

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 497 Hospice Care  
**SPONSOR(S):** Health Innovation Subcommittee; Stone  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 724

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	13 Y, 0 N, As CS	Royal	Crosier
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Hospice is a program of care and support for terminally ill patients. A specially trained team of professionals and caregivers provide care for the patient's physical, emotional, social, and spiritual needs, and provides support to family caregivers. In Florida, the Agency for Health Care (AHCA) and the Department of Elder Affairs (DOEA) regulate hospices. A hospice is defined as a corporation or limited liability company that provides a continuum of palliative and supportive care for a terminally ill patient and his or her family members. As of January 18, 2018, there are 47 licensed hospice providers in the state.

HB 497 permits a hospice to provide community palliative care to seriously ill patients and their families. This broadens the patient population to which a hospice will be allowed to provide services. The bill gives a hospice the option to provide community palliative care services to seriously ill persons and their families directly or through a contracted provider. The bill defines a "seriously ill" person as someone with a life-threatening medical condition that may continue indefinitely and may be managed through palliative care. The bill defines community palliative care as consultative palliative care delivered across care settings that addresses the physical, emotional, psychosocial, and spiritual needs of a seriously ill patient and his or family.

The bill has no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Hospice

Hospice is a program of care and support for terminally ill patients, which helps them to live comfortably.<sup>1</sup> A specially trained team of professionals and caregivers provide care for the terminally ill patient's physical, emotional, social, and spiritual needs, and provide support to family caregivers.<sup>2</sup> The team that provides hospice services includes physicians, nurses, medical social workers, spiritual and pastoral counselors, home health aides, therapists, bereavement counselors, and specially trained volunteers.<sup>3</sup> Hospice care includes the following items and services:

- Nursing care;
- Physical or occupational therapy, or speech-language pathology services;
- Medical social services;
- Home health aide and homemaker services;
- Medical supplies, including prescription drugs and biologicals, and the use of medical appliances;
- Physician services;
- Short-term inpatient care; and
- Counseling.<sup>4</sup>

Hospice care may be provided to a patient in an inpatient hospice facility, with licensed beds;<sup>5</sup> it may also be provided to the patient in the patient's home or in another facility, such as a hospital or a nursing home. Hospices provide four levels of care:

- **Routine care** provides the patient with hospice services at home or in a home-like setting. The patient's family provides primary care, with the assistance of the hospice team.
- **Continuous care** provides the patient with skilled nursing services in his or her home during a medical crisis.
- **Inpatient care** is provided in a healthcare facility for symptoms of a medical crisis that cannot be managed in the patient's home. Inpatient care is provided on a temporary basis as determined by the patient's physician and the hospice team.
- **Respite care** is provided in a healthcare facility and is primarily to provide the patient's family members and caretakers with a period of relief.<sup>6</sup>

To be eligible for hospice services under Medicaid or Medicare,<sup>7</sup> a patient must have a prognosis of living six months or less and no longer be seeking curative care.<sup>8</sup> However, Medicare coverage does

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<sup>1</sup> Centers for Medicare and Medicaid Services, *Medicare Hospice Benefits*, available at <https://www.medicare.gov/Pubs/pdf/02154-Medicare-Hospice-Benefits.PDF> (last visited January 18, 2018).

<sup>2</sup> Id.

<sup>3</sup> Florida Hospice and Palliative Care Association, *About Hospice*, <http://www.floridahospices.org/hospice-palliative-care/about-hospice/>, (last visited January 18, 2018).

<sup>4</sup> 42 U.S.C. § 1395x(dd).

<sup>5</sup> A hospice must obtain a Certificate of Need (CON) to increase the number of licensed beds in an inpatient facility, see the discussion of CON below.

<sup>6</sup> Id.

<sup>7</sup> Medicare is the federal health insurance program for people who are 65 or older, certain younger people with disabilities, and people with end-stage renal disease. Medicare Part A covers hospice care.

<sup>8</sup> 42 U.S.C. § 1395d, 1395x.

not end if a patient lives beyond six months after admission; the patient can continue to receive services as long as a physician continues to document the patient's eligibility.<sup>9</sup>

## Hospice Care in Florida

### *Regulation of Hospices*

In Florida, the Agency for Health Care Administration (AHCA) and the Department of Elder Affairs (DOEA) regulate hospices pursuant to part IV of Chapter 400, F.S., part II of Chapter 408, F.S., and Chapter 58A-2, F.A.C. A hospice is defined as a corporation or limited liability company that provides a continuum of palliative<sup>10</sup> and supportive care for a terminally ill<sup>11</sup> patient and his or her family members.<sup>12</sup> Section 400.601(6), F.S., defines "hospice services" as the items and services furnished to a patient and his or her family by a hospice and specifies where those services may be provided.<sup>13</sup>

Hospices are subject to the Certificate of Need (CON) program.<sup>14</sup> A CON is a written statement issued by AHCA evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility or health service. The Florida CON program has three levels of review: full, expedited, and exempt.<sup>15</sup> Unless a hospital project is exempt from the CON program, it must undergo a full comparative review.<sup>16</sup> Projects required to undergo full comparative review include building a hospice and establishing a hospice program or hospice inpatient facility.<sup>17</sup> Section 408.036(3), F.S., provides exemptions to CON review for certain projects, which includes adding hospice services or swing beds<sup>18</sup> in a rural hospital, the total of which does not exceed one-half of its licensed beds.

As of January 18, 2018, there are 47 licensed hospice providers in Florida, with 1,038 licensed beds.<sup>19</sup>

### **Effect of Proposed Changes**

#### Palliative Care for Seriously Ill Patients

HB 497 permits a hospice to provide palliative care to seriously ill patients and their families. This broadens the patient population to which a hospice will be allowed to provide services. The bill defines a "seriously ill" patient as someone who has a life-threatening medical condition that may continue indefinitely, and which may be managed through palliative care.

The bill creates s. 400.6093, F.S., to allow a hospice to provide community palliative care services to seriously ill persons and their families directly or through a contracted provider. It also allows for community palliative care of a seriously ill patient to manage the side effects of treatment for a progressive disease, medical condition, or surgical condition. The bill specifies that it does not preclude

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<sup>9</sup> Id.

<sup>10</sup> Palliative care means services or interventions which are not curative but are provided for the reduction or abatement of pain and human suffering. S. 400.601(7), F.S.

<sup>11</sup> Rule 59C-1.0355, F.A.C.; s. 400.601(10), F.S. In Florida, a "terminally ill" patient, for hospice purposes, is as a patient with a medical prognosis that his or her life expectancy is 1 year or less if the illness runs its normal course.

<sup>12</sup> S. 400.601(4), F.S.

<sup>13</sup> Hospice services may be provided in a place of temporary or permanent residence used as the patient's home for the purpose of maintaining the patient at home; or, if the patient needs short-term institutionalization, the services shall be furnished in cooperation with those contracted institutions or in the hospice inpatient facility.

<sup>14</sup> S. 408.036, F.S. CON programs are designed to restrain health care costs and provide for directed, measured planning for new services and facilities National Conference of State Legislators, *CON-Certificate of Need State Laws*, available at <http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx> (last visited January 18, 2018).

<sup>15</sup> S. 408.036, F.S.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> S. 395.602(2)(g), F.S., defines "swing bed" as a bed which can be used interchangeably as a hospital, skilled nursing facility, or intermediate care facility bed pursuant to 42 C.F.R. parts 405, 435, 440, 442, and 447.

<sup>19</sup> AGENCY FOR HEALTH CARE ADMINISTRATION, *Facility/Provider Search Results – Hospice*, <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited January 18, 2018).

any other providers from being able to provide community palliative care, nor does it mandate or prescribe additional Medicaid coverage for community palliative care.

The bill distinguishes community palliative care services from hospice services, which are limited to terminally ill patients. The bill defines a hospice program as a continuum of palliative and supportive care that is provided to terminally ill patients and their families. The bill defines community palliative care as consultative palliative care delivered across care settings that addresses the physical, emotional, psychosocial, and spiritual needs of a seriously ill patient and his or family. The bill also provides types of community palliative care that hospices may provide to seriously ill patients, such as:

- Consultation by a licensed, board certified hospice and palliative care physician or osteopathic physician, or advanced registered nurse practitioner for care planning, pain or symptom management, and care goals;
- Assistance with advance care planning, grief support for the patient and caregiver, and adjustment to the illness and other psychosocial and emotional needs by a licensed clinical social worker; and
- Assistance with spiritual needs by a clergy, chaplain or spiritual counselor.

The bill also authorizes hospices to identify licensed funeral service providers for terminally ill patients and their families.

The bill provides an effective date of July 1, 2018.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 400.6005, F.S., relating to legislative findings and intent.

**Section 2:** Amends s. 400.601, F.S., relating to definitions.

**Section 3:** Amends s. 400.609, F.S., relating to hospice services.

**Section 4:** Creates s. 400.6093, F.S., relating to community palliative care services.

**Section 5:** Amends s. 400.6095, F.S. relating to patient admission; assessment; plan of care; discharge; death.

**Section 6:** Provides an effective date of July 1, 2018.

## **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:

More patients will have access to palliative care services in a hospice setting. Seriously ill patients receiving palliative care in a hospice may have a cost savings associated with less need for care in a hospital and hospices may benefit from providing palliative care to a new patient population.

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:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 23, 2018, the Health Innovation Subcommittee adopted an amendment that:

- Defines community palliative care.
- Authorizes hospices to identify licensed funeral service providers for patients.
- Provides types of community palliative care that hospices may provide to seriously ill patients.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.