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.)

Prepared By: Health and Human Services Appropriations Committee

BILL:	CS/CS/SB 1472
SPONSOR:	Health and Human Services Appropriations Committee, Health Care Committee and Senator Peaden
SUBJECT:	Critical access hospitals
DATE:	April 12, 2005 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Wilson	HE	**Fav/CS**
2.	Fabricant	Peters	HA	**Fav/CS**
3.				
4.				
5.				
6.				

I. Summary:

The bill defines critical access hospital to be a hospital that meets specified federal requirements and is certified by the Secretary of the U.S. Department of Health and Human Services. Under the federal requirements, a critical access hospital is not required to provide surgery and obstetrical services, so the bill creates an exception in Florida's hospital licensure law for critical access hospitals for these services.

The bill also extends the moratorium on the authorization of hospital off-site emergency departments to July 1, 2006.

This bill amends ss. 305.002, 395.003, 408.061, 408.07, 458.345, and 459.021, F.S.

II. Present Situation:

Critical Access Hospitals

The Critical Access Hospital (CAH) program was designed to improve the financial performance of small, rural hospitals. Created in the Balanced Budget Act of 1997, the Medicare Rural Hospital Flexibility Program allows a CAH to receive cost-based reimbursement from Medicare. CAHs are certified under a different set of Medicare conditions of participation that are more flexible than the conditions of participation for acute care hospitals.

The federal law permits a state to establish a Medicare rural hospital flexibility program, if it develops at least one rural health network in the state and designates at least one facility as a critical access hospital. 42 U.S.C. s. 1395i-4(c) establishes criteria for designation, by the state,

of a facility as a critical access hospital. The state may designate a facility as a critical access hospital if the facility:

- Is a hospital that is located in a county in a rural area and that is located more than a 35-mile drive from a hospital, or a health clinic or health center, or is certified by the state as being a necessary provider of health care services to residents in the area;
- Makes available 24-hour emergency care services that the state determines are necessary for ensuring access to emergency care services in each area served by a critical access hospital;
- Provides not more than 25 acute care inpatient beds for providing inpatient care for a period that does not exceed, as determined on an annual, average basis, 96 hours per patient;
- Meets rural hospital staffing requirements, except that:
    - The facility need not meet hospital standards relating to the number of hours during a day, or days during a week, in which the facility must be open and fully staffed, except insofar as the facility is required to make available emergency care services and must have nursing services available on a 24-hour basis, but need not otherwise staff the facility except when an inpatient is present;
    - The facility may provide any services otherwise required to be provided by a full-time, on site dietitian, pharmacist, laboratory technician, medical technologist, and radiological technologist on a part-time, off site basis; and
    - The inpatient care described may be provided by a physician assistant, nurse practitioner, or clinical nurse specialist subject to the oversight of a physician who need not be present in the facility; and

- Meets the federal requirements for a quality assessment and performance improvement program, and appropriate procedures for review of utilization of services, that are required for rural health clinics and federally qualified health centers.

Under 42 U.S.C. s. 1395i-4(e), the United States Secretary of Health and Human Services shall certify a hospital as a critical access hospital if the facility:

- Is located in a State that has established a Medicare rural hospital flexibility program in accordance with 42 U.S.C. s. 1395i-4(c);
- Is designated as a critical access hospital by the state in which it is located; and
- Meets such other criteria as the Secretary may require.

As of November 2004, there were 1,018 certified Critical Access Hospitals located throughout the United States. Currently, Florida has 11 CAHs, which are listed below:

- Calhoun-Liberty Hospital (Blountstown)
- Campbellton-Graceville Hospital (Graceville)
- Doctor’s Memorial Hospital, Bonifay (Bonifay)
- Florida Hospital Wauchula (Wauchula)
- Gadsden Community Hospital (Quincy)
- George E. Weems Memorial Hospital (Apalachicola)
- Hendry Regional Medical Center (Clewiston)

- Northwest Florida Community Hospital (Chipley)
- Lake Butler Hospital (Lake Butler)
- Shands at Live Oak (Live Oak)
- Shands at Starke (Starke)

Hospital Licensure Requirements for Surgical and Obstetrical Services

Hospitals are licensed under chapter 395, F.S. Under s. 395.002, F.S., a hospital is required to "regularly make available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care or other definitive medical treatment of similar extent."

Rural Hospitals

Section 395.602(2)(e), F.S., defines "rural hospital as:

An acute care hospital licensed under this chapter, having 100 or fewer licensed beds and an emergency room, which is:

1. The sole provider within a county with a population density of no greater than 100 persons per square mile;

2. An acute care hospital, in a county with a population density of no greater than 100 persons per square mile, which is at least 30 minutes of travel time, on normally traveled roads under normal traffic conditions, from any other acute care hospital within the same county;

3. A hospital supported by a tax district or subdistrict whose boundaries encompass a population of 100 persons or fewer per square mile;

4. A hospital in a constitutional charter county with a population of over 1 million persons that has imposed a local option health service tax pursuant to law and in an area that was directly impacted by a catastrophic event on August 24, 1992, for which the Governor of Florida declared a state of emergency pursuant to chapter 125, and has 120 beds or less that serves an agricultural community with an emergency room utilization of no less than 20,000 visits and a Medicaid inpatient utilization rate greater than 15 percent;

5. A hospital with a service area that has a population of 100 persons or fewer per square mile. As used in this subparagraph, the term "service area" means the fewest number of zip codes that account for 75 percent of the hospital's discharges for the most recent 5-year period, based on information available from the hospital inpatient discharge database in the State Center for Health Statistics at the Agency for Health Care Administration; or

6. A hospital designated as a Critical Access Hospital by the Department of Health in accordance with federal regulations and state requirements.

A similar definition of rural hospital is included in s. 408.07, F.S.. However, that definition does not include the fourth item in the list above, "A hospital in a constitutional charter county…"

A rural hospital licensed under ch. 395, F.S., with 25 or fewer licensed beds may apply to the Department of Health, Office of Rural Health, for critical access hospital designation. Applicant hospitals must meet the state and Medicare requirements, including but not limited to:

- Number of beds;
- Average length of patient stays;
- Distance to the nearest hospital, or state certification as a "necessary provider"; and
- Providing a financial feasibility study to the Department of Health.

The hospital must send written notice to the Agency for Health Care Administration (AHCA), Hospital and Outpatient Services Unit, and the fiscal intermediary requesting a change in Medicare certification. Upon fiscal intermediary approval and successful completion of a critical access hospital Medicare certification survey conducted by AHCA, the Centers for Medicare and Medicaid Services will issue the hospital a new or different provider number. The critical access hospital uses the newly assigned provider number to apply for Medicare reimbursement at a cost basis instead of the prospective payment system. The designation does not impart special conditions, waivers or exemptions from state licensure requirements, change or alter the state licensure classification of the hospital, and does not appear on the state hospital license. As of February 15, 2005, eleven out of 275 licensed Florida hospitals are designated as critical access hospitals. Only two additional hospitals are potentially eligible and have indicated some interest in the program. The majority of critical access hospitals are located in the Panhandle or north Florida, with one facility in south Florida.

All of the Florida critical access hospitals qualified for this designation via a federal provision permitting states to waive the distance requirements (a critical access hospital must be more than 35 miles away from the nearest hospital) by certifying the facility as a "necessary provider" of health services to residents in the area. This provision will sunset effective January 1, 2006, per Medicare Prescription Drug, Improvement and Modernization Act of 2003, §405(h). Florida hospitals designated as critical access hospitals prior to January 1, 2006, will be grandfathered, but no other currently licensed Florida hospital will qualify after that date.

Freestanding Emergency Departments

According to AHCA:

> *Acute care hospitals have diversified their services in recent decades, particularly in the 1990s. The expansion of managed care in the 1990s led hospitals to eliminate unnecessary inpatient stays in favor of greater use of outpatient services. The overnight inpatient stay has become shorter and hospitals have increased their involvement with outpatient surgery, outpatient diagnostic imaging, outpatient clinical laboratories, freestanding urgent care centers, outpatient rehabilitation centers and outpatient clinic services… The development of freestanding emergency departments is part of this trend toward more hospital-based outpatient services.*[1]

[1] *Freestanding Emergency Departments*. Florida Agency for Health Care Administration. December 2004.

Emergency room patients are considered outpatients and are billed as such. The Centers for Medicare and Medicaid Services (CMS), which establishes federal payment policies for the reimbursement of hospital services, pays for emergency department patients as 'outpatients'.

CMS recognizes both onsite and freestanding emergency departments. With respect to Medicare participating hospitals' treatment of individuals with emergency medical conditions, on September 9, 2003, CMS published 42 CFR Parts 413, 482, and 489 Medicare program; Clarifying Policies Related to the Responsibilities of Medicare-Participating Hospitals in Treating Individuals with Emergency Medical Conditions; Final Rule. This rule defines "dedicated emergency department" at 489.24(b) as: "any department or facility of the hospital regardless of whether it is located on or off the main hospital campus, that meets at least one of the following requirements:

(1) It is licensed by the state in which it is located under applicable state law as an emergency department;
(2) It is held out to the public (by name, posted signs, advertising or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment…"

Section 395.003(2)(d), F.S., specifies that "the agency shall, at the request of a licensee, issue a single license to a licensee for facilities located on separate premises. Such a license shall specifically state the location of the facilities, and the licensed beds available on each separate premises…." Rule 59A-3.203(f), F.A.C., related to hospital licensure, allows for the "addition of beds or offsite facilities to a hospital's license..." According to AHCA, approximately 70 of Florida's 270 licensed hospitals list offsite outpatient facilities on their licenses. The Legislature removed the review of hospital proposals for new outpatient services from Florida's Certificate-of-Need (CON) program in 1987. AHCA does not regulate the establishment of outpatient services or the mix of outpatient services a hospital can provide.

In April 2002, AHCA approved the addition of an offsite, freestanding emergency department to the license of Munroe Regional Medical Center (MRMC) in Ocala. The freestanding emergency department is located approximately 12 miles to the southwest of the MRMC inpatient facility. The inpatient facility also includes a traditional, onsite emergency department.

In October 2003, AHCA approved the state's second freestanding emergency department for Ft. Walton Beach Medical Center. The offsite emergency department is located in Destin, approximately 12 miles to the east of the main inpatient facility.

AHCA published a proposed administrative rule in September 2003. The proposed rule was challenged and later withdrawn by the agency.

The 2004 Legislature required AHCA to submit a report to the President of the Senate and the Speaker of the House of Representatives by December 31, 2004, recommending whether it is in the public interest to allow a hospital to license or operate an emergency department located off the premises of the hospital. The legislature imposed a moratorium on the authorization of additional emergency departments located off the premises of licensed hospitals until July 1, 2005.

The report[2], issued in December 2004, concluded that:

- It is in the public interest to allow hospitals in certain unique communities to develop freestanding emergency departments and to have them listed separately on their license.
- As long as the hospital understands that the freestanding emergency department will be regulated identically to the onsite emergency department, there is no reason to have a concern about quality of care.
- The Legislature should add freestanding emergency departments as a project subject to CON review by AHCA.

The report made two recommendations:

- Allow the development of freestanding emergency departments, adding them to projects subject to CON pursuant to s. 408.036(1), Florida Statutes.
- Direct AHCA to promulgate rules designating that the regulatory criteria for onsite emergency departments also apply to offsite freestanding emergency departments.

III. Effect of Proposed Changes:

Section 1. Amends the definition of hospital in s. 395.002, F.S., to exempt a CAH from the requirement for a hospital to have facilities for surgery, obstetrical care, or similar services. The CAH would be exempt from those requirements as long as it is designated as a critical access hospital. A hospital that lost the CAH designation would have to provide facilities for surgery and obstetrical care. Makes a change allowing any accrediting organization to certify hospitals specializing in treating patients under the age of 18 with psychiatric disorders.

Section 2. Amends s. 395.003, F.S., to extend until July 1, 2006, the moratorium on the approval of hospital freestanding emergency departments. The bill also corrects a cross-reference in this section and makes a change allowing any accrediting organization to certify hospitals specializing in treating patients under the age of 18 with psychiatric disorders.

Section 3. Amends s. 408.061, F.S., to correct a cross-reference.

Section 4. Amends s. 408.07, F.S., to define *critical access hospital* as a hospital that meets the requirements in 42 U.S.C. s. 1395i-4 under the Social Security Act and is certified by the Secretary of the United States Department of Health and Human Services as a critical access hospital. The bill amends the reference to a critical access hospital in the definition of "rural hospital" to delete the requirement that a critical access hospital be designated by the Department of Health in accordance with federal regulations and state requirements.

Section 5. Amends s. 458.345, F.S., to correct a cross-reference.

Section 6. Amends s. 459.021, F.S., to correct a cross-reference.

[2] Ibid.

Section 7. 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 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:

A review of the data reported to AHCA indicates that nine critical access hospitals performed inpatient surgical procedures for the period July 2003 through June 2004, for a total of 371 procedures, or an average of 30 per month. The facility performing the least number of surgical procedures performed six surgeries during the 12-month period while the facility performing the most reported 131 surgical procedures. Four critical access hospitals reported performing outpatient surgeries for an average of 151 per month. It would be expected that some critical access hospitals would cease offering surgical services while others would continue. Critical access hospitals that choose to discontinue these services would not incur the cost of providing surgery and obstetrical services.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.