

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1252

SPONSOR: Appropriations Subcommittee on Health and Human Services; Health, Aging, and Long-Term Care Committee and Senator Bennett

SUBJECT: Nursing Homes

DATE: April 10, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Wilson	HC	Favorable/CS
2.			BI	Withdrawn
3.	Peters	Belcher	AHS	Favorable/CS
4.			AP	Withdrawn: Fav/CS
5.				
6.				

I. Summary:

The bill authorizes nursing home facilities, subject to approval by the Agency for Health Care Administration, to use licensed nursing home beds for purposes other than nursing home care for extended periods of time exceeding 48 hours. A nursing home is authorized to use a contiguous portion of the facility to meet the needs of the elderly through adult day care, assisted living, extended congregate care, or limited nursing services. A nursing home that converts beds to an alternative use may return those beds to nursing home operations upon notice to the Agency. Each licensed nursing home must report to the Agency or its designee, quarterly, the total number of patient days and the total of those that were Medicaid patient days during the quarter.

The bill allows the nursing home resident care plan to be signed by another registered nurse employed by the facility to whom institutional responsibilities have been delegated; provides that Agency records, reports, ranking systems, Internet information, and publications must reflect final Agency actions; removes the requirement that "each offering of" nutrition and hydration be recorded in the medical record for each resident of a nursing home facility; and requires training of nursing assistants to meet the standards that require completion of 18 hours of inservice training during each calendar year.

The bill requires the Agency to establish by rule a nursing-home-bed-need methodology that has a goal of maintaining a district average occupancy rate of 94 percent.

The bill provides for expedited review of a certificate of need for two additional projects and provides for the exemption from a certificate of need for an additional two projects.

The bill allows an audited financial statement of the parent company to fulfill the required audited financial statement of the applicant, for a certificate of need, if the applicant is included in a parent company's consolidated audit which details each entity separately.

The bill amends ss. 400.021, 400.141, 400.211, 400.23, 408.034, 408.036, 408.037, F.S., and creates s. 400.244, F.S.

II. Present Situation:

Nursing Homes

Over the last 10 years, the Medicaid budget for long-term care has more than doubled. Yet the rate of growth in Medicaid-funded resident days slowed during the years 1991-2000, and there was an absolute decline in the number of Medicaid resident days in 2001. The 2002 Legislature, in CS/SB 1276, directed the Agency for Health Care Administration (AHCA), in consultation with the Department of Elderly Affairs (DOEA), to produce a report on Medicaid funded nursing home bed days. The bill required the report to contain proposals for reducing the number of Medicaid-funded nursing home bed days purchased by the state and replacing such nursing home care with care provided in less costly settings.

The report, "Proposals to Reduce Medicaid-Funded Nursing Home Bed Days in Florida," was presented to the Governor, President of the Senate, and Speaker of the House of Representatives on December 1, 2002. The report proposed five ways to reduce Medicaid nursing home utilization:

- Restrict the supply of nursing home beds,
- Promote cost-effective independent living for at-risk older people,
- Increase nursing home diversion and transitioning,
- Make Medicaid a more selective purchaser of long-term care services, and
- Increase private spending for nursing home care.

The report proposed four ways to restrict the supply of nursing home beds:

- Continue the nursing home certificate-of-need moratorium, but allow limited expansions in rural areas where overall occupancy is 95 percent or greater,
- Establish a priority system for the renovation or replacement of existing nursing home beds,
- Allow nursing homes to voluntarily convert underutilized space to assisted living, adult day health care, or other uses through bed banking, and
- Increase regulatory oversight of assisted living facilities and adult day health care.

Bed banking is a way to temporarily convert licensed nursing home beds to another use without losing the ability to use the beds as nursing home beds at a later time. Two options for bed banking are suggested in the report. The first would allow a nursing home with low occupancy rates to convert unoccupied nursing home beds to assisted living facility (ALF) beds, adult day health care services, adult day care services, or other uses. The second option would allow a nursing home to convert an occupied bed to an ALF bed when the resident's need for care decreases to levels below skilled nursing care. There could also be a possibility for using banked

beds in an emergency situation, such as when a nursing home closes and its residents must find a new placement.

Nursing homes, governed by part II of ch. 400, F.S., provide nursing care, personal care or custodial care to residents. Assisted living facilities, under part III of ch. 400, F.S., provide housing, meals, and one or more personal services to residents. Adult day care centers, under part V of ch. 400, F.S., provide basic services to adults in a protective, noninstitutional setting for a part of a day. The services provided in adult day care centers may include therapeutic social and health programs, leisure activities, self-care training, rest, and respite care.

There are approximately 660 nursing homes in Florida. The total number of beds in Florida nursing homes is approximately 82,000. The number of nursing home beds decreased from a total of 84,012 at the end of 2001 to a total of 82,138 at the end of 2002. The overall occupancy rate is 85 percent, with the Medicaid bed occupancy being 85.4 percent and the non-Medicaid bed occupancy being 70.1 percent.

Section 400.23, F.S., provides that the Agency enforce rules that establish criteria by which a reasonable and consistent quality of resident care may be ensured and the results of such resident care can be demonstrated and by which safe and sanitary nursing homes can be provided. Further, it is intended that reasonable efforts be made to accommodate the needs and preferences of residents to enhance the quality of life in a nursing home. Additionally, efforts must be made to minimize the paperwork associated with the reporting and documentation requirements of these rules. Section s. 400.141, F.S., specifies administration and management of nursing home facilities and requires each licensed facility to comply with certain applicable standards and rules of the Agency.

Certificate-of-Need

The Certificate-of-Need (CON) regulatory process under chapter 408, F.S., requires that before specified health care services and facilities may be offered to the public they must be approved by the Agency for Health Care Administration (AHCA). Section 408.036, F.S., specifies which health care projects are subject to review. Subsection (1) of that section lists the projects that are subject to *full comparative review* in batching cycles by AHCA against specified criteria. Subsection (2) lists the kinds of projects that can undergo an *expedited review*. These include: research, education, and training programs; shared services contracts or projects; a transfer of a certificate of need; certain increases in nursing home beds; replacement of a health care facility when the proposed project site is located in the same district and within a 1-mile radius of the replaced facility; and certain conversions of hospital mental health services beds to acute care beds. Subsection (3) lists projects that may be *exempt* from full comparative review upon request. Section 408.037, F.S., outlines the content of an application for a certificate of need.

Certificate-of-Need Workgroup

As required by Section 15 of Chapter 2000-318, Laws of Florida, a workgroup on CON was established to study issues pertaining to the CON program including the impact of trends in health care delivery and financing. The workgroup met eight times in 2001 and produced an interim report in December 2001. In 2002, the group held three meetings and produced a final

report in December 2002, which included recommended changes to the CON program in the form of a draft bill. Much of the workgroup's recommended bill is incorporated in SB 2132.

Nursing Assistants

Under s. 400.021, F.S., nursing homes are required to have all resident care plans signed by the director of nursing as a means of ensuring that there is a comprehensive and objective clinical review of the residents' care. The current procedure requires that the director of nursing sign these plans as a means of confirming that the plan is based on comprehensive and objective clinical evaluation on the part of a nurse who is not directly involved in the day to day care of the resident.

III. Effect of Proposed Changes:

Section 1. The bill creates s. 400.244, F.S., to authorize nursing home facilities to use licensed nursing home beds for purposes other than nursing home care for extended periods of time exceeding 48 hours. A nursing home is authorized to use a contiguous portion of the facility to meet the needs of the elderly through less restrictive and less institutional methods of long-term care, including, but not limited to, adult day care, assisted living, extended congregate care, or limited nursing services.

Funding under assisted living Medicaid waivers may be used to provide extended congregate care or limited nursing services only to residents who have resided in the facility for a minimum of 90 consecutive days.

Nursing home beds that are used to provide alternative services may share common areas, services, and staff with beds that are designated for nursing home care. The fire and life safety codes applicable to nursing homes would apply to the portion of the facility that is used for alternative services. In addition, if the facility were used for an alternative service, it would have to meet the requirements specified by law for that use.

Before using nursing home beds for an alternative service, a nursing home would have to submit a written request to AHCA in a format specified by the Agency, and AHCA would have to approve the request unless it determined that the alternative use of the nursing home beds would adversely affect access to nursing home care in the geographical area in which the nursing home is located. The bill provides criteria for determining whether access to nursing homes would be adversely affected by an alternative use of nursing home beds. AHCA must consider a district average occupancy of 94 percent or greater at the time of the application as an indicator of adverse impact.

At each annual license renewal for the facility, AHCA would have to review the request for alternative use of nursing home beds. Beds used for an alternative purpose would remain licensed as nursing home beds, and the facility could return those beds to nursing home use upon notice to AHCA. The bill specifies that a nursing home facility must continue to pay the license fees required under s. 400.062, F.S., for those beds converted to alternative use, but must not be required to pay additional licensure fees required under other statutes for the alternative service.

The bill requires each facility that has nursing facility beds licensed under ch. 400, F.S. to report to AHCA or its designee the total number of patient days which occurred in each month of the quarter and the number of those days that were Medicaid patient days.

Section 2. The bill amends s. 400.021, F.S., to allow the resident care plan to be signed by another registered nurse employed by the facility to whom institutional responsibilities have been delegated.

Section 3. The bill amends s. 400.23, F.S., to provide that Agency records, reports, ranking systems, Internet information, and publications must reflect final agency actions.

Section 4. The bill amends s. 400.141, F.S., to eliminate the requirement that “each offering of” nutrition and hydration be recorded in the medical record for each resident of a nursing home facility.

Section 5. The bill amends s. 400.211, F.S., to ensure that training of nursing assistants meet the standards in s. 464.203 (7) that require completion of 18 hours of inservice training during each calendar year.

Section 6. The bill amends s. 408.034, F.S., to require the Agency to establish by rule a nursing-home-bed-need methodology that has a goal of maintaining a district average occupancy rate of 94 percent.

Section 7. The bill amends s. 408.036, F.S., to provide for expedited review of a certificate of need for the following two projects: replacement of a nursing home within the same district provided the proposed project site is located within a geographic area that contains at least 65 percent of the facilities current residents and is within a geographic area that contains at least 65 percent of the facilities current residents and is within a 30 mile radius of the replaced nursing home; and relocation of a portion of a nursing home’s licensed beds to a replacement facility within the same district provided the relocation is within a 30 mile radius of the existing facility and the total number of nursing home beds in the district does not increase. The bill deletes obsolete dates when requesting an exemption. The bill provides for an exemption from a certificate of need for the following projects: replacement of a licensed nursing home on the same site, or within 3 miles of the same site, provided the number of licensed beds does not increase; and for consolidation or combination of licensed nursing homes or transfer of beds between licensed nursing homes within the same district, by providers that operate multiple nursing homes within that district, provided there is no increase in the district total of nursing home beds and the relocation does not exceed 30 miles from the original location.

Section 8. The bill amends s. 408.037, F.S., related to the audited financial statement of the applicant for a certificate of need, to allow an audited financial statement of the parent company if the applicant is included in a parent company’s consolidated audit which details each entity separately.

Section 9. The bill will take effect July 1, 2003.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Staffing costs and other nursing home costs could be reduced when the beds were used for a less costly service.

C. Government Sector Impact:

The bill proposes a less costly use of licensed nursing home beds, with the aim of reducing the state's cost for Medicaid nursing home bed days.

AHCA was not able to estimate a cost for implementing this bill since it is unknown how many facilities might seek to convert nursing home beds. The Agency's annual expenditures to regulate assisted living facilities are well over \$5 million dollars while fees associated with ALF licensure generate only a little over \$2.6 million dollars annually.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The provision authorizing shared staffing does not make the shared staffing contingent upon the nursing home continuing to meet its minimum staffing requirements under s. 400.23(3), F.S.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
