

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 267 w/CS Health Care Facilities
SPONSOR(S): Murman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1062

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care	22 Y, 0 N	Rawlins	Collins
2) Future of Florida's Families	14 Y, 0 N w/CS	Meyer	Liem
3) Appropriations		Speir	Baker
4)			
5)			

SUMMARY ANALYSIS

This bill with CS authorizes nursing home facilities, subject to approval by the Agency for Health Care Administration, to use licensed nursing home beds for alternatives to nursing home care. Those alternatives include: adult day care and assisted living.

This bill amends s. 400.021, F.S., to allow a registered nurse employee with institutional responsibilities the ability to sign the residents' care plan on behalf of the facility. The bill requires that Agency records, reports, ranking system, internet information, and publications to be promptly updated to reflect the most current agency actions on nursing home's licensure denial, suspension, revocation, moratorium, or fine actions. The bill removes conflicting language from the nursing home statute regarding the in-service standards for Certified Nursing Assistants (CNAs).

The Certificate-of-Need (CON) regulatory process for health care services is revised for nursing homes to ease the awarding of a CON when occupancy is at 94 percent in a subdistrict; to allow expedited review of requests to replace a nursing home in the same district and for the relocation of some beds to another facility in the same district; and to provide an exemption to the current CON moratorium on nursing home beds.

The bill provides an effective date of upon becoming law.

The CS has a fiscal impact that can not be determined.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0267e.ap.doc
DATE: April 22, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

Background: Certificate-of-Need (CON) Regulatory Process

Currently, 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. Subsection (3) lists projects that may be exempt from full comparative review upon request. Currently, there are 20 exemptions to the CON review process.

Background: Long Term Care

Chapter 400, F.S., is the statutory framework for nursing homes and related health care facilities. Part II regulates nursing homes. The *related* facilities that are of particular relevance to elderly people who are at-risk for nursing home placement include:

- Assisted living facilities in Part II provide housing, meals, and one or more personal services to residents.
- Adult Day Care Centers in Part V provide basic services that may include therapeutic social and health programs, leisure activities, self-care training, rest, and respite care to adults in a protective, noninstitutional setting for a part of a day.
- Adult Family Care Homes in Part VII provide housing and personal care with an individual or family in a private home.

Summary of Key Nursing Home Data

Total Nursing Homes 2004	670
Total nursing home beds 2004	82,465
Total nursing home beds 2002	82,138
Total nursing home beds 2001	84,012
Occupancy rate 1992	90.6%
Occupancy rate June 2003	87.6%

Over the last 10 years, the Medicaid budget for long-term care has more than doubled. The national consensus among experts seems to be that the only way to minimize Medicaid nursing home bed use is to divert people from, or transition people out of, nursing homes and to **permanently reduce the supply of beds.**

Report on Medicaid Nursing Home Expenditures

The 2002 Report "Proposals to Reduce Medicaid-Funded Nursing Home Bed Days in Florida"¹ proposed three ways to restrict the supply of nursing home beds:

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

"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 later. Banked beds would be available in case of an emergency that required residents to be placed quickly: either a natural disaster or a facility closure. The report offers two options for bed banking:

1. 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 personal care services, or other uses; or,
2. Allow a nursing home to convert, for a limited time, an occupied bed to an "ALF bed" when the resident's need for care decreases below skilled nursing care.

Nursing Home Certificate of Need (CON) Moratorium

The 2001 Legislature created a moratorium of the issuance of CONs for nursing homes until July 1, 2006, in an effort to contain the growth in the Medicaid budget for nursing home care. That moratorium on Certificates of Need applies to sheltered nursing home beds in a continuing care retirement community pursuant to chapter 651, Florida Statutes.

Effects of the Bill Related to Long Term Care

If its request is approved by AHCA, nursing homes are permitted to use licensed beds to provide less restrictive long-term care services to elders, such as adult day care and assisted living. Residents' plans of care can be signed by either the director of nursing or another registered nurse employee to whom institutional responsibilities have been delegated. This dilutes the accountability of the director of nursing being responsible for all of the plans of care in the facility, but it also reduces the burden on the directors of nursing. AHCA's records, reports, ranking system, internet information, and publications must reflect the most current agency actions against a licensee; therefore, actions which are in dispute or have been reversed must be changed promptly. Training requirements for certified nursing assistants (CNAs) are clarified.

The bill revises nursing home related CON to:

- Expand the current need methodology to allow for the consideration of beds in a subdistrict maintaining a 94 percent occupancy rate.
- Allow for consolidation or combination of licensed nursing homes or transfer of beds between licensed nursing homes within the same planning subdistrict by providers that operate multiple nursing homes within that planning subdistrict, provided there is no increase in that planning subdistrict's total number of nursing home beds, and the relocation does not exceed 30 miles from the original location.
- The bill allows an exemption to the moratorium for a nursing home that is located in a county that has no community nursing home beds due to closure of all nursing home beds in that county that were licensed on July 1, 2001.
- Add projects that are subject to CON expedited review:

¹ CS/CS/CS/SB 1276 directed the Agency for Health Care Administration and the Department of Elder Affairs to prepare this report.

- 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 facility's current residents and is within a 30-mile radius of the replaced nursing home.
- Relocation of a portion of a nursing home's licensed beds to a 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.
- Allowing for 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.
- Expanding the conditions whereby a nursing home may receive an exemption by allowing for the addition of nursing home beds licensed under chapter 400, F.S., at a facility that has been designated as a Gold Seal nursing home under s. 400.235, F.S., in a number not exceeding 20 total beds or 10 percent of the number of beds licensed in the facility being expanded, whichever is greater.

C. SECTION DIRECTORY:

Section 1. Creates s. 400.0712, F.S., "Application for an inactive license" that allows nursing homes to convert beds to alternative uses as specified; providing restrictions on uses of funding under assisted-living Medicaid waivers; providing procedures; providing for the applicability of certain fire and life safety codes; providing applicability of certain laws; requiring a nursing home to submit to the Agency for Health Care Administration a written request for permission to convert beds to alternative uses; providing conditions for disapproving such a request; providing for periodic review; providing for retention of nursing home licensure for converted beds; providing for reconversion of the beds; providing applicability of licensure fees; and requiring quarterly reports to the agency relating to patient days. The agency is granted authority to adopt rules to implement this section.

Section 2. This section amends s. 400.071, F.S., to remove the provisions related to issuing an inactive license. These provisions are now in s. 400.0712, F.S.

Section 3. This section amends s. 400.021, F.S., to allow in addition to the Director of Nursing, a registered nurse to whom institutional responsibilities have been delegated to sign the "resident care plan". The bill specifies that temporary or "agency" staff can not be used to meet the requirements for this signature on the plan of care.

Section 4. Amends s. 400.23, F.S., providing that information that the Agency for Health Care Administration prepares including agency records, reports, ranking systems, information on the Internet, and publications must be promptly updated to reflect the most current agency actions.

Section 5. Amends s. 400.211, F.S., to include a cross-reference to ss. 464.203(7) and to remove from s. 400.211 the duplicative reference to 18 hours of training.

Section 6. Amends s. 408.034, F.S., requiring the nursing-home-bed-need methodology established by the Agency for Health Care Administration by rule to include a goal of maintaining a specified *sub-district* average occupancy rate.

Section 7. Amends s. 408.036, F.S., relating to health-care-related projects subject to review for a certificate of need. Replacement of a nursing home within the same district if the proposed site is within 30 miles of the existing facility and in a geographic area that includes at least 65 percent of the facility's current residents. Relocation of nursing home beds are granted expedited review if the beds are being relocated to a facility in the same district, within 30 miles of the existing facility, and the total number of beds in the district does not increase.

Section 8. Amends s. 52 of Chapter 2001-45, Laws of Florida, as amended by section 1693 of Chapter 2003-261, Laws of Florida, specifying that the moratorium on certificates of need for nursing

home beds does not apply and the certificate of need for community nursing home beds certain counties under certain circumstances; and providing review requirements and bed limitations.

- **Section 9.** This section amends s. 656.118, F.S., to Continuing Care Retirement Communities (CCRC) licensed pursuant to chapter 651, F.S. It clarifies that the provisions related to the CCRC as a whole and those related only to the nursing home part of the CCRC for CON purposes. Specifically it clarifies that the term "facility" as used in s. 651.1151(7) applies to the nursing home portion of the CCRC.

Section 10. Provides that this act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments" section of the bill analysis.

2. Expenditures:

This bill will have a fiscal impact but it cannot be determined. See the explanation in Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Counties are responsible for a percentage of Medicaid nursing homes days. By allowing nursing home facilities to utilize existing resources to provide alternative levels of care that are less costly this bill may reduce a small portion of the overall contribution counties pay for Medicaid nursing home expenditures

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

With regard to the nursing home provisions of this bill, staffing costs and other nursing home costs may be reduced when the beds are used for a less costly service.

D. FISCAL COMMENTS:

If the option of using unoccupied nursing home beds to provide alternative services is implemented, if it results in diverting or transferring persons who would have received Medicaid reimbursed nursing home care, and if it does not simply increase capacity for Medicaid reimbursed long-term care services, there should be some savings in Medicaid nursing home expenditures.

According to AHCA, in Section 1, the bill requires nursing homes to continue to pay fees associated with maintaining the nursing home license, but not those fees associated with the alternative use of the beds. The agency would need to survey the facilities to ensure that they were meeting the standards associated with the alternative uses. A true fiscal impact is not assessed because it cannot be determined how many facilities might seek and qualify to convert beds at this time. The Agency's annual expenditures to regulate assisted living facilities are well over \$5 million while fees associated with ALF licensure generate only a little over \$2.6 million annually resulting in a recurring and

increasing annual loss. If a significant number of new assisted living facilities are created by this bill, it will be necessary to consider an appropriation or a revised fee that more completely covers the costs of licensure activity.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Agency for Health Care Administration is authorized to adopt rules to implement section 400.0712, F.S., related to inactive licensure.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

CS/HB 267 revised the bill as follows:

1. A new section (400.0712) is created to group all of the provisions related to inactive licensure into one section.
2. An inactive license issued for an alternative use may be issued for 12 months and may be extended annually for an additional 12 months.
3. An inactive license issued because a facility is temporarily unable to perform services may renew its inactive status for an additional six months, if it is making progress toward reopening.
4. The CS clarifies that AHCA must update its publications and consumer information about nursing homes "promptly" to address a concern the agency raised about not being able to make updates immediately upon a decision. This amendment removed the fiscal impact the agency had projected.
5. The CS clarifies that the CON methodology is based on a sub-district goal, not a district-wide occupancy rate goal.
6. The CS removes the provisions related to CON for percutaneous emergency heart treatment.
7. The CS clarified provisions related to nursing home beds in continuing care retirement communities.