

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SB 1926

INTRODUCER: Health Regulation Committee and Senator Lawson

SUBJECT: Inactive licenses and certificates of need for health care providers

DATE: April 1, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Wilson	HR	Fav/CS
2.			HA	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This committee substitute extends the expiration date for certain certificates of need from 18 months to 3 years after the date of issuance. The committee substitute also authorizes the Agency for Health Care Administration (Agency) to renew an inactive license that has been held by a rural hospital for at least 20 months for an additional 12 months if the rural hospital has demonstrated progress toward reopening but is unable to reopen before the inactive license expires upon conclusion of 24 months in inactive licensure status. The committee substitute provides criteria for determining whether the rural hospital has demonstrated progress toward reopening.

The committee substitute substantially amends the following sections of the Florida Statutes: 408.040 and 408.808.

II. Present Situation:

Hospitals Generally

Hospitals are licensed by the Agency under ch. 395, F.S., and the general licensure provisions of part II, ch. 408, F.S. A hospital offers more intensive services than those required for room, board, personal services, and general nursing care. A range of health care services is offered with beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care. Hospitals must make regularly 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.¹ Hospitals are not required to provide emergency services.

Rural Hospitals

A rural hospital² is an acute care hospital having 100 or fewer licensed beds and an emergency room, which is:

- The sole provider within a county with a population density of no greater than 100 persons per square mile;
- 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;
- Supported by a tax district or subdistrict whose boundaries encompass a population of 100 persons or fewer per square mile;
- 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 ch. 125, F.S., 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;
- A hospital with a service area³ that has a population of 100 persons or fewer per square mile; or
- A hospital certified by the Secretary of Health and Human Services as a critical access hospital.

Hospital Licensure

Hospitals must meet initial licensing requirements set forth in state regulations by submitting a completed application, required documentation, and satisfactory completion of a facility survey. The license fee is \$1,542 or \$31 per bed, whichever is greater. The survey/inspection fee is \$400 or \$12 per bed, whichever is greater. To meet federal requirements, the hospital must be surveyed for certification as directed by the Centers for Medicare and Medicaid Services. Hospitals are issued biennial licenses.

¹ Section 395.002(12), Florida Statutes.

² s. 395.602(2)(e), F.S.

³ "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 Florida Center for Health Information and Policy Analysis at the Agency

The applicant for a renewal license must submit an application, and applicable fees, at least 60 days prior to the expiration of the current license. If the renewal application and fee are received prior to the license expiration date, the license remains active during the agency's review of the renewal application.⁴ Failure to apply for the renewal of a license prior to the expiration date renders the license void.⁵

The Agency must approve or deny the application within 60 days after the receipt of a complete application.

The Agency may issue an inactive license to a health care provider subject to the certificate-of-need (CON) provisions when the provider is currently licensed, does not have a provisional license,⁶ and will be temporarily unable to provide services but is reasonably expected to resume services within 12 months.⁷ An inactive license may be renewed for up to 12 additional months upon demonstration by the licensee of the provider's progress toward reopening. A request by a licensee for an inactive license or to extend the previously approved inactive period must be submitted to the Agency and must include a written justification for the inactive license with the beginning and ending dates of inactivity specified, a plan for the transfer of any clients to other providers, and the appropriate licensure fees.

The Agency may not accept a request for an inactive license or renewal of an inactive license that is submitted after initiating closure, after any suspension of service, or after notifying clients of closure or suspension of service, unless the action is a result of a disaster at the licensed premises. A disaster is a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or manmade, which renders the provider inoperable at the premises. Upon Agency approval, the provider must notify clients of any necessary discharge or transfer as required by authorizing statutes or applicable rules. The beginning of the inactive license period is the date the provider ceases operations. The end of the inactive license period is the license expiration date. All licensure fees must be current, must be paid in full, and may be prorated. Reactivation of an inactive license requires the approval of a renewal application, including payment of licensure fees and Agency inspections indicating compliance with all requirements of the general health care licensing provisions, authorizing statutes, and applicable rules.

Certificate of Need

A CON⁸ is a written statement issued by the Agency evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice.⁹ Health care facilities and health services subject to CON review include hospitals, long

⁴ s. 408.806(2)(a), F.S.

⁵ s. 408.806(6), F.S.

⁶ A provisional license is issued to an applicant who has undergone a background screening with satisfactory results received from the Florida Department of Law Enforcement, pending results from the Federal Bureau of Investigation or while awaiting final disposition of an action to deny or revoke a license. See s. 408.808(2), F.S.

⁷ s. 408.808(3), F.S.

⁸ Provisions related to the CON program are set forth in ss. 408.031 – 408.045, F.S., and Rule Chapters 59C-1 and 59C-2, F.A.C.

⁹ s. 408.032(3), F.S.

term care hospitals, skilled nursing facilities,¹⁰ hospices, intermediate care facilities for the developmentally disabled, inpatient diagnostic, curative, or comprehensive medical rehabilitative services, and tertiary health services.¹¹ A CON is not required for outpatient services, home health services, or the purchase of major medical equipment.

A CON terminates 18 months after the date of issuance unless the applicant:

- Has commenced construction, if the project provides for construction;
- Has incurred an enforceable capital expenditure commitment for a project, if the project does not provide for construction; or
- Holds a provisional certificate of authority under ch. 651, F.S., relating to continuing care contracts, in which case the certificate of need terminates one year after the applicant receives a valid certificate of authority.

The Agency monitors the progress of the holder of the CON in meeting the timetable for project development that is specified in the application for the CON, and may revoke the CON, if the holder of the certificate is not meeting that timetable and is not making a good-faith effort to meet it. The Agency is required to extend the period of validity of a CON for a project, to the extent that the applicant demonstrates to the satisfaction of the Agency, that good-faith commencement of the project is being delayed by litigation or by governmental action or inaction with respect to regulations or permitting precluding commencement of the project.

III. Effect of Proposed Changes:

This committee substitute extends the period of validity for a CON from 18 months to 3 years after the date of issuance, unless construction has commenced or an enforceable capital expenditure commitment for a project has been incurred on a project that is not subject to a provisional certificate of authority for a continuing care community.

This committee substitute authorizes the Agency to renew, for an additional 12 months, an inactive license of a rural hospital if, after 20 months in the inactive licensure status, the rural hospital has demonstrated progress toward reopening but is not able to reopen before the expiration date of its inactive license (at the end of month 24). If construction or renovation is required for the rural hospital to reopen, the licensee must have had plans approved by the Agency and construction must have already commenced, or, if construction or renovation is not required, the licensee must provide proof of having made an enforceable capital expenditure greater than 25 percent of the total costs associated with the hiring of staff and the purchase of equipment and supplies needed to operate the facility upon opening. This allows a rural hospital to maintain an inactive license for up to 36 months.

The committee substitute provides an effective date of upon becoming a law.

¹⁰ Currently there is a moratorium in effect for nursing homes until July 1, 2011. See s. 408.0435, F.S.

¹¹ Tertiary health services are highly intense, complex, specialized, and costly. Examples of such services include, but are not limited to, pediatric cardiac catheterization, pediatric open-heart surgery, organ transplantation, and comprehensive rehabilitation.

Other Potential Implications:

Although this bill has general applicability, currently the Gadsden County Hospital, a public, rural hospital, has an inactive license. The expiration date for the second renewal of this inactive license is June 21, 2009. The citizens in Gadsden County approved a 1/2 cent sales surtax in August 2008 and construction is underway. A reopening date is planned for June 2009, however unforeseen delays could jeopardize the licensure status of the hospital.

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 the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 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. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Access to health care in rural communities would be enhanced if a rural hospital needs additional time to reopen. Additionally, this bill provides additional time for hospitals to find additional funding or address other unforeseen obligations for a project prior to the CON expiring.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation Committee on April 1, 2009:

The substantial changes in the committee substitute include extending the period of validity for a CON from 18 months to 3 years, providing criteria for determining whether a rural hospital has demonstrated progress toward reopening to support renewing an inactive hospital license for up to an additional 12 months, and revising the effective date to upon becoming a law.

- B. **Amendments:**

None.