

# 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 1062

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

SUBJECT: Health Care Facilities

DATE: April 14, 2004      REVISED: \_\_\_\_\_

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

**I. Summary:**

This bill provides nursing homes flexibility in the use of nursing home beds for other long-term-care purposes on a temporary basis and provides exemptions from certificate-of-need (CON) review for nursing homes under certain circumstances. The bill updates certain statutory provisions relating to inservice training for certified nursing assistants (CNAs) and the publishing of nursing home data by the Agency for Health Care Administration (AHCA).

The bill creates a procedure for the issuance of an inactive license for a nursing home to permit a home to maintain its license under two circumstances: during a period when it is not serving residents but will resume doing so, or when the nursing home will use a contiguous portion of its facility for other services to meet the long-term care needs of elderly residents.

The bill permits a registered nurse, other than the director of nursing, to sign a resident care plan in a nursing home. The bill requires AHCA's publication of data regarding nursing homes to reflect the most current agency actions and requires AHCA to adopt by rule a nursing home bed need methodology that has a goal of maintaining a district average occupancy rate of 94 percent.

The bill revises CON requirements for nursing homes to provide expedited review of a proposed replacement nursing home or a project to relocate a portion of the beds of a nursing home. The bill creates exemptions from CON review for replacing a nursing home on the same site, or within three miles of the site, and for combining or consolidating nursing homes or transferring licensed nursing home beds within the same planning subdistrict. The bill provides exceptions to the moratorium on CON approval for nursing homes for a proposed nursing home in a county in which there are no community nursing home beds and all nursing home beds that were licensed on July 1, 2001, have subsequently closed and for the addition of beds in a nursing home in a county of fewer than 50,000 residents.

This bill amends ss. 400.071, 400.021, 400.211, 400.23, 408.034, 408.036, and 658.118, F.S., and s. 52 of ch. 2001-45, L.O.F.

The bill creates s. 400.0712, F.S.

## **II. Present Situation:**

The operation of nursing homes is governed by part II of ch. 400, F.S. Establishment of a new nursing home and the addition of nursing home beds is subject to the CON process under ch. 408, F.S., which includes determination of the level of need that exists for such services in a geographical area. There is a legislatively imposed moratorium on CON authorization of additional nursing home beds through June 30, 2006. This moratorium, enacted by the 2001 Session of the Florida Legislature, does not provide exceptions for facilities to return to licensed status in the event the facility closes and forfeits the license. Forfeiture of a license results in the immediate removal of those licensed beds from the total inventory of nursing home beds in the state. The moratorium has been interpreted as prohibiting any increase in the number of licensed nursing home beds. The determinations of whether a need exists for additional nursing home beds is based on data related to sub-district planning areas that provide more local access to services.

Currently, there is a statutory process to license and de-license nursing home beds. That process includes filing a notice with the CON office where the de-licensure is authorized and the inventory of skilled nursing facility beds is adjusted. The CON program maintains both the inventory of skilled nursing facility beds and occupancy in those beds. Resident daily occupancy is reported by skilled nursing facilities to the agency's CON program through the state's nine local health councils. No CON requirement exists for establishment of adult day care, assisted living facility (ALF) beds or specialized ALF beds (extended congregate care and limited nursing services) within those facilities. There are statutory criteria and standards to comply with before assisted living beds, extended congregate care beds, limited nursing services and/or adult day care beds may be licensed.

The ability for nursing homes to use beds as assisted living facility beds is currently authorized on a limited basis for sheltered beds (beds that are not available to the community-at-large) in continuing care retirement communities. This provision was passed during the 2002 Legislative Session, and only one facility has requested the conversion of nursing home beds to assisted living facility beds. AHCA required the nursing home licensee to first obtain the appropriate assisted living facility (ALF) license through a process that includes submission of an application, required documentation and fees, with an on-site survey. Additionally, the licensee continues to maintain the nursing home license for those beds designated for use as ALF beds. The facility must be inspected by agency surveyors for compliance with both nursing home and ALF requirements.

Section 651.118, F.S., governs the use of "sheltered" nursing home beds in continuing care retirement communities (CCRCs). Sheltered beds are reserved for the use of CCRC residents and are not available to the community at-large. In subsection (7), the use of the term facility to refer to the entire CCRC facility has reduced the flexibility that the CCRC might realize if the statute

specified when a criterion applied to the entire CCRC facility and when it applied only to the CCRC's nursing home facility.

### III. Effect of Proposed Changes:

**Section 1.** Creates s. 400.0712, F.S., to create a procedure whereby AHCA may issue an inactive license to a nursing home facility for all or a portion of its beds. A request that a licensed nursing home or portions of a nursing home become inactive must be submitted to AHCA in a format specified by the agency. The facility may not initiate suspension of services, notify residents, or initiate facility closure before receiving approval from AHCA. Upon agency approval of an inactive license, the nursing home must notify residents of any necessary discharge or transfer as provided in s. 400.0255, F.S.

If a nursing home that receives an inactive license uses an unoccupied, contiguous portion of the facility for alternative uses to meet the needs of elderly persons through the use of less restrictive and less institutional services, the inactive license may be granted for a period not to exceed 12 months and may be renewed annually. Nursing homes that receive an inactive license to provide alternative services may not receive preference for participation in the Assisted Living for the Elderly Medicaid waiver.

If a nursing home that receives an inactive license will be temporarily unable to provide services but is reasonably expected to resume services, the inactive license may be granted for a period not to exceed 12 months and may be renewed for an additional six months upon demonstration of progress toward reopening.

All licensure fees must be current and paid in full before the inactive license is issued. Before a license is reactivated, the applicant must pay all licensure fees and the facility must be inspected by AHCA to confirm compliance with part II of ch. 400, F.S., and applicable rules.

The bill requires AHCA to adopt rules necessary to implement this section.

**Section 2.** Amends s. 400.071, F.S., to repeal s. 400.071(10), F.S., which provides for the issuance of an inactive license for a nursing home. This subsection is replaced by s. 400.0712, F.S., which is created in section 1 of this bill.

**Section 3.** Amends s. 400.021, F.S., to revise the definition of the "resident care plan" to allow a registered nurse, other than the director of nursing, to sign the resident's care plan. The nurse must be employed by the facility and have documented delegated institutional responsibilities. The facility may not use an agency or temporary registered nurse to satisfy this requirement and must document the institutional responsibilities that have been delegated to the registered nurse.

**Section 4.** Amends s. 400.23, F.S., to require that all of AHCA's publications, Internet information, records and ranking systems must reflect the most current agency actions.

**Section 5.** Amends s. 400.211(4), F.S., to eliminate the requirement for 18 hours per year of inservice training for certified nursing assistants (CNA), and to refer instead to requirements in s. 464.203(7), F.S., which requires 18 hours of inservice training annually for CNAs.

**Section 6.** Amends s. 408.034, F.S., to require AHCA to adopt a rule for a CON nursing-home-bed-need methodology that has a goal of maintaining a district average occupancy rate of 94 percent.

**Section 7.** Amends s. 408.036, F.S., to revise certificate-of-need requirements to provide for an expedited review of a proposed replacement of a nursing home within the same health planning district, if the project is located within an area that contains at least 65 percent of the current residents and is within a thirty mile radius of the replaced home. The bill would provide expedited review for a project that would relocate a portion of the beds of an existing nursing home within the same district and within a thirty mile radius, provided the total number of beds in the district would not increase.

The bill expands the criteria for exempting the addition of a limited number of nursing home beds from CON review to remove the requirement that, in order to qualify for the exemption to add beds, the facility must be designated as a Gold Seal nursing home, and to permit a nursing home that has been designated a Gold Seal facility to add 20 beds or 10 percent of the current licensed bed total, whichever is greater.

The bill creates an exemption from CON review for replacement of a nursing home on the same site or within three miles of the existing facility if the number of beds does not increase. The bill also creates an exemption from CON review for consolidating or combining licensed nursing homes or transferring licensed nursing home beds within the same planning subdistrict by providers that operate multiple homes within that subdistrict. The relocation must be within 30 miles of the original location.

**Section 8.** Amends s. 52 of ch. 2001-45, L.O.F., to provide exceptions to the moratorium on CON approval of additional nursing home beds that was put into effect by the 2001 Session of the Florida Legislature. Exceptions are created for:

- A proposed nursing home in a county in which there are no community nursing home beds and all nursing home beds that were licensed on July 1, 2001, have subsequently closed.
- The addition of nursing home beds in a nursing home located in a county of 50,000 or fewer residents in a number not exceeding 10 beds or 10 percent of the number of licensed beds, whichever is greater.

The bill provides criteria the nursing homes must meet for these exceptions. These exceptions will be repealed when the moratorium on nursing home CONs expires.

**Section 9.** Amends s. 651.118, F.S., to distinguish the application of the term “facility” to a continuing care retirement community’s entire facility and the application of the term to its nursing home facility in regard to standards for the use of sheltered nursing home beds.

**Section 10.** Provides that the bill will take effect upon becoming a law.

**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 Article 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:**

Nursing homes could realize a positive financial impact from the regulatory flexibility afforded by this bill.

**C. Government Sector Impact:**

There likely would be a cost to AHCA to implement the provisions of the bill. The agency did not provide an estimate of the cost for CS/SB 1062 because the number of facilities that might convert nursing home beds or seek a CON exemption is not known.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.