HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 809 Public Health Services
SPONSOR(S): Barreiro
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1658 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Standards (Sub)		Garner	Collins
2) Health Care			
3) Health Appropriations (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

HB 809 provides for a new licensure category of sub-acute pediatric prescribed extended alternative care centers (SPPEAC) that provide transitional care for medically fragile or technologically dependent children on a short-term basis of 90 days or less. It is presumed that these centers would offer 24-hour services as an expansion to the similar nonresidential prescribed pediatric extended care (PPEC) facilities.

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.

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 Agency for Health Care Administration (AHCA) to amend the Medicaid state plan or seek waiver authority to implement the pilot project. AHCA applied for the waiver and projected approximate cost savings of $17 million over the two years of the pilot program. The waiver was granted by the federal government in December 2002 for the pilot project. The waiver was approved for a 2-year period and expires on December 31, 2004. AHCA has not implemented this pilot project at this time.

According to the AHCA, based on an estimate of 30 licensed SPPEACs, the proposed bill will require four FTEs be located within the Agency to regulate this new health care provider type with a cost of $323,799 of operating expenses in year-one and $342,481 operating expenses thereafter. Using the maximum fee revenues to be $36,000 in year-one and $39,600 in year two, a deficit of $290,427 in year one and $ 302,881 in year two is estimated. This analysis also provides for non-operating expenses of $2,628 in year one and $2,891 in year two for General Revenue Service Charges.

The bill provides an effective date upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[X]	N/A[]
2. Lower taxes?	Yes[X]	No[X]	N/A[]
3. Expand individual freedom?	Yes[]	No[]	N/A[X]
4. Increase personal responsibility?	Yes[]	No[]	N/A[X]
5. Empower families?	Yes[X]	No[]	N/A[]

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

1. This bill creates a new licensure category of health care facilities that will require an expansion of the Agency for Health Care Administration's regulatory responsibilities.

2. The bill requires additional staff to implement the regulation which will require additional revenue that will need to come from other programs or through additional taxes. However, the official waiver application submitted by the Agency for the pilot program in Miami-Dade estimated $17 million in cost savings over the term of the two-year pilot program.

B. EFFECT OF PROPOSED CHANGES:

The proposed bill provides for a new licensure category of subacute pediatric prescribed extended alternative care centers (SPPEAC) that provide transitional care for medically fragile or technologically dependent children on a short-term basis of 90 days or less. It is presumed that these centers would offer 24-hour services as an expansion to the similar nonresidential PPEC facilities; however the bill does not specify whether these centers will operate on an inpatient or outpatient basis.

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 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 PPECs, 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.

PREVIOUS LEGISLATIVE ACTIVITY CREATING SPPEAC's

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 Agency for Health Care Administration (AHCA) to amend the Medicaid state plan or seek waiver authority to implement the pilot project. AHCA applied for the waiver and projected approximate cost savings of $17 million over the two years of the pilot program. The waiver was granted by the federal government in December 2002 for the pilot project. The waiver was approved for a 2-year period and expires on December 31, 2004.

AHCA initiated a Request for Proposal process in early 2003; however the project was only funded for one year, expiring June 30, 2003, because 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.

C. SECTION DIRECTORY:

Section 1. Establishes the Legislature's intent to provide for the licensure and regulation of subacute pediatric prescribed extended alternative care facilities (SPPEACs) and to establish and enforce basic standards for the provision of necessary family-centered medical, developmental, physiological, nutritional, psychosocial, and family training services in SPPEACs.

Section 2. Provides definitions.

Section 3. Requires a SPPEAC 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.

Section 4. Establishes procedures for licensure.

Section 5. Establishes requirements for administration and management of a SPPEAC center.

Section 6. Requires each SPPEAC 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.

Section 8. Requires each SPPEAC 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 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 to have a nursing director who is a registered nurse with a baccalaureate degree in nursing.

Section 11. Provides staffing standards for the provision of ancillary services at a SPPEAC. 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 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 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 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'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.

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

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

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

Section 22. Requires each SPPEAC 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 an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   According to the Agency for Health Care Administration, assuming the maximum fees allowed to be charged for licensure are used, the licensure fees will produce revenues of $36,000 in Year 1 and $39,600 in Year 2.

Estimated Recurring Revenue	Amount Year 1 FY 04-05	Amount Year 2 FY 05-06
Licenses	$36,000	$39,600
TOTAL RECURRING REVENUE	**$36,000**	**$39,600**

2. Expenditures:

According to the Agency for Health Care Administration, the cost of regulating this new type of facility will require non-recurring start-up expenses of $15,080 and recurring operating expenses of $323,799 in Year 1 and $342,481 in Year 2, and each year thereafter.

Estimated Non-recurring Expenses	Amount Year 1 FY 04-05	Amount Year 2 FY 05-06
Salaries	$0	$0
Other Personnel Services	0	0
Expenses	10,376	0
Operating Capital Outlay	4,704	0
TOTAL NON-RECURRING EXPENSES	**$15,080**	**$0**

Estimated Recurring Expenses	Amount Year 1 FY 04-05	Amount Year 2 FY 05-06
Salaries		
Registered Nurse Specialist	$54,721	$54,721
Registered Nursing Consultant	69,871	69,871
Health Services & Facilities Consultant	50,513	50,513
Senior Attorney	52,541	70,055
Administrative Assistant 1	23,573	31,430
TOTAL Salary and Benefits	**$251,219**	**$276,590**
Other Personnel Services	**$0**	**$0**
Expenses		
Professional staff	$49,500	$55,000
Travel expenses	8,000	8,000
TOTAL Expenses	**$57,500**	**$63,000**
General Revenue Service Charge	**$2,628**	**$2,891**
TOTAL RECURRING EXPENSES	**$311,347**	**$342,481**

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Agency for Health Care Administration (AHCA) if legislative funding and federal approval is obtained for SPPEAC providers to become eligible for Medicaid reimbursement, it will be impossible to accurately project the potential Medicaid expenditures in this program, as there is no mechanism to limit or control the potential growth of these facilities. Although other state agencies, such as the Department of Health and the Department of Children and Families may see a fiscal impact due to the enrollment and monitoring of this population in services that these agencies provide, the fiscal analysis provided for this bill is provided by AHCA.

HEALTH CARE REGULATION

Based on an estimated 30 facilities that will be primarily in the South Florida area, but will also cover other areas of the state, it is anticipated that three (3) three-day on-site visits would be required (270 days per year) consisting of annual surveys, complaint investigations and follow-up visits at each facility. Two positions would be required to conduct on-site visits (Registered Nurse Consultants. Survey and monitoring responsibilities would require the specialty of registered nurses due to the complex medical condition of the residents. Also, additional time will be needed to prepare for surveys, administrative hearings and testifying at legal proceedings (approximately 115 days per year), as well as attending required initial and annual in-service training. Due to the shortage of qualified nurses in Florida and the Agency's difficulty filling these positions statewide, a 20% above the minimum salary is requested along with a competitive area pay differential (CAD) since the nurses will be assigned to the South Florida area. Laptop computers (OCO funds) will be necessary for each field position for the completion of survey notes and reports while on-site and in the field at the standard allowance of $1,468 each.

Additional travel expenses will be needed to conduct surveys and complaint investigations to encompass the vast geographical region of the facilities. Using an average cost based on similar experience in performing validations surveys throughout the state, travel for staff in the Survey Integrity Support Branch of Health Quality Assurance (HQA) costs $642 per month per person. Deducting the allowance for travel of $3,550 that is already included in the annual expenditure allowance for these staff, we determined that additional travel in the amount of approximately $4,000 per person per year would be needed for field staff due to implementation of a new regulatory program. There will be instances when surveyors will be required to stay overnight near the facility that requires the longer inspection.

An Agency central office staff position (Health Services and Facilities Consultant) would be necessary for central office responsibilities of overseeing the licensure process of these facilities. This would include application procedure development and processing, survey report analysis and review, data processing, development of surveyor guidance and resources, policy development and clarification, and other duties necessary to implement this newly regulated program. In addition, this position would be responsible for tracking data between headquarters and the field offices, verifying background screening information and preparing legal actions such as fines, revocations and moratoriums. The central office position must be hired effective July 1, 2004 to be ready to implement the provisions of the bill that is to take effect on becoming law.

In addition, it is recommended that each facility undergo a Plans and Construction review, however this process would not require any additional staff. It is also recommended that each licensee, administrator and/or supervisor undergo background screening as a requirement for licensure. It is estimated that a minimum of 2 screenings would be required per facility, therefore an additional 60 Level 2 screenings is anticipated the first year. This would cause minimal impact to the Agency's Background Screening Unit. However, should background screening be required for direct care staff,

as is required in similar facility types, the impact on the Background Screening Unit would be much greater and would require the addition of at least 1 position.

The licensure fees established for this program will generate revenue, however it is not expected that the earnings could offset the total cost for licensing and monitoring the program. The bill proposes a fee of not less than $500 and no more than $1,200. At the maximum rate, an estimated $36,000 (based on the initial licensure of 30 facilities) could be expected in the first year. The annual growth rate for facilities is approximately 10%; therefore an additional 3 facilities could be expected in year two, generating revenue of $39,600. Based on project regulatory costs, and fee revenues, a deficit of $290,427 is projected in year one and $302,881 in year two. This analysis also provides for non-operating expenses of $2,628 in year one and $2,891 in year two for General Revenue Service Charges.

GENERAL COUNSEL"S OFFICE

Based on an estimated 30 facilities, it is anticipated that the General Counsel's Office will experience an increase in informal and formal administrative proceedings involving SPPEAC centers. Such proceedings include, but are not limited to, licensure suspensions, revocations and denials and administrative fines and sanctions imposed by the Agency against SPPEAC centers for violations of laws and rules. The General Counsel's Office will need one senior attorney position (FTE) to handle the additional litigation that will arise due to the addition of another type of health care facility to the Florida market. Based on litigation statistics from other skilled nursing facilities, AHCA estimates 9% of the surveys (81) will result in a filing of an administrative case by the Agency. AHCA estimates that the Agency Clerk will receive 45 petitions for formal or informal hearing and of these, 23 will result in an administrative hearing. Assuming an average of 2.5 days hearing for each case (20 hours), 8 days working time (64 hours) for preparation of pleadings, depositions, travel, and correspondence on each case, this equates to 84 X 23= 1932 hours. Other sources of legal tasks and litigation come from injunctions, rule development, rule challenges, waivers, declaratory statements, public records requests, subpoenas from cases in which the Agency is not a party and bill analyses. Experience has shown that the Agency cannot hire attorneys for less than 10 percent above the minimum, and expect to retain them long enough to justify the training that they receive from the Agency. One (1) Administrative Assistant I is added to handle the additional administrative duties for the Agency Clerk (who processes all petitions and final orders) and the litigation attorney. The administrative assistant is expected to help process requests for sanctions, draft initial versions of pleadings, and assist in the processing of discovery (both received and issued). Administrative assistants will also assist with basic legal research and case analysis, as well as record processing. By assuming duties beyond standard duties related to scheduling, telephone call management, filing, etc., the administrative assistant increases attorney efficiency thus shortening the work time estimates on a given case to those provided above. Without increased administrative support through an additional administrative assistant requested here, additional attorney time will be required beyond the 1932 estimated above. One laptop computer will be needed at the Agency standard allowance of $1,468 (OCO funds) due to travel and additional litigation workload as well as necessary components (docking station, keyboard, mouse and monitor) at the cost of $300.

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 revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Agency for Health Care Administration has rulemaking authority necessary to implement this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

HB 809 does not limit the licensure of subacute pediatric prescribed extended alternative care centers (SPPEAC) to any particular part of the state, or designate this as a pilot program as enacted into law in Chapter 2002-400, Laws of Florida.

The similar bill in the Senate (SB 1658) was amended in Committee to limit the licensure to a pilot program in Miami-Dade only.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES