

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/SB 1252

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Bennett

SUBJECT: Nursing Homes

DATE: March 12, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>BI</u>	_____
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute 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 for Health Care Administration.

Each licensed nursing home must report to the Agency for Health Care Administration or its designee, quarterly, the total number of patient days and the total of those that were Medicaid patient days during the quarter.

This bill creates s. 400.244, F.S.

II. Present Situation:

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 a 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.

III. Effect of Proposed Changes:

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.

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.