

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 787 Nursing Home Facilities

SPONSOR(S): Health & Human Services Committee; Health & Human Services Quality Subcommittee; Trujillo

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	13 Y, 0 N, As CS	Guzzo	Calamas
2) Health & Human Services Committee	15 Y, 3 N, As CS	Guzzo	Gormley

SUMMARY ANALYSIS

The bill expands the ability of nursing homes to provide additional services to nonresidents of nursing home facilities. Currently, nursing homes must have a standard license, have no class I or class II deficiencies in the previous two years, or have been awarded a Gold Seal, to provide additional services like respite and adult day services. The bill allows all licensed nursing homes to provide additional services, without limitation based on prior deficiencies or recognition as a Gold Seal facility, including respite, adult day services, and therapeutic spa services.

The bill creates the following regulations and provisions for overnight respite care in nursing homes:

- Facilities must have a written abbreviated plan of care and a contract;
- Prospective respite care recipients must provide medical information to the facility;
- Respite care recipients may bring their medications from home if permitted by the facility; and
- Respite care recipients may reside in the facility for 60 days within a contract or calendar year, provided each stay does not exceed 14 consecutive days.

The bill adds to the list of professionals authorized to staff a geriatric outpatient clinic. Currently, geriatric outpatient clinics must be staffed by a registered nurse or a physician assistant. The bill allows a licensed practical nurse under the direct supervision of a registered nurse, advanced registered nurse practitioner, physician assistant, or physician to staff a geriatric outpatient clinic.

The bill also removes the requirement for resident care plans to be signed by the director of nursing or another registered nurse employed by the facility. The resident care plan is written and developed by a registered nurse with participation from other staff and the resident, so the requirement for a signature is not necessary.

Currently, nursing home facilities that meet the following requirements are allowed to share programming and staff.

- Be a part of a continuing care facility or a retirement community that operates on a single campus;
- Have a standard license or have been awarded a Gold Seal; and
- Exceed the minimum required hours of licensed nursing and certified nursing assistant direct care.

Facilities that choose to do so must be able to demonstrate compliance with the minimum staffing ratios at the time of inspection and in the semiannual report. The bill eliminates the requirement to prove compliance with staffing ratios in the semiannual report. Facilities will still be required to demonstrate at the time of inspection that minimum staffing requirements are met. The bill also removes the requirement for the facility to be a Gold Seal facility to be able to share programming and staff.

The bill provides a certificate of need (CON) exemption in certain AHCA sub-districts until June 30, 2014, for construction of a nursing home affiliated with and located on the property of a private accredited university which meets certain criteria.

Finally, the bill allows nursing homes to use a portion of their sheltered nursing home beds to provide assisted living services without giving up their CON for those beds. Current law allows for such flexibility, but the beds must be used to provide extended congregate care rather than standard assisted living care.

The bill does not appear to have a significant fiscal impact on state or local government.

The bill provides an effective date of July 1, 2012.

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

STORAGE NAME: h0787d.HHSC

DATE: 2/23/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Nursing Homes

Geriatric Outpatient Clinics

A geriatric outpatient clinic is a site for providing outpatient health care to individuals at least 60 years of age. Geriatric outpatient clinics must be staffed by a registered nurse, or a physician assistant.¹

Resident Care Plans

A resident care plan is a written plan developed, maintained, and reviewed not less than quarterly by a registered nurse, with participation from other facility staff and the resident. The resident care plan must include the following:²

- A comprehensive assessment of the needs of a resident;
- The type and frequency of services required to provide the necessary care for the resident to attain or maintain the highest level of physical, mental, and psychosocial well-being;
- A list of services provided within or outside the facility to meet those needs; and
- An explanation of service goals.

The resident care plan is required to be signed by the director of nursing or another registered nurse employed by the facility and by the resident, the resident's designee, or the resident's legal representative.³

Shared Programming and Staff

Currently, nursing home facilities that meet the following requirements are allowed to share programming and staff.⁴

- Be a part of a continuing care facility or a retirement community that operates on a single campus;
- Have a standard license or have been awarded a Gold Seal; and
- Exceed the minimum required hours of licensed nursing and certified nursing assistant direct care.

If the above requirements are met, licensed nurses and certified nursing assistants who work in the facility may be used to provide services elsewhere on campus. Facilities that choose to do so must be able to demonstrate compliance with the minimum staffing ratios at the time of inspection and in the semiannual report.

¹ S. 400.021(8), F.S.

² S. 400.021(16), F.S.

³ *Id.*

⁴ S. 400.141(1)(g), F.S.

Respite Care

Section 400.141(1)(f), F.S., allows nursing homes to provide other needed services, including, but not limited to, adult day services, and respite care for people needing short-term or temporary nursing home services. Respite care means admission to a nursing home for the purpose of providing a short period of rest, relief, or emergency alternative care for the primary caregiver of an individual receiving care at home who, without home-based care, would otherwise require institutional care.⁵ Only nursing homes with standard licensure status with no Class I or Class II deficiencies in the past two years or having Gold Seal status may provide respite services. Respite care is required to be provided in accordance with rules adopted by the Agency for Health Care Administration (AHCA) and AHCA may modify requirements by rule for resident assessment, resident care plans, resident contracts, physician orders, and other provisions for short term or temporary nursing home services.

Nursing Home Certificates of Need

The certificate of need (CON) is a regulatory review process administered by AHCA which requires specified health care providers to obtain prior authorization before offering certain new or expanded services or making major capital expenditures. A "Certificate of Need" is defined as: "...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."

Florida's CON program has been in operation since July 1973. From 1974 through 1986, the specifics of the program were largely dictated by the federal National Health Planning and Resources Development Act, which established minimum requirements regarding the type of services subject to CON review, review procedures, and review criteria. Each state was required to have a CON program in compliance with those standards as a condition for obtaining federal funds for health programs. The federal health planning legislation was repealed in 1986.

Pursuant to s. 408.036, F.S., with certain limited exceptions, nursing homes in Florida are subject to CON. In addition to general criteria applicable to CON issuance, pursuant to s. 408.040, F.S., AHCA may issue a CON or exemption based upon a statement of intent from a nursing home. In doing so, AHCA may consider that a specified percentage of the annual patient days at a facility will be utilized by Medicaid recipients. AHCA's issuance of the CON to such nursing homes is issued as a condition of that utilization level, and any change in utilization level requires the certificate holder to seek a modification of conditions from AHCA. Failure to comply with these conditions can result in administrative fines against the certificate holder.

Sheltered Beds

Section 651.118, F.S., contains provisions relating to AHCA's ability to issue certificates of need for sheltered nursing home beds. Sheltered nursing home beds are those for which a certificate of need has been issued to construct nursing home beds for the exclusive use of the prospective residents of the facility.⁶

Currently, AHCA allows sheltered nursing home beds to be used as extended congregate care beds.⁷ Extended congregate care means assistance and care that is beyond that of personal services.⁸ The beds must be in a distinct area of the nursing home which can be adapted to meet the requirements for extended congregate care.

⁵ S. 400.021(15), F.S.

⁶ S. 651.118(3), F.S.

⁷ S. 651.118(8), F.S.

⁸ S. 429.02(11), F.S.

Adult Day Care Services

Section 429.905(2), F.S., allows licensed assisted living facilities (ALFs), hospitals, and nursing homes to provide adult day care services during the day to adults who are not residents of the facility without being licensed as an adult day care center. AHCA is required to monitor the facility during the regular inspection and at least biennially to ensure adequate space and sufficient staff is provided. However, if an ALF, hospital, or nursing home holds itself out to the public as an adult day care center, it must be licensed as such.

Section 429.901, F.S., defines “adult day care center” as providing basic services, *for a part of the day*, to three or more individuals who are at least 18 years of age, who are not related to the owner or operator by blood or marriage, and who require such services. Currently, AHCA interprets the provision of day care services to be services rendered during a *business day*.⁹ Rule 58A-6.002, F.A.C., defines “daily attendance” as the number of participants who, during any one *calendar or business day*, attend the center. According to AHCA, they have informed the public, and denied request for centers wishing to provide services during late-night hours.¹⁰

Effect of Proposed Changes

Nursing Homes

Geriatric Outpatient Clinics

The bill adds to the list of professionals authorized to staff a geriatric outpatient clinic. Currently, geriatric outpatient clinics must be staffed by a registered nurse or a physician assistant. The bill allows a licensed practical nurse under the direct supervision of a registered nurse, advanced registered nurse practitioner, physician assistant, or physician to staff a geriatric outpatient clinic.

Resident Care Plans

The bill removes the requirement for resident care plans to be signed by the director of nursing or another registered nurse employed by the facility. The resident care plan is written and developed by a registered nurse with participation from other staff and the resident.

Shared Programming and Staff

Facilities that choose to share programming and staff are required to prove compliance with minimum staffing requirements at the time of inspection and in the semiannual report. The bill eliminates the requirement to prove compliance with staffing requirements in the semiannual report. Facilities will still be required to demonstrate at the time of inspection that minimum staffing requirements are met. The bill also removes the requirement for the facility to be a Gold Seal facility to be able to share programming and staff. This will allow more facilities with a standard license to participate in shared staffing and be able to move staff to areas where they feel they are needed, provided they are in compliance with the minimum staffing requirements.

Respite Care

The bill amends s. 400.141, F.S., to expand the ability of nursing homes to provide additional services to nonresidents of nursing home facilities.

Currently, nursing homes must have a standard license, have no class I or class II deficiencies in the previous two years, or have been awarded a Gold Seal to provide additional services including, but not limited to, respite, and adult day services. The bill allows all licensed nursing homes to provide additional services without limitation based on prior deficiencies or recognition as a Gold Seal facility.

⁹ AHCA, *Staff Analysis and Economic Impact, House Bill Number 787* (January 28, 2012); Rule 58A-6.002(g), F.A.C.

¹⁰ *Id.*

As a result, more facilities with a standard license will have the opportunity to provide these services to clients.

In addition to respite, and adult day services the bill allows for the provision of therapeutic spa services, and defines such services to mean bathing, nail, hair care, and other similar services related to personal hygiene.

The bill creates s. 400.172, F.S., to include the following regulations and provisions for overnight respite care in nursing homes:

- Requires facilities to have a written abbreviated plan of care and a contract;
- Requires prospective respite care recipients to provide medical information to the facility;
- Allows respite care recipients to bring their medications from home if permitted by the facility; and
- Allows respite care recipients to reside in the facility for 60 days within a contract or calendar year, provided each stay does not exceed 14 consecutive days.

Nursing Home Certificates of Need

The bill provides a CON exemption in AHCA planning sub-districts¹¹ 4-1, 4-2, and 4-3 until June 30, 2014, for the construction of a nursing home. The nursing home must be affiliated with and located on the property of a private accredited university. Subdistrict 4-1 consists of Nassau County, and the northern portion of Duval County. Subdistrict 4-2 consists of Baker County, Clay County, and the southwestern portion of Duval County. Subdistrict 4-3 consists of St. John's County, and the southeastern portion of Duval County.

The nursing home may have up to 150 beds and must be affiliated with an accredited nursing school offering Bachelor of Science, Master of Science, and Doctor of Science degree programs within a private accredited university. The nursing home must at all times have an affiliation with the private accredited university and must employ or make positions available for the education and training of nursing students in the field of long-term care or geriatric nursing. The bill requires construction of the nursing home to begin within 11 months of this bill becoming law. Currently, it appears that only Jacksonville University meets the established criteria.

Sheltered Beds

The bill amends s. 651.118(8), F.S., to allow sheltered beds to be used not only to provide extended congregate care, but standard and limited nursing services as well. This will result in nursing homes being able to utilize their sheltered beds to provide care to individuals with various levels of acuity.

Adult Day Care Services

The bill amends s. 429.905(2), F.S., defining the term "day" as any portion of a 24-hour day. As a result, ALFs, hospitals and nursing homes will be able to provide adult day services at any time during a 24-hour day. According to AHCA, adult day care centers are inspected during day-time hours.¹² The change will also require inspections of centers and facilities during non-daytime hours, including evenings and weekends. AHCA currently inspects various facility types during evening and weekend hours, but this would require inspections during the hours these facilities choose to perform such services.

¹¹ Florida Agency for Health Care Administration Rule 59C-2.200, F.A.C., defines and numbers the nursing home subdistricts as follows: Subdistrict 4-1 consists of Nassau County, and the northern portion of Duval County lying within ZIP codes 32202, 32206, 32208, 32209, 32218, 32219, 32220, 32226, and 32254; Subdistrict 4-2 consists of Baker County, Clay County, and the southwestern portion of Duval County lying within ZIP codes 32204, 32205, 32210, 32212, 32215, 32221, 32222, 32234, and 32244; Subdistrict 4-3 consists of St. John's County, and the southeastern portion of Duval County lying within ZIP codes 32207, 32211, 32216, 32217, 32223, 32224, 32225, 32228, 32233, 32246, 32250, 32256, 32257, 32258, 32266, and 32277.

¹² AHCA, *Staff Analysis and Economic Impact, House Bill Number 787* (January 28, 2012).

B. SECTION DIRECTORY:

- Section 1:** Amends s. 400.021, F.S., relating to geriatric outpatient clinics, resident care plans, and therapeutic spa services.
- Section 2:** Amends s. 400.141, F.S., relating to administration and management of nursing home facilities.
- Section 3:** Creates s. 400.172, F.S., relating to respite care provided in nursing home facilities.
- Section 4:** Amends s. 408.036, F.S., relating to projects subject to review; exemptions.
- Section 5:** Amends s. 429.905, F.S., relating to exemptions; monitoring of adult day care center programs collocated with assisted living facilities or licensed nursing home facilities.
- Section 6:** Amends s. 651.118, F.S., relating to the Agency for Health Care Administration; certificates of need; sheltered beds; and community beds.
- Section 7:** Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
None.
- 2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

- 1. Applicability of Municipality/County Mandates Provision:
Not applicable. This bill does not appear to affect county or municipal governments.
- 2. Other:

The bill may implicate Art. III Sec. 10 of the Florida Constitution, relating to special or local laws.¹³ A special law is “one relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal”. A local law is “one relating to, or designed to operate only in, a specifically indicated part of the State, or one that purports to operate within classified territory when classification is not permissible or the classification is illegal”.¹⁴

Art. III Sec. 10 of the Florida Constitution provides:

No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

Sections 11.02, 11.021, and 11.03, F.S., establish the notification procedures required by Art. III, Sec. 10, Fla. Const. Notice of special or local legislation must be published in newspapers¹⁵ in the affected counties 30 days prior to introduction of the legislation. An affidavit of compliance with this requirement must be attached to the bill when introduced.

When determining whether a law is an unconstitutional special or local law, the standard applied by the Florida Supreme Court is whether there is a reasonable possibility that the law has a general application; that is, whether it is reasonably possible that the class defined by the law will include others.¹⁶

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Health and Human Services Quality Subcommittee adopted an amendment to HB 787. The amendment retains current law relating to the certificate of need moratorium on new nursing home beds by removing section 5 from the bill.

On February 16, 2012, the Health and Human Services Committee adopted an amendment to HB 787. The amendment provides a CON exemption in certain AHCA sub-districts until June 30, 2014, for the construction of a nursing home affiliated with and located on the property of a private accredited university which meets certain criteria.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

¹³ See, e.g., St. Vincent's Medical Center, Inc., v. Mem. Healthcare Group, Inc., 967 So.2d 794, (Fla. 2007); Martin Mem. Medical Center, Inc., v. Tenet Healthsystem Hospitals, Inc., 875 So.2d 797, (Fla. 1st DCA 2004);

¹⁴ State ex rel. Landis v. Harris, 163 So. 237, 240 (1934)).

¹⁵ Or, if none, posted in at least 3 public locations in each of the affected counties, one of which must be at the county courthouse, for at least 30 days.

¹⁶ St. Vincent's, 967 So.2d 794 at 798 (quoting Florida Dept. of Business & Professional Regulation v. Gulfstream Park Racing Ass'n., Inc., 912 So.2d 616 (Fla. 1st DCA 2005), aff'd, So.2d 802, (Fla. 2007).