

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: SB 1658
 SPONSOR: Senator Diaz de la Portilla
 SUBJECT: Public Health Services
 DATE: February 29, 2004 REVISED: 03/09/04 _____

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

I. Summary:

This bill creates a new type of licensed facility setting for providing care for children who are medically fragile or technologically dependent and who are transitioning from a hospital to their home or to a lower level of care. A subacute pediatric prescribed extended alternative care center would provide therapies for children in a setting that could be residential. The bill requires licensure of the facilities and specifies staffing requirements for the centers and services to be provided.

This bill creates 22 undesignated sections of law.

II. Present Situation:

According to Rule 59G-1.010(164) and (165), F.A.C., the Florida Medicaid program defines medically complex individuals as having a chronic debilitating disease or condition of one or more physiological or organ systems that generally make the person dependent upon 24-hour medical, nursing or health supervision or intervention. Medically fragile individuals have a medically complex condition and require medical procedures or apparatus to sustain life.

Children in Florida who need complex medical services or therapeutic interventions may be served in one of six licensed settings: a hospital, a nursing home, a medical foster care home, a group home, an intermediate care facility for the developmentally disabled, or a prescribed pediatric extended care (PPEC) center. All of these are residential settings except for the PPEC center which provides services for a period of no more than 12 hours per day. Services in each of these settings are covered by Medicaid, for Medicaid-eligible individuals.

Presently, the primary services available to medically complex or fragile children through the Medicaid program include private duty nursing, personal care, medical foster care, developmental services waiver, prescribed pediatric extended care (PPEC) and skilled nursing facility services, durable medical equipment, and speech, physical and respiratory therapy. The most costly of these services between 1998 and 2002 were the developmental services waiver (\$2.7 million), private duty nursing (\$3.3 million), durable medical equipment (\$1.1 million) and speech language pathology (approximately \$60,000).

Part IX of chapter 400, F.S., establishes PPEC centers, which are non-residential health care centers that provide the needed continuum of care for children whose needs are medically complex. A PPEC is a facility that provides basic nonresidential services to three or more medically dependent or technologically dependent children who are not related to the owner or operator by blood, marriage, or adoption and who require such services. The hours that a child is allowed to attend a PPEC is limited to 12-hours within a 24-hour period. Infants and children considered for admission to a PPEC center must have complex medical conditions that require continual care. Prerequisites for admission are a prescription from the child's attending physician and consent of a parent or guardian. The Agency for Health Care Administration (AHCA) licenses and regulates PPEC facilities. Currently there are 26 licensed PPECs throughout the state serving approximately 754 children. The Medicaid per diem rate for a full day (over 4 hours to 12 hours per day) is \$160.05. A half-day (4 hours or less) is calculated in units of an hour at \$20.61 per hour.

Children served in existing PPEC facilities are, predominantly, being cared for by their families, with the PPECs providing up to 12 hours of care and training to family members in care techniques. Advocates for the establishment of residential facilities to serve these children describe the difficulties and stresses associated with the demands of caring for the children for the remaining twelve hours of the day. No data is available on this issue.

The 2002 Legislature enacted an initiative to create a subacute pediatric prescribed extended alternative care (SPPEAC) center in chapter 2002-400, L.O.F., by authorizing a pilot program to provide SPPEAC services to a maximum of 30 children in the Dade County area utilizing existing beds in a licensed hospital or nursing facility. The law also directed AHCA to amend the Medicaid state plan or seek waiver authority to implement the pilot project. The waiver was granted in December 2002 for the pilot project and a Request for Proposal process was begun. However the project was only funded for one year, expiring June 30, 2003, and it was expected that additional funds to extend the project would likely not be available. Any further funding for SPPEAC services would require legislative action and approval through the federal Centers for Medicare and Medicaid Services.

Additionally, Chapter 2002-400, Laws of Florida, directed AHCA, in cooperation with the Children's Medical Services Program (CMS) in the Department of Health (DOH) to conduct a study to identify the total number of children who are medically fragile or dependent on medical technology, from birth through age 21, in Florida. The report of these findings was submitted to the Legislature on February 14, 2003. According to that report, there are three primary state funding sources that provide services to medically complex or fragile children: they are Florida Medicaid, through AHCA; DOH's CMS program; and the Department of Financial Services (DFS) Birth Related Neurological Injury Compensation Association (NICA). Overall, 66,702

children who received Medicaid benefits in FY 2001-2002 met the medically complex or fragile definition. The total cost for serving these individuals was approximately \$363.8 million. In addition, 8,424 medically complex children received services through Title XXI programs (Florida KidCare), 6,032 were assisted through CMS programs; 87 children are covered under DFS' NICA program.

Residential services as described in this bill can also be provided to medically fragile and technologically dependent children in a skilled nursing facility (SNF) licensed under chapter 400, Part II, Florida Statutes, and certified to participate in the Medicaid program by AHCA. Currently, there are 6 nursing facilities that provide special services to children throughout the state. The CMS program's, Children's Multidisciplinary Assessment Team, provides the recommendation for the level of care at a nursing facility for an individual under the age of 21. Currently, there are 136 beds designated for pediatric services in Florida nursing facilities. As of January 2004, the average Medicaid reimbursement per diem for pediatric residents in nursing homes is \$364.79, based on an average nursing home per diem of \$153.20, plus a supplemental amount for Fragile Under 21 of \$211.59.

Other residential services available for medically complex children include group homes licensed through the Department of Children and Family Services (DCF), Office of Developmental Services (DS). A DS group home is a residential facility that provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of a group home must be at least 4 residents but not more than 15 residents. Currently, there are 10 group homes in the state providing services to 86 medically complex pediatric residents. Hospitals serving pediatric patients may also have a population that would qualify for these services; however, no current data is available to estimate the number of children that would be appropriate for this service. Intermediate Care Facilities for the Developmentally Disabled (ICF-DD) may also have residents that meet the criteria for medically fragile or technologically dependent children. Currently there are 107 licensed ICF-DD facilities in Florida serving approximately 121 children.

III. **Effect of Proposed Changes:**

This bill creates a new type of licensed facility setting for providing transitional care for medically fragile or technologically dependent children on a short-term basis of 90 days or less. A subacute pediatric prescribed extended alternative care center (SPPEAC center) would provide therapies for children in a setting that could be residential. A section-by-section description of the provisions of the bill follows:

Section 1. Establishes the Legislature's intent to provide for the licensure and regulation of SPPEAC centers and to establish and enforce basic standards for the provision of necessary family-centered medical, developmental, physiological, nutritional, psychosocial, and family training services in SPPEAC centers.

Section 2. Provides definitions for the following terms: *administrator, manager, or supervisor; advisory board; agency; ancillary services; applicant; basic services; executive director or owner; licensee; medical director; medical records; medically fragile or technologically dependent child; nursing director; plan of care; premises; prescribing physician; primary*

physician; quality assurance; quality assurance committee; acute care; long-term care; transitional care; subacute; subacute pediatric prescribed extended alternative care center or SPPEAC center; and transition. A medically fragile or technologically dependent child is one who, because of a medical condition, requires continuous therapeutic interventions or skilled nursing supervision. The basic services to be provided include development, implementation, and monitoring of a comprehensive plan of care that specifies the medical, nursing, psychosocial, and developmental therapies required by the child as well as the training needed by the child's parent or guardian. A subacute pediatric prescribed extended alternative care center (SPPEAC center) means a building or other place where basic services are provided to three or more medically fragile or technologically dependent children who are not related to the owner or executive director by blood, marriage, or adoption. A SPPEAC center may be operated for profit or not for profit. Infants and children considered for admission to a SPPEAC center must have a complex medical condition that requires daily care, transitional care, or continual care. The prerequisite for admission is a prescription from the child's attending physician or primary physician.

Section 3. Requires a SPPEAC center to be licensed by AHCA. Violation of this requirement is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S. If the buildings of a facility are located on separate premises, an applicant for licensure must submit a separate application for each building. The license must be renewed annually. The bill authorizes collocation of an SPPEAC center with another licensed entity that is a business or organization that provides a complementary service or product for the benefit of the SPPEAC client and his or her family.

Section 4. Establishes procedures for licensure. An applicant other than a county or municipality must submit a license fee in an amount determined by AHCA to be sufficient to cover the agency's costs to implement the regulation, but the fee may not be less than \$500 or more than \$1,200. The application for licensure must include:

- The number of beds for which the license is being requested;
- The name of the SPPEAC center's administrator, manager, executive director, or supervisor;
- The name and license number of the director of nursing and all other licensed personnel; and the number of employed supportive personnel;
- A listing of the number of dietary, housekeeping, maintenance, and other personnel who are available on a daily basis;
- Certificates of approval from the local zoning authority;
- A projection of revenue and expenses for the first 12 months of operation;
- A copy of all deeds, contracts for sale, or leases;
- A contingency plan for extraordinary occurrences that would have a financial impact; and
- Other information relating to financing and facilities.

An applicant for a license must be 18 years of age or older, be of good moral character, and not have been convicted or found guilty of a felony involving fraud, embezzlement, fraudulent conversation, misappropriation of property, violence against a person, or moral turpitude. Specified documentation must be provided to AHCA showing compliance with these requirements.

Each facility must have liability insurance coverage of, at a minimum, \$50,000 per child for bodily injury and \$150,000 per occurrence for the center and the same amounts of coverage per vehicle, if the center provides transportation.

Section 5. Establishes requirements for administration and management of a SPPEAC center. The licensee must ensure that the center is operating in accordance with chapter 400, F.S., which governs nursing homes and related health care facilities. The following documents must be available in the center: a copy of chapter 400, F.S.; a copy of the SPEACC rules adopted under this act; a medical dictionary; a current year's copy of the *American Academy of Pediatrics Red Book*; and the current year's drug reference book. The licensee must manage the facility on a sound financial basis. Each center must have an executive director who is responsible and accountable for the overall management of the center. The bill specifies the responsibilities of the executive director. Each center must maintain fiscal records as specified in the act.

Section 6. Requires each SPPEAC center to have an advisory board and specifies the composition of the advisory board. The advisory board must review the policy and procedure components of the center to assure conformance with licensure standards and provide consultation regarding the operational and programmatic components of the center.

Section 7. Establishes criteria for admission, transfer, and discharge of children. The admission of each child must be under the supervision of the nursing director or his or her designee. A physician must prescribe the center's services for the child and the child must remain under the care of the licensed primary physician for the duration of the child's stay. The bill specifies criteria the child must meet in order to be admitted to a SPPEAC center, which include:

- The child must be medically fragile or technologically dependent;
- The child may not, prior to admission, present significant risk of infection to other children or personnel; and
- The child must be medically stabilized and require skilled nursing care or other interventions.

If a child meets these criteria, the medical director or nursing director of the SPPEAC center must implement a preadmission plan that delineates services to be provided and appropriate sources for such services. A consent form must be signed by the parent or guardian and witnessed before a child is admitted to a SPPEAC center. The bill states that the confidentiality of a child's records must be maintained in accordance with s. 456.057, F.S., which makes patient records private.

Section 8. Requires each SPPEAC center to establish policies for child care and related medical services. At a minimum, the policies must be in compliance with chapter 400, F.S. The policies must be reviewed annually.

Section 9. Requires each SPPEAC center to have a medical director who is a board-certified pediatrician. The medical director must review services to ensure levels of quality, advise center personnel on the development of new programs or changes in existing programs, consult with the center administrator on the health status of facility personnel, review reports of accidents and

incidents at the center, and ensure the development of a policy for delivering emergency services.

Section 10. Requires each SPPEAC center to have a nursing director who is a registered nurse with a baccalaureate degree in nursing. The bill establishes additional qualifications for the director of nursing and specifies the responsibilities of the director of nursing. The bill establishes staffing requirements, including required qualifications for registered nurses, licensed respiratory therapists, and licensed practical nurses, and responsibilities of the staff. Qualifications of additional staff are specified. Staffing ratios are established.

Section 11. Provides staffing standards for the provision of ancillary services at a SPPEAC center. Ancillary services include the services of a child development specialist, a child life specialist, an occupational therapist, a physical therapist, a speech pathologist, a respiratory therapist, a social worker, a licensed psychologist, and a dietitian. The bill specifies the responsibilities of each of these professionals.

Section 12. Requires each SPPEAC center to develop a cooperative program with the local school system to provide a planned educational program to meet the needs of the individual child.

Section 13. Requires each SPPEAC center to provide in-service training for all caregivers, including family members.

Section 14. Requires that a medical record be maintained for each child and specifies the types of documents that must be in the record.

Section 15. Requires each SPPEAC center to have a quality assurance program, which includes quarterly reviews of medical records for at least half of the children served. The bill specifies the content of the quarterly reviews.

Section 16. Requires a registered dietitian to be available for consultation regarding the nutritional needs and diet of individual children. If food is prepared onsite, the center must conform to food services standards for child care facilities adopted by the Department of Health.

Section 17. Establishes minimum requirements for the SPPEAC center's physical location and facility. The center must comply with part V of chapter 553, F.S., for accessibility for handicapped persons.

Section 18. Establishes requirements for furniture and linens in each SPPEAC center.

Section 19. Requires each SPPEAC center to provide specified safety, medical, and emergency equipment.

Section 20. Establishes procedures for infection control in each SPPEAC center, including a requirement to have an isolation room.

Section 21. Requires each SPPEAC center that provides transportation to include transportation procedures in its procedure manual.

Section 22. Requires each SPPEAC center to conform to the fire safety standards for child care centers and specifies emergency procedures. Facility staff are authorized to withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate that has been executed pursuant to s. 401.45, F.S. Facility staff and facilities are not subject to criminal prosecution or civil liability and are not considered to have engaged in negligent or unprofessional conduct for withholding or withdrawing cardiopulmonary resuscitation pursuant to such an order and rules adopted by AHCA. The absence of an order not to resuscitate does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.

Section 23. 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, s. 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:

The bill establishes a licensure fee that may not be less than \$500 or more than \$1,200. This fee would apply to an applicant that was not a county or municipality.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The SPPEAC centers would serve medically fragile or medical-technology-dependent children whose medical costs could be covered by Medicaid. This new licensed facility type is not currently authorized to receive Medicaid reimbursement through Title XIX of the Social Security Act. The Agency would have to submit a Medicaid State Plan

amendment to the federal Centers for Medicare and Medicaid Services and request approval of Medicaid funding of this new facility type and the reimbursement methodology.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In section 5 (p. 13), the bill requires a SPPEAC center to operate in accordance with the requirements of chapter 400, F.S., which licenses nursing homes and related health care facilities. Each type of facility has specific regulations, and it would be extremely unlikely that a single facility could comply with all of the regulations of chapter 400, F.S. Some of the requirements in chapter 400, F.S., conflict with provisions in this bill.

In section 8 (p. 18), the bill requires a SPPEAC center to comply with chapter 400, F.S., with regard to child care policies and procedures. Child care regulation is contained in chapter 402, F.S.

In section 17, the bill requires a SPPEAC center to be in compliance with part V of chapter 553, F.S., for accessibility of public buildings for handicapped persons. Part V of chapter 553, F.S., governs thermal efficiency standards. Part II of chapter 553, F.S., governs accessibility by handicapped persons.

Typically, many of the detailed requirements contained in this bill would be specified in administrative rules.

VIII. Amendments:

1 by Health, Aging, and Long-Term Care Committee:

Provides that a subacute pediatric prescribed extended alternative care pilot project will be conducted by Pediatric Alternative Treatment Care, Housing and Evaluation Services (PATCHES) in Miami-Dade County and will be overseen by the Agency for Health Care Administration and Children's Medical Services.