SB 1844(i)

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

- (1) HEALTH CARE LICENSING & REGULATION
- (2) ELDER AFFAIRS & LONG-TERM CARE
- (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
- (4)
- (5)

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I. SUMMARY:

The direct effect of HB 1517 on the Certificate of Need review process (CON) is that it amends the certificate of need (CON) statutes (ss. 408.031-.045, F.S.) to eliminate CON review of the addition of acute care beds to existing hospital facilities as well as the addition of new nursing home beds to existing nursing facilities by new construction or alteration. Other provisions eliminate the agency's authority to require a provider to commit to a specified number of Medicaid patient days as a prerequisite to the award of a CON.

It repeals the following sections: s. 400.071(8), F.S., 1998 Supplement, which prohibits the agency from issuing a license to a nursing home that fails to receive a certificate of need; s. 408.032(17), F.S., which directs the agency to give preference to proposals that would construct nursing homes in geographically underserved areas; s. 430.708, F.S., which requires the agency to consider the existence of a community nursing home diversion pilot project in its bed need determination for new beds; and s. 408.034(4), F.S., 1998 Supplement, which requires the agency to reduce the number of nursing home beds to be awarded in areas with a long-term care community diversion project.

While the addition of beds will be eliminated from CON review, proposals for new hospitals or nursing homes will remain subject to CON review.

However, according to the Agency for Health Care Administration, the net effect of the bill is that it deregulates both the addition of beds to existing hospitals and nursing homes as well as the construction of new hospitals and nursing homes. To determine the need for a new hospital or nursing home in a given area three years from now, the agency has to know the total number of beds that will be available in the future. If providers can add beds to existing facilities at any time and without CON review, the agency will be unable to determine the future supply of beds. Thus, the agency will be unable to determine the need for a new hospital or nursing home. The agency could either grant the construction of a new hospital or nursing home assuming that none of the existing providers is adding beds, or the agency could deny any requests for a new hospital or nursing home assuming that existing providers will add beds to meet the need.

The latter assumption would prevent any new provider from ever entering Florida's hospital or nursing home market and the result would be highly anti-competitive.

According to the Agency for Health Care Administration, this bill has a potential fiscal impact of increasing expenditures for the state's Medicaid program of \$16.7 million annually,

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

**Certificate of Need (CON)** - A "certificate of need" means a written statement issued by the Agency for Health Care Administration (agency) evidencing community need for a new, converted, expanded or otherwise significantly modified health care facility, health service, or hospice. The purpose of the CON process is to avoid costly duplication of services and unnecessary capital expenditures as it relates to hospitals, nursing homes, acute care hospital services, psychiatric or rehabilitative beds, and tertiary health services. As part of the CON review process, the financial feasibility of a project is assessed, the underserved population groups is determined, and the overall reasonableness of proposed revenues and expenses is evaluated. Applicants generally propose a specified level of care to indigent and Medicaid patients as a condition placed upon the award of a CON. These activities are consistent with the agency's mission to champion accessible, affordable, quality health care for all Floridians. The agency is charged with carrying out the CON review process on the applicable facilities.

**Hospitals** - Current statutes (s. 408.036, F.S.) require hospitals to make application for the establishment of new hospitals and the addition of beds to existing hospitals. The agency publishes a need for acute care hospital beds twice a year for the 11 planning areas. Hospitals can respond to published need, or demonstrate special circumstances unique to their hospital and the service area. In order to determine future bed need, the agency has to establish a complete inventory of acute care beds and look at the current and projected utilization of each hospital in the respective service area. All proposals are evaluated against statutory, rule, and local health plan CON review criteria.

Overall, most Floridians have adequate geographical access to acute care hospital services. The statewide average acute care bed occupancy rate remains low at 50 percent. The CON program lacks authority to de-license underutilized beds. However, in some areas of the state a few hospitals have experienced increasing occupancy rates especially during the winter season.

Over the past five years, the agency reviewed 37 proposals to add general acute care beds to existing hospitals. A total of 1,214 new acute care beds were proposed, at a cost of \$306 million. During the same time period, the agency reviewed 17 proposals for new acute care hospitals excluding replacement facilities. A total of 815 new acute care beds were proposed, at a cost of \$826 million.

According to the agency, the CON review for acute care beds was originally implemented when reimbursement for acute care services was cost-based and fears of over utilization were prevalent. These market conditions have clearly changed, and better cost control mechanisms have been implemented. However, nearly 60 percent of all hospital care is funded by Medicare and Medicaid, and the CON program ensures public input into the allocation of resources.

Deregulation of new hospital beds may affect the level of care provided to indigent and Medicaid patients. Government and not-for-profit hospitals provide nearly 90 percent of all indigent/uncompensated care. In a recent CON case with two applicants proposing the construction of a new hospital, the applicant approved for the construction of a new hospital agreed to share the indigent care load currently provided by the only hospital in the service area. In the absence of CON, two new hospitals would have been built and neither one of them would have had any obligation to provide indigent care. With deregulation, a hospital's willingness and ability to provide these services in a highly competitive market are likely to decline.

**Nursing Homes** - Current statutes (s. 408.036, F.S.) require CON review of proposals to establish new nursing homes, and proposals to add beds to existing nursing homes. The agency publishes a need for nursing home beds twice a year for 38 planning areas. Nursing home applicants generally respond to published need. In order to determine future bed need, the agency has to establish a complete inventory of nursing home beds and look at the current and projected utilization of all nursing homes in the respective service area. Future bed need is primarily determined based on population growth in each respective service area. Since it takes about three years to establish a new facility, bed need is projected three years into the future. All proposals are evaluated against statutory, rule, and local health plan CON review criteria. The construction of state veterans' nursing homes is exempted from CON review provided certain conditions are met.

The primary rationale for nursing home market controls is to contain capacity, ensure access to care regardless of income, promote the location of nursing homes in areas with need, ensure efficient occupancy levels, and avoid costs associated with duplicative services and facilities. Additionally, the CON program allows the state to assess the financial soundness of a potential provider and to evaluate his/her past quality of care record.

According to the agency, Florida's CON program for nursing homes has been one of the most effective CON programs. Most Floridians have adequate geographic access to nursing home care. At the same time, Florida has maintained one of the lowest nursing home bed-to-population ratios in the country, while several other states had to resort to moratoria to contain the bed supply. Florida has approximately 29 beds per 1,000 65+ population compared to the national average of 50 beds.

It is in the interest of most growing states to control the nursing home bed supply, since nearly 50 percent of all nursing home care is funded by Medicaid and another 15 percent by Medicare. Florida's annual Medicaid nursing home budget exceeds \$1 billion even with the low bed ratio and an overall low nursing home utilization rate.

Over 330 nursing homes have received CONs predicated on the condition that they provide a specified level of care to Medicaid patients. This is an important program feature in view of recent events in Florida when a nursing home tried to evict Medicaid patients.

Over the past 5 years, the agency has reviewed 220 proposals for new freestanding nursing homes. A total of 20,998 new nursing home beds were proposed, at a cost of \$1.4 billion. During the same period, there were 216 proposals to add beds to existing nursing homes. A total of 8,220 new nursing home beds were proposed, at a cost of \$454 million. Thus, there were 5,844 new nursing home beds proposed in an average year.

According to the agency, the elimination of CON regulation for nursing homes would most likely result in an uncontrolled increase of nursing home beds, a reduction in nursing home occupancy rates, which would increase overhead costs, and thus increase Medicaid per diem rates.

**Other current provisions** - Current statutes specifically require review of any increase in the number of psychiatric or rehabilitation beds at hospitals. Also, a review of the establishment of tertiary health services is required. Under current statutes, tertiary health services with dedicated inpatient beds include Level II neonatal intensive care, Level III neonatal intensive care, specialty burn units, and comprehensive rehabilitation.

Except for proposals from rural hospitals under specified circumstances, the agency also reviews proposals to establish or expand hospital-based skilled nursing units (SNUs), which are licensed under Chapter 395, F.S., not Chapter 400, F.S.

## B. EFFECT OF PROPOSED CHANGES:

The direct effect on the CON review process is that it amends the certificate of need (CON) statutes (ss. 408.031-.045, F.S.) to eliminate CON review of the addition of acute care beds to existing hospital facilities as well as the addition of new nursing home beds to existing nursing facilities by new construction or alteration. Other provisions eliminate the agency's authority to require a provider to commit to a specified number of Medicaid patient days as a prerequisite to the award of a CON.

It repeals the following sections: s. 400.071(8), F.S., 1998 Supplement, which prohibits the agency from issuing a license to a nursing home that fails to receive a certificate of need; s. 408.032(17), F.S., which directs the agency to give preference to proposals that would construct nursing homes in geographically underserved areas; s. 430.708, F.S., which requires the agency to consider the existence of a community nursing home diversion pilot project in its bed need determination for new beds; and s. 408.034(4), F.S., 1998 Supplement, which requires the agency to reduce the number of nursing home beds to be awarded in areas with a long-term care community diversion project.

While the addition of beds will be eliminated from CON review, proposals for new hospitals or nursing homes will remain subject to CON review.

However, according to the Agency for Health Care Administration, the net effect of the bill is that it deregulates both the addition of beds to existing hospitals and nursing homes as well as the construction of new hospitals and nursing homes. To determine the need for a new hospital or nursing home in a given area three years from now, the agency has to know the total number of beds that will be available in the future. If providers can add beds to existing facilities at any time and without CON review, the agency will be unable to determine the future supply of beds. Thus, the agency will be unable to determine the need for a new hospital or nursing home. The agency could either grant the construction of a new hospital or nursing home assuming that none of the existing providers is adding beds, or the agency could deny any requests for a new hospital or nursing home assuming that existing providers will add beds to meet the need.

The latter assumption would prevent any new provider from ever entering Florida's hospital or nursing home market and the result would be highly anti-competitive.

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?

Yes. The bill eliminates the agency's ability to review and issue decisions relative to the construction of new beds for hospitals and nursing homes.

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

Yes. The bill eliminates the requirement that hospitals and nursing homes must seek a CON prior to construction of new beds for hospitals and nursing homes.

(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.

(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. The bill reduces fees the agency currently receives for the CON review program. Applicants exempted from the CON process would no longer have to pay CON fees. The agency estimates the amount at \$759,150 annually.

- 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?

N/A

- 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. The bill allows some health care providers to expand bed capacity without a CON review.

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

No.

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?

N/A

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. STATUTE(S) AFFECTED:**

Sections 400.071, 400.702, 408.032, 408.034, 408.036, 408.039, 408.040, 430.705, and 430.708, Florida Statutes.

**E. SECTION-BY-SECTION ANALYSIS:**

Section 1. Amends s. 408.036, Florida Statutes, 1998 Supplement, to eliminate the requirement for a certificate of need (CON) review of the addition of beds by new construction or alteration for both hospitals and nursing homes; and eliminates review of combinations or divisions of nursing home beds authorized in a certificate of need.

Section 2. Amends s. 408.039(4)(a), Florida Statutes, to eliminate a requirement that the agency give preference to an applicant proposing to develop a nursing home in a nursing home geographically underserved area.

Section 3. Amends s. 408.040(1)(a) and (2)(d), Florida Statutes, to eliminate the agency's authority to condition a certificate of need upon the provision of services to Medicaid patients. Also, it eliminates the provision specifying the validity period for a certificate of need issued to combine or divide nursing home certificates of need.

Section 4. Amends s. 430.705(5), Florida Statutes, to eliminate the requirement that the agency consider the impact of any demonstration nursing home diversion projects in determining the need for nursing homes.

Section 5. Amends s. 400.702(1)(d), Florida Statutes, to eliminate the requirement that nursing home beds proposed under a pilot program for the development of intermediate care facilities must be included in the total bed supply counted for the determination of nursing home bed needs. This pilot project has ended.

Section 6. Repeals ss. 400.071(8), 408.034(4), 408.032(17), and 430.708, Florida Statutes. Section 400.071(8), F.S., 1998 Supplement, prohibits the agency from issuing a license to a nursing home

that fails to receive a certificate of need; s. 408.032(17), F.S., directs the agency to give preference to proposals that would construct nursing homes in geographically underserved areas; s. 430.708, F.S., requires the agency to consider the existence of a community nursing home diversion pilot project in its bed need determination for new beds; and s. 408.034(4), F.S., 1998 Supplement, requires the agency to reduce the number of nursing home beds to be awarded in areas with a long-term care community diversion project.

Section 7. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

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:

None.

2. Direct Private Sector Benefits:

The private sector (hospitals and nursing homes) will save \$759,150 annually in CON fees that they will no longer have to pay to the agency for CON reviews of additional and new beds.

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

According to the agency, the bill is anti-competitive, in that it allows unlimited expansion for existing providers, while requiring CON approval for those wishing to establish new inpatient facilities (hospitals and nursing homes).

D. FISCAL COMMENTS:

According to the Agency for Health Care Administration, the bill will have the following impact on the agency as well as state expenditures for the Medicaid program:

<b>Total Revenues and Expenditures:</b>	<b>1999-2000</b>	<b>2000-2001</b>
<b><u>Revenues:</u></b>		
Health Care Trust Fund:		
Loss of CON fee revenue	(\$759,150)	(\$759,150)
<b><u>Expenditures:</u></b>		
Health Care Trust Fund:		
Reduction of 2 FTEs	(101,781)	-0-
Expense (standard agency package)	( 22,114)	-0-
Medical Care Trust Fund (54.46%):		
General Revenue (43.54%):		
Annual Increase in Medicaid expenses	-0-	<u>16,657,412</u>
<b>Total Expenditures</b>	(\$123,895)	\$16,657,412

**Impact on Medicaid Program**

Nursing Home Medicaid Costs

According to the agency, the proposed bill deregulates expansion of existing nursing homes and the establishment of new nursing homes because the need for new nursing homes cannot be determined without some knowledge of, and control over, proposed expansion of existing facilities. Unregulated market expansion of nursing homes will significantly increase costs to Florida's Medicaid program. The deregulation of nursing home beds will lead to significant increases in the construction of nursing home beds, as demonstrated in other states. Florida currently has one of the lowest number of nursing home beds per 1,000 persons age 65 and over.

The immediate impact of eliminating nursing home beds from CON review will be a decline in occupancy. Reduced occupancy rates in freestanding nursing homes will in turn increase operating costs. Considering that about 65 percent of all patient days in freestanding nursing homes are funded by Medicaid, an increase in Medicaid per diem rates can be expected. The following is based on FY96 data:

Medicaid days (64.62% of total bed days of 39,473) = 25,263  
 Medicaid per diem rate increase (25,263 @ \$1.04) = \$26,274  
**Total Medicaid increase for FY 2000-2001 - (\$26,274 @ 634 certified facilities) = \$16,657,412**

**Of the \$16,657,412 increased Medicaid costs, \$9,404,775 (56.46%) will be from the Medicaid Nursing Home Trust Fund, and \$7,252,637 (43.54%) will be from General Revenue.**

Hospital Medicaid Costs



Accurate determination of the bill's impact on Medicaid costs for acute care would require foreknowledge of the future revenue at specific hospitals which will add acute care beds without CON review. Because this is not possible, the agency cannot make a dollar estimate of the bill's impact on Medicaid acute care costs. **Any increase in costs is indeterminate at this time.**

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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 LICENSING & REGULATION:

Prepared by:

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