

**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 Judiciary

**BILL:** CS/CS/SB 1482

**INTRODUCER:** Judiciary Committee; Health Policy Committee; and Senator Hays

**SUBJECT:** Skilled Nursing Facilities

**DATE:** April 17, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	<b>Fav/CS</b>
2.	Munroe	Cibula	JU	<b>Fav/CS</b>
3.			AP	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/CS/SB 1482 provides for a certificate of need (CON) exemption for up to 240 additional skilled-nursing-facility beds located within a retirement community that:

- Is located in a county that has 25 percent or more of its population aged 65 or older;
- Is located in a county with a ratio of no more than 16.1 beds per 1,000 persons aged 65 or older;
- Is zoned for mixed use;
- Is deed restricted for older persons; and
- Has a population of at least 8,000 residents.

This bill creates section 408.0362 of the Florida Statutes.

## II. Present Situation:

### Certificates of Need

A CON is a written statement issued by the Agency for Health Care Administration (AHCA or Agency) evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice.<sup>1</sup> Under this regulatory program, the Agency must provide approval through the CON review and approval process prior to a provider establishing a new nursing home or adding nursing home beds.

The Florida CON program has three levels of review: full, expedited, and the granting of an exemption.<sup>2</sup> The nursing home projects addressed in s. 408.036, F.S., related to CONs are as follows:

#### *Projects Subject to Full Comparative Review*

- Adding beds in community nursing homes; and
- Constructing or establishing new health care facilities, which include skilled nursing facilities.<sup>3</sup>

#### *Projects Subject to Expedited Review*

- Replacing a nursing home within the same district; and
- Relocating a portion of a nursing home's licensed beds to a facility within the same district.

#### *Exemptions from CON Review*

- Converting licensed acute care hospital beds to Medicare and Medicaid certified skilled nursing beds in a rural hospital;
- Adding nursing home beds at a skilled nursing facility that is part of a retirement community which had been in operation on or before July 1, 1949, for the exclusive use of the community residents;
- Combining licensed beds from two or more licensed nursing homes within a district into a single nursing home within that district if 50 percent of the beds are transferred from the only nursing home in a county and that nursing home had less than a 75 percent occupancy rate;<sup>4</sup>
- State veteran's nursing homes operated by or on behalf of the Florida Department of Veterans' Affairs;
- Combining into one nursing home, the beds or services authorized by two or more CONs issued in the same planning subdistrict;
- Separating into two or more nursing homes in the subdistrict, the beds or services that are authorized by one CON;

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<sup>1</sup> Section 408.032(3), F.S.

<sup>2</sup> Section 408.036, F.S.

<sup>3</sup> Section 408.032(16), F.S., defines a skilled nursing facility as an institution, or a distinct part of an institution, which is primarily engaged in providing, to inpatients, skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

<sup>4</sup> This exemption is repealed upon the expiration of the moratorium by operation of s. 408.036(3)(f), F.S.

- Adding no more than 10 total beds or 10 percent of the licensed nursing home beds of that facility, whichever is greater; or if the nursing home is designated as a Gold Seal nursing home, no more than 20 total beds or 10 percent of the licensed nursing home beds of that facility for a facility with a prior 12-month occupancy rate of 96 percent or greater; and
- Replacing a licensed nursing home on the same site, or within three miles, if the number of licensed beds does not increase.

The CON program applies to all nursing home beds, regardless of the source of payment for the beds (private funds, insurance, Medicare, Medicaid, or other funding sources).

### *Determination of Need*

A CON is predicated on a determination of need. The future need for community nursing home beds is determined twice a year and published by the agency as a fixed bed need pool for the applicable planning horizon. The planning horizon for CON applications is 3 years. Need determinations are calculated for subdistricts within the Agency's 11 service districts<sup>5</sup> based on a formula<sup>6</sup> and estimates of current and projected population as published by the Executive Office of the Governor.

### **Moratorium on Nursing Home CONs**

In 2001, the Legislature enacted the first moratorium on the issuance of CONs for additional community nursing home beds until July 1, 2006.<sup>7</sup> The legislation reenacted the moratorium in 2006,<sup>8</sup> and then again in 2011.<sup>9</sup> The current moratorium lasts until October 1, 2016, or until Medicaid managed care is implemented statewide.

The Legislature provided for additional exceptions to the moratorium to address occupancy needs that might arise including:

- Adding sheltered nursing home beds;
- Beds may be added in a county that has no community nursing home beds and the lack of beds is the result of the closure of nursing homes that were licensed on July 1, 2001;<sup>10</sup>
- Adding the greater of no more than 10 total beds or 10 percent of the licensed nursing home beds of a nursing home located in a county having up to 50,000 residents, if:
  - The nursing home has not had any class I or class II deficiencies within the 30 months preceding the request for addition;
  - The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility has not had any class I or class II deficiencies since its initial licensure; or

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<sup>5</sup> The nursing home subdistricts are set forth in Rule 59C-2.200, F.A.C.

<sup>6</sup> Rule 59C-1.036, F.A.C.

<sup>7</sup> Chapter 2001-45, Laws of Florida, s. 52.

<sup>8</sup> Chapter 2006-161, Laws of Florida.

<sup>9</sup> Chapter 2011-135, Laws of Florida.

<sup>10</sup> The request to add beds under this exception to the moratorium is subject to the full competitive review process for CONs.

- For a facility that has been licensed for less than 24 months, the prior 6-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility has not had any class I or class II deficiencies since its initial licensure; and
- Adding the greater of no more than 10 total beds or 10 percent of the number of licensed nursing home beds if:
  - The facility has not had any class I or class II deficiencies within the 30 months preceding the request for addition;
  - The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 96 percent;
  - The prior 12-month occupancy rate for the nursing home beds in the subdistrict is 94 percent or greater; and
  - Any beds authorized for the facility under this exception in a prior request have been licensed and operational for at least 12 months.<sup>11</sup>

### County Populations

According to the AHCA population estimates from 2012,<sup>12</sup> 10 counties<sup>13</sup> have populations of 25 percent or more persons aged 65 or over. Of those counties, five currently also have ratios of 16.1 or less nursing home beds per 1,000 persons aged 65 or older.<sup>14</sup> Within those five counties, only the Villages retirement community, located in Sumter County, and On Top of the World retirement community, located in Marion County, currently meet the remaining criteria listed in the bill for an exemption from the CON process.

### Housing for Older Persons

Section 760.29(4), F.S., defines housing for older persons as housing that:

- Is provided for under any state or federal program that the Florida Commission on Human Relations determines is specifically designed and operated to assist elderly persons;
- Is intended for, and solely occupied by, persons age 62 or older; or
- Is intended for, and solely occupied by, persons age 55 or older if:
  - At least 80 percent of the occupied units are occupied by at least one person age 55 or older;
  - The housing facility or community meets policy requirements to demonstrate the intent to restrict the facility to older persons and the facility or community's governing documents meet certain criteria; and
  - The housing facility or community complies with federal law.

Additionally, s. 760.29(4)(c), F.S., states that housing will not fail to be considered housing for older persons if some current residents<sup>15</sup> do not meet the age requirements or if some housing units are vacant as long as any new residents meet the age requirement.

<sup>11</sup> The request to add beds under the exception to the moratorium is subject to the procedures related to an exemption to the CON requirements.

<sup>12</sup> On file with Senate Health Policy staff.

<sup>13</sup> Sumter, Charlotte, Citrus, Highlands, Sarasota, Martin, Indian River, Collier, Marion, and Hernando counties.

<sup>14</sup> Sumter, Indian River, Collier, Marion, and Hernando counties.

<sup>15</sup> Residents who have lived in the housing on or after Oct. 1, 1989.

### III. Effect of Proposed Changes:

The bill creates s. 408.0362, F.S., to provide for a CON exemption for additional-skilled-nursing-facility beds located within a retirement community that:

- Is located in a county that has 25 percent or more of its population aged 65 or older;
- Is located in a county with a ratio of no more than 16.1 beds per 1,000 persons aged 65 or older;
- Is zoned for mixed use;
- Is deed restricted for housing for older persons;<sup>16</sup> and
- Has a population of at least 8,000 residents.

The bill caps the maximum number of beds which may be added within the community to the lesser of 240 or the maximum number of beds required to reach a ratio of 16.1 beds per 1,000 residents aged 65 or older in the county where the community is located. To determine the percentage of older persons in a county, and the ratio of 16.1 beds per person aged 65 or older, the agency must use county population estimates for 3 years in the future.

The bill also requires that, in order to receive the CON exemption, a retirement community must make a written request for the exemption which includes evidence of population, mixed-use status, and data on the gross and net numbers of skilled-nursing-facility beds in the county. Also, any skilled nursing facility built pursuant to the exemption, and all new skilled-nursing-facility beds, must be certified under both Medicare and Medicaid programs.

The bill provides for an effective date of July 1, 2013.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

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<sup>16</sup> As defined in s. 760.29, F.S.

**B. Private Sector Impact:**

The bill may have a positive fiscal impact for persons or entities that will be able to open a skilled nursing facility or add skilled-nursing-facility beds where they are now currently restricted by the CON process.

The bill may have a negative fiscal impact on skilled nursing facilities that are currently serving the area where new nursing facilities are opened if demand decreases due to the increase in the number of skilled nursing beds. In addition, if the skilled-nursing-facility beds are included in the calculations for future skilled-nursing-facility-bed need, it could impact the ability of other providers to compete for beds in the district.

Both the negative and positive impacts of this bill will be restrained by the 240 bed cap provided for in the bill.

**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/CS by Judiciary on April 15, 2013**

The committee substitute clarifies that the bill does not authorize more than one additional nursing home in a single retirement community.

**CS by Health Policy on April 2, 2013:**

The committee substitute substantially amends SB 1482 to:

- Conform the bill to the language in CS/HB 1159;
- Exempt the construction of a skilled nursing facility located in a retirement community from the CON process if the retirement community:
  - Is located in a county that has 25 percent or more of its population aged 65 or older;
  - Is located in a county with a ratio of no more than 16.1 beds per 1,000 persons aged 65 or older;
  - Is zoned for mixed use;
  - Is deed restricted for older persons; and

- Has a population of at least 8,000 residents.
- Caps the number of additional beds at the lesser of either the maximum number of beds to reach a ratio of 16.1 beds per 1,000 persons aged 65 or older in the county where the community is located or 240 beds per community;
- Details how retirement communities can apply for the exemption, what beds qualify, and how the 16.1 beds per 1,000 persons aged 65 or older ratio must be determined.

**B. Amendments:**

None.