

STORAGE NAME: h1993z.lt  
DATE: June 7, 2000

**\*\*AS PASSED BY THE LEGISLATURE\*\***  
CHAPTER #: 2000-190, Laws of Florida

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
Elder Affairs and Long Term Care  
FINAL ANALYSIS**

**BILL #:** HB 1993

**RELATING TO:** Task Force on the Availability and Affordability of Long-term Care

**SPONSOR(S):** Representative Russell & others

**TIED BILL(S):** SB 1222

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

- (1) Elder Affairs & Long Term Care YEAS 10 NAYS 0
  - (2) HEALTH AND HUMAN SERVICES APPROPRIATIONS YEAS 9 NAYS 0
  - (3)
  - (4)
  - (5)
- 

I. SUMMARY:

**Passed by the Legislature as HB 1993, 3rd Eng. On June 2, 2000, HB 1993, 3rd Eng., became Ch. 2000-190, Laws of Florida, with Governor's signature.**

HB 1993 creates the Task Force on the Availability and Affordability of Long-term Care. The bill describes subject matter the task force is to consider, defines the membership of the task force, describes the manner in which the task force is to conduct its business, provides for administrative functions of the task force, establishes a time requirement for appointment of members of the task force and an initial meeting, requires a report, provides an appropriation for the task force, and provides an effective date.

The non-recurring sum of \$200,000 is appropriated to the University of South Florida for the purposes of implementing the bill.

The bill takes effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Florida's Elderly Population**

Florida's elderly population of 3.5 million people represents more than 20 percent of the state's residents. "Baby boomers" will add one million to that number when they start retiring in 2010. While the majority of Florida's elders live independent and healthy lives, the number of frail elderly in need of long-term care services is expected to increase by 42 percent over the next ten years.

To address this issue the Legislature in 1994 formed the Commission on Long-term Care, chaired by former Senator Kurt Kiser. The Commission developed recommendations for long-term care system reform, to be implemented by the Department of Elder Affairs, the Agency for Health Care Administration and the Department of Children and Family Services. The Commission made its FINAL report in December, 1995.

The Commission's primary recommendation was that the state should begin planning to meet its residents' long-term care needs in order to ensure that the state's long-term care dollars are spent on the most appropriate and cost-effective mix of institutional, residential and community services. The report also recommended the development of alternative systems of care, including transitioning the state's long-term care delivery system from an institutional to a community and risk-based managed care model, integrating acute and long-term care services by the year 2000, establishing a long-term care planning and coordination advisory board within the Department of Elder Affairs, reducing the regulatory burden on long-term care providers, and encouraging the purchase of long-term care insurance. Many of the Commission's recommendations were adopted in statute by the 1997 Legislature at ss. 430.703-430.710, F.S. An interagency long-term care advisory council made up of state agency and long-term care industry members, charged with making recommendations regarding long-term care matters, was created by s. 430.710, F.S. The Department of Elder Affairs reports that this group is no longer meeting.

**Certificate of Need**

A certificate of need (CON) is a 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 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. The CON review process, as it pertains to nursing homes, allows construction of additional nursing home beds when there is a need demonstrated for such construction based on a region's elder demographics and occupancy rate for existing facilities. The agency is required, under s. 408.034, F.S., to establish by rule a nursing home bed need methodology which reduces the community nursing home bed need in areas of the state where the agency establishes pilot community diversion projects under the Medicaid aging waiver program.

### **Assisted Living Facilities**

Florida has experienced steady growth in assisted living facility beds. Between 1995 and January, 2000, the number of assisted living facilities rose by 26% to 2,350. The total number of beds in assisted living facilities rose from 62,000 to nearly 77,000 during the same period. Florida was the first state in the country to develop a Medicaid waiver program specifically targeted to residents of assisted living facilities. This waiver program allows the state to purchase additional supportive services for assisted living facility residents who would otherwise be placed in nursing home care. In 1998, the Legislature, in proviso language in the General Appropriations Act, targeted funds in the waiver to require the department to enroll a public housing facility (the Metro-Dade Housing Agency) as an assisted living waiver provider.

### **Nursing Home Liability in Florida**

There is a growing concern among long-term care policy experts that liability costs to nursing homes in Florida are growing at a disproportionate rate compared to the rest of the country. According to an actuarial study commissioned by the Florida Health Care Association, general and professional liability losses for the long-term care industry in Florida are the highest in the United States, increasing 200% in the past four years, resulting in a significant decline in the availability of coverage.

### **Financial Condition of the Nursing Home Industry**

A combination of factors, including changes to Medicare reimbursement mandated by the Balanced Budget Act of 1997, have placed many nursing homes in precarious financial positions. A number of major nursing home chains (Vencor, Mariner, Sun Healthcare, and Integrated Health Care Systems) are currently in bankruptcy proceedings. In Florida, 21% (17,000) of nursing home beds are in facilities which have filed for Chapter 11 protection.

### **Home and Community-based Care Alternatives to Nursing Home Placement**

The Department of Elder Affairs and the Medicaid program operate a number of programs to provide support services to elderly individuals to assist them in remaining in their homes by mitigating the decline in functioning brought about by increasing frailty. The Community Care and Medicaid Waiver programs operated by the department serve approximately 49,000 elderly individuals.

C. EFFECT OF PROPOSED CHANGES:

HB 1993 creates the "Task Force on the Availability and Affordability of Long-term Care." This task force is composed of 19 people representing a wide range of long-term care expertise and is charged with investigating and reporting on 16 specific issues. The task force is administered by the Florida Policy Exchange Center on Aging at the University of South Florida and has a \$200,000 non-recurring appropriation.

D. SECTION-BY-SECTION ANALYSIS:

**Section 1**

Name

Establishes the "Task Force on the Availability and Affordability of Long-term Care."

Study Issues

Directs the task force to study issues related to the provision of long-term care to the elderly in nursing homes and alternatives to nursing homes, and to make recommendations to the Governor and the Legislature. Specifically, the task force is directed to study:

1. The **availability of alternative housing** and care settings;
2. The **availability of community based care** arrangements;
3. The **role of family members** in caring for elderly relatives;
4. The adequacy of **reimbursement arrangements** in both nursing home and alternative care arrangements;
5. The availability and affordability of **long-term care insurance**;
6. The role of the **certificate-of-need process** in the development of long-term care systems;
7. Issues relating to the quality of care in long-term care facilities as influenced by market changes that affect the **industry's financial stability**;
8. The **effect of lawsuits** on the cost of care and the stability of the nursing home industry;
9. The kinds of **incidents that lead to the filing of lawsuits** and the extent to which frivolous lawsuits are filed;
10. The **cost of liability insurance** for long-term care providers;
11. The **availability of liability insurance** for long-term care providers;
12. The primary causes for **nursing home bankruptcies**;
13. The additional costs to Medicaid, Medicare, and the family when a patient suffering from a **preventable condition** has to be admitted to a hospital;
14. **Innovative alternative and home-based care programs** that have been developed in other states;
15. **Differences in quality of care** provided by for-profit and non-profit skilled nursing facilities;
16. The **quality of care in Florida** as compared with other states.

Membership

Membership of the task force includes:

1. The Lieutenant Governor, who is the chair;
2. The Secretary of Elder Affairs;

3. The state Medicaid director;
4. A member of The Florida Bar, appointed by The Florida Bar;
5. A representative from the Florida Assisted Living Association, appointed by the association;
6. A representative from the Florida Association of Homes for the Aging, appointed by the association;
7. A representative of the insurance industry who has experience in insurance markets affecting long-term care, appointed by the Governor in consultation with the President of the Senate and the Speaker of the House of Representatives;
8. A member representing private sponsors of housing for the elderly financed through U.S. HUD, appointed by the Secretary of Elderly Affairs;
9. An investment banker who has experience in long-term care economics, appointed by the Governor in consultation with the President of the Senate and the Speaker of the House of Representatives;
10. An academic gerontologist, appointed by the Chancellor of the State University System;
11. A physician who specializes in geriatrics and has experience in treating people with memory-related disorders, appointed by the Florida Medical Association;
12. A member of the Florida chapter of the American Association of Retired Persons who has experience administering a long-term care facility, appointed by the Governor in consultation with the President of the Senate and the Speaker of the House of Representatives;
13. An individual who has experience with periodic review of long term care facilities, appointed by the Attorney General;
14. A representative of the Florida Health Care Association, appointed by the association;
15. A volunteer long-term care ombudsman with at least two years experience, appointed by the State Long-term Care Ombudsman;
16. A consumer representative, appointed by the President of the Senate;
17. A consumer representative, appointed by the Speaker of the House of Representatives;
18. A member of the Legislature, appointed by the President of the Senate;
19. A member of the Legislature, appointed by the Speaker of the House of Representatives.

### Administration

Directs the task force to conduct research, hold public hearings, employ consultants, and undertake other activities, as needed, to fulfill responsibilities.

The members of the task force may not delegate their attendance or voting power to designees.

The task force is located at the University of South Florida for administrative purposes. The Florida Policy Exchange Center on Aging is to provide staff and support services to the task force.

### Timeframe

Appointments to the task force must be completed within 30 days after the effective date of the act and the task force must hold its first meeting within 45 days after the effective date of the act. The task force is required to submit a report of its recommendations, including proposed legislation, to the Governor, the President of the Senate, and the Speaker of the

House of Representatives, by January 1, 2001. The task force shall expire on March 1, 2001.

**Section 2**

The non-recurring sum of \$200,000 is appropriated to the University of South Florida for the purposes of implementing the bill.

**Section 3**

The bill takes effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The non-recurring sum of \$200,000 is appropriated to the University of South Florida for the purposes of implementing the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

N/A

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 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:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON Elder Affairs & Long Term Care:

Prepared by:

Staff Director:

Melanie Meyer

Tom Batchelor, Ph.D.

AS REVISED BY THE COMMITTEE ON HEALTH AND HUMAN SERVICES

APPROPRIATIONS:

Prepared by:

Staff Director:

Robert Wagner

Lynn Dixon

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**DATE:** June 7, 2000

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**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON Elder Affairs and Long Term Care:**

Prepared by:

Staff Director:

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Melanie Meyer

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