

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 Committee on Health Policy

BILL: SB 268

INTRODUCER: Senator Grimsley

SUBJECT: Certificates of Need

DATE: December 16, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Pre-meeting
2.			CF	
3.			AHS	
4.			AP	

I. Summary:

SB 268 amends various sections of the Florida Statutes related to nursing home certificates of need (CON) in order to:

- Repeal the moratorium on CONs for new community nursing homes and for adding additional community nursing home beds to an existing nursing home.
- Decrease the statutorily set goal minimum average sub-district nursing home occupancy rate from 94 to 92 percent.
- Allow contiguous sub-districts that each have nursing-home-bed-need to aggregate their need for the construction of one nursing home.
 - If only two sub-districts are aggregated, the nursing home must be located in the sub-district with the greater need.
 - If more than two sub-districts are aggregated, the nursing home must be located in a place that provides for reasonable geographic access for residents in each aggregated sub-district.
- Allow for an expedited review of a CON application for the replacement of a nursing home:
 - Within a 30-mile radius of the existing nursing home regardless of healthcare planning districts or the geographic location of the majority of the current nursing home's residents.
 - Outside of a 30-mile radius of the existing nursing home. The new nursing home must be within the same sub-district or a contiguous sub-district within the same district and, if moved to a contiguous sub-district, existing nursing homes in that sub-district must have at least an 85 percent occupancy rate.
- Amend several of the provisions granting exemptions to the nursing home CON process, without increasing the number of nursing home beds.

II. Present Situation:

Certificates of Need

A CON is a written statement issued by the Agency for Health Care Analysis (agency or AHCA) evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice.¹ 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 exempt.² The nursing home projects that require 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 (SNF).³

Projects Subject to Expedited Review

- Replacing a nursing home within the same district;
- Relocating a portion of a nursing home's licensed beds to a facility within the same district; or
- The new construction of a nursing home in a retirement community if certain population and bed need criteria are met.⁴

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 SNF 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;⁵
- State veteran's nursing homes operated by or on behalf of the Florida Department of Veterans' Affairs;
- Combining the beds or services authorized by two or more CONs issued in the same planning sub-district into one nursing home;
- Separating the beds or services that are authorized by one CON into two or more nursing homes in the sub-district;

¹ S. 408.032(3), F.S.

² S. 408.036, F.S.

³ S. 408.032(16), F.S., defines an SNF 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.

⁴ These provisions, laid out in s. 408.036(2)(d), F.S., are excepted from the moratorium on CONs for new nursing homes in s. 408.0435, F.S.

⁵ 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

Granting 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 sub-districts within the Agency's 11 service districts⁶ based on a formula⁷ and estimates of current and projected population as published by the Executive Office of the Governor.

Moratorium on Nursing Home CONs

Under the provisions of s. 408.0435, F.S., no CONs for additional community nursing home beds may be approved by the Agency until the moratorium on nursing home CONs expires. The Legislature first enacted this moratorium in 2001 which was slated to last until July 1, 2006.⁸ The Legislature then reenacted the moratorium in 2006,⁹ and again in 2011.¹⁰ The current moratorium lasts until October 1, 2016, or until Medicaid managed care is implemented statewide. Full implementation of the statewide Medicaid managed care program is statutorily required to be completed by October 1, 2014.¹¹

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;¹²
- 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;

⁶ The nursing home subdistricts are set forth in Rule 59C-2.200, F.A.C. and generally consist of 1 to 2 counties. Duval County is divided between several subdistricts of district 4.

⁷ Rule 59C-1.036, F.A.C.

⁸ Ch. 2001-45, L.O.F. s. 52.

⁹ Ch. 2006-161, L.O.F.

¹⁰ Ch. 2011-135, L.O.F.

¹¹ ss. 409.971 and 409.978, F.S.

¹² The request to add beds under this exception to the moratorium is subject to the full competitive review process for CONs.

- 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
- 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 sub-district 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.¹³

The new construction of a nursing home in a retirement community if certain population and bed need criteria are met.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 408.034, F.S., to reduce the average sub-district nursing home occupancy rate which the AHCA must attempt to maintain by rule from 94 to 92 percent. Potentially, this could result in an increase in nursing home beds. Statewide bed occupancy rates have remained around 88.5 percent since fiscal year 2004-05.¹⁴ The bill also allows an applicant applying for a CON for the construction of a new community nursing home to aggregate bed need from two or more contiguous sub-districts if:

- The proposed nursing home will be located in the sub-district with the greater need when only two sub-districts are aggregated, or
- The proposed nursing home will be located at a site that provides reasonable geographic access for residents in each sub-district respective of that sub-district's bed need when more than two sub-districts are aggregated.

Contiguous sub-districts where the nursing home is not built will continue to show bed need in subsequent batching cycles.

The bill deletes obsolete language related to pilot nursing home diversion projects.

Section 2 of the bill amends s. 408.036, F.S., to allow for an expedited review of a CON application for the replacement of a nursing home either:

¹³ The request to add beds under the exception to the moratorium is subject to the procedures related to an exemption to the CON requirements.

¹⁴ *AHCA bill analysis for SB 268*, December 20, 2013, on file with the Senate Health Policy Committee.

- Within a 30-mile radius of the existing nursing home regardless of healthcare planning districts or the geographic location of the majority of the current nursing home's residents, or
- Outside of a 30-mile radius of the existing nursing home if the new nursing home will be within the same sub-district or a contiguous sub-district. If the nursing home is moved to a contiguous sub-district, existing nursing homes in that sub-district must have at least an 85 percent occupancy rate.

The bill makes the following changes to established CON exemptions:

- Reduces the required average occupancy rate from 96 to 94 percent for a facility to add a number of beds equal to the greater of no more than 10 beds or 10 percent of the facility's current licensed beds;
- Increases the distance a replacement nursing home may be located from the current nursing home to up to 5, rather than 3, miles;¹⁵ and
- Allows the consolidation of multiple licensed nursing homes with any shared controlled interest or the transfer of beds between such nursing homes if all of the nursing homes are within the same planning district, rather than sub-district. The site of relocation must be within 30 miles of the original sites and the total number of nursing home beds in the planning district may not increase.

The bill also makes technical and conforming changes to this section.

Section 3 of the bill repeals s. 408.0435, F.S., which establishes the moratorium on nursing home CONs.

Section 4 of the bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁵ According to a phone conversation with Molly McKinstry, Deputy Secretary for Health Quality Assurance with the AHCA, presently there are no nursing homes within 3 miles of their sub-district or district boundaries. However, some nursing homes may be within 5 miles of such boundaries and with this change may be able to move outside of those boundaries.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

SB 268 repeals the moratorium preventing the AHCA from issuing CONs for new community nursing home beds in most instances. Repealing this moratorium will allow the AHCA to grant new CONs for the construction of new community nursing homes and the addition of community nursing home beds to existing nursing homes when need is determined. The bill also eases some of the guidelines that the AHCA must follow when issuing new nursing home CONs. Most significantly, the bill allows for a reduced minimum occupancy rate for existing nursing homes and allows CON applicants to aggregate bed need between sub-districts to qualify for the CON.

When taken together, the provisions of the bill will allow for the construction of new nursing homes and the expansion of existing nursing homes where such construction or expansion would have been previously restricted. This new construction will likely have indeterminate positive effects on the parts of the private sector responsible for such construction, but may also have indeterminate negative effects on existing nursing homes in or around areas where such new construction is allowed.

C. Government Sector Impact:

According to the agency's bill analysis,¹⁶ the AHCA will need to amend its CON rules and revise the bed need formula to comply with the reduced average sub-district nursing home occupancy rate. Rewriting these rules will produce a minor indeterminate fiscal impact for the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The term "reasonable geographic access for residents in the respective sub-districts" on line 46 may prove difficult to define by rule since several of the state's contiguous sub-districts cover large geographic areas. For example, District 3 has seven sub-districts and consists of 16 counties ranging from Hamilton County to Hernando County, District 8 has six sub-districts and includes seven counties, and District 4 has four sub-districts and includes seven counties.¹⁷

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 408.034, 408.036.

¹⁶ *Supra*, 14.

¹⁷ *Supra*, 14.

This bill repeals the following section of the Florida Statutes: 408.0435.

IX. Additional Information:

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

None.

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
