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 Appropriations

BILL:	CS/CS/SB 1712
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Harrell
SUBJECT:	Hospital Licensure
DATE:	April 19, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	**Fav/CS**
2.	McKnight	Kidd	AHS	**Recommend: Fav/CS**
3.	McKnight	Kynoch	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1712 amends and repeals various sections of the Florida Statutes to:

- Effective July 1, 2021, eliminate the requirement that a new freestanding general hospital must obtain a certificate of need (CON) from the Agency for Health Care Administration (AHCA) prior to being licensed; and
- Effective July 1, 2024:
  - Eliminate the CON program for all other hospitals and for existing hospitals that wish to provide tertiary services, such as neonatal intensive care, comprehensive rehabilitation, and pediatric cardiac catheterization services; and
  - Eliminate provisions prohibiting the AHCA from licensing hospitals whose discharges are over 65 percent cardiac-related, orthopedic-related, or cancer-related diseases.

The bill maintains rulemaking and licensure requirements for hospitals that wish to provide tertiary services and maintains the CON program for other healthcare facilities such as nursing homes and hospice facilities.

Except as otherwise specified, the bill takes effect on July 1, 2021.

II. Present Situation:

Hospital Licensure

Hospitals are licensed by the AHCA under chapter 395, F.S., and the general licensure provisions of part II, of chapter 408, F.S. Hospitals offer a range of health care services with beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care.[1] Hospitals must, at a minimum, make clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment, regularly available.[2]

A specialty hospital, in addition to providing the same services as general hospitals, provides other services, including:

- A range of medical services restricted to a defined age or gender group;
- A restricted range of services appropriate to the diagnosis, care, and treatment of patients with specific categories of medical or psychiatric illnesses or disorders; or
- Intensive residential treatment programs for children and adolescents.[3]

Section 395.1041(2), F.S., requires the AHCA to maintain an inventory of hospitals with an emergency department. The inventory must list all services within the service capability of each hospital, and such services must appear on the face of the hospital's license. As of March 12, 2019, 217 of the 308 licensed hospitals in the state have an emergency department.[4]

Unless exempt, a hospital must obtain a CON prior to licensure. Facilities must meet initial licensing requirements by submitting a completed application and required documentation, and the satisfactory completion of a facility survey. The current license fee is $1,565.13 or $31.46 per bed, whichever is greater.[5] The survey fee is $400 or $12 per bed, whichever is greater.[6]

Section 395.1055, F.S., requires the AHCA to adopt rules for hospitals. Separate standards may be provided for general and specialty hospitals.[7] The rules for general and specialty hospitals must include minimum standards to ensure:

- A sufficient number of qualified types of personnel and occupational disciplines are on duty and available at all times to provide necessary and adequate patient care;
- Infection control, housekeeping, sanitary conditions, and medical record procedures are established and implemented to adequately protect patients;
- A comprehensive emergency management plan is prepared and updated annually;
- Licensed facilities are established, organized, and operated consistent with established standards and rules; and

[1] Section 395.002(12), F.S.
[2] Id.
[3] Section 395.002(27), F.S.
[4] Agency for Health Care Administration, Facility/Provider Search Results, Hospitals, *available at* http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx (reports generated on March 13, 2019).
[5] Rule 59A-3.066(3), F.A.C.
[6] Section 395.0161(3)(a), F.S.
[7] Section 395.1055(2), F.S.

- Licensed facility beds conform to minimum space, equipment, and furnishing standards.[8]

The minimum standards for hospital licensure are provided under Rule 59A-3, Florida Administrative Code (F.A.C.). The AHCA may perform inspections of hospitals, including:

- Inspections directed by the federal Centers for Medicare & Medicaid Services;
- Validation inspections;
- Life safety inspections;
- Licensure complaint investigations; and
- Emergency access complaint investigations.[9]

The AHCA must accept an inspection performed by an accrediting organization in lieu of its own periodic licensure inspection.[10]

Certain Specialty Hospital Licensure Ban

Section 395.003(8), F.S., restricts a hospital from being licensed if the diagnosis-related groups for 65 percent or more of the discharges from the hospital are for diagnosis, care, and treatment of patients who have cardiac-related diseases and disorders, orthopedic-related diseases and disorders, cancer-related diseases and disorders, or any combination of the three, with some exceptions. Additionally a hospital may not be licensed if it restricts its medical and surgical services to primarily or exclusively cardiac, orthopedic, surgical, or oncology specialties.

- In 2003, the federal government passed the Medicare Prescription Drug Improvement, and Modernization Act[11] that placed an 18 month moratorium on physician referrals to specialty hospitals in which the physician had an ownership interest and required the U.S. Department of Health and Human Services (HHS) to study such hospitals. Specifically, the HHS was tasked with:
  - Studying referral patterns of specialty hospital owners (specific to Medicare patients);
  - Comparing the quality of care and patient satisfaction levels between specialty and full service hospitals; and
  - Assessing the differences in uncompensated care between specialty hospitals and full service hospitals.
- In 2004, the Florida Legislature amended s. 395.003, F.S., with language banning certain specialty hospitals from being licensed in Florida.[12]
- In 2005, the HHS issued a report that concluded:
  - There were no "clear, consistent patterns of preference for referring to specialty hospitals among physician owners relative to their peers;"
  - "Patient satisfaction was very high in both cardiac and orthopedic/surgery hospitals, as Medicare beneficiaries enjoyed large private rooms, quiet surroundings, adjacent sleeping rooms for their family members if needed, easy parking, and good food;" and
  - "The total proportion of net revenue that specialty hospitals devoted to uncompensated care and taxes combined exceeded the proportion of net revenues that community hospitals devoted to uncompensated care" due to specialty hospitals being required to pay

[8] Section 395.1055(1), F.S.
[9] Section 395.0161(1), F.S.
[10] Section 395.0161(2), F.S.
[11] See https://www.congress.gov/bill/108th-congress/house-bill/1/text (last viewed April 17, 2019).
[12] See HB 329 (2004), Ch. 2004-383, L.O.F.

real estate, property, income, and sales tax while full service hospitals were generally exempt.[13]

- The federal moratorium on referrals to specialty hospitals was allowed to expire in June of 2006.
- In 2010, the Affordable Care Act imposed additional requirements for physician-owned hospitals to qualify for the whole hospital and rural provider exceptions. A physician-owned hospital is now generally prohibited from expanding facility capacity. However, a physician-owned hospital that qualifies as an applicable hospital or high Medicaid facility may request an exception to the prohibition from the HHS Secretary.[14]
- There has been no significant change in Florida law regarding specialty hospitals since the ban was enacted in 2004.

Florida's Certificate of Need Program

Overview

In Florida, a CON is a written statement issued by the AHCA evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility or health service, including hospices. The Florida CON program has three levels of review: full, expedited, and exempt.[15] Unless a hospital project is exempt from the CON program, it must undergo a full comparative review. Expedited review is primarily targeted toward nursing home projects.

Florida's CON program has existed 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 of 1974 (Act), which established minimum requirements regarding the type of services subject to CON review, review procedures, and review criteria.[16] Each state was required to have a CON program in compliance with the Act as a condition for obtaining federal funds for health programs. The Act was repealed in 1986.

Projects Subject to Full Review

Some hospital projects are required to undergo a full comparative CON review under the statute, including:

- New construction of general hospitals, long-term care hospitals, and freestanding specialty hospitals;
- Replacement of a hospital if the proposed project site is not located on the same site or within one mile of the existing health care facility;[17]
- Increasing the number of beds for comprehensive rehabilitation; and

[13] See https://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/Downloads/RTC-StudyofPhysOwnedSpecHosp.pdf, (last viewed April 17, 2019).
[14] See *Physician-Owned Hospitals*, available at https://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/Physician_Owned_Hospitals.html (last viewed April 17, 2019).
[15] Section 408.036, F.S.
[16] Pub. Law No. 93-641, 42 U.S.C. s. 300k et seq.
[17] Section 395.6025, F.S., exempts rural hospitals from the requirement to obtain a CON for building a new hospital, or replacing a hospital, located in a county with a population between 15,000 and 18,000 and a population density of less than 30 persons per square mile as long as the new or replacement hospital is located within 10 miles of the current rural hospital.

- Establishing tertiary health services.[18]

Projects Subject to Expedited Review

Section 408.036(2), F.S., permits certain projects to undergo expedited CON review. Applicants for expedited review are not subject to the application deadlines associated with full comparative review and may submit an application at any time. Projects subject to an expedited review include the transfer of a CON and certain replacements, relocations, and new construction of nursing homes.[19]

Exemptions from Review

Section 408.036(3), F.S., provides many exemptions to CON review for certain hospital projects, including:

- Adding swing beds[20] in a rural hospital, the total of which does not exceed one-half of its licensed beds.
- Converting licensed acute care hospital beds to Medicare and Medicaid certified skilled nursing beds in a rural hospital, as defined in s. 395.602, F.S., so long as the conversion of the beds does not involve the construction of new facilities.
- Adding hospital beds licensed under ch. 395, F.S., for comprehensive rehabilitation, the total of which may not exceed the greater of 10 total beds or 10 percent of the licensed capacity.
- Establishing a Level II neonatal intensive care unit (NICU) if the unit has at least 10 beds, and if the hospital had a minimum of 1,500 births during the previous 12 months.
- Establishing a Level III NICU if the unit has at least 15 beds, and if the hospital had a Level II NICU and a minimum of at least 3,500 births during the previous 12 months.
- Establishing a Level III NICU if the unit has at least five beds, and is a verified trauma center,[21] and if the applicant has a Level II NICU.
- Establishing an adult open heart surgery program in a hospital located within the boundaries of a health service planning district, which:
  - Has experienced an annual net out-migration of at least 600 open heart surgery cases for three consecutive years; and
  - Has a population that exceeds the state average population per licensed and operational open-heart programs by at least 25 percent.
- For the addition of mental health services or beds if the applicant commits to providing services to Medicaid or charity care patients at a level equal to or greater than the district average.

[18] Section 408.032(17), F.S., defines "tertiary health service" as a health service which, due to its high level of intensity, complexity, specialized or limited applicability, and cost, should be limited to, and concentrated in, a limited number of hospitals to ensure the quality, availability, and cost-effectiveness of such service. Examples of such service include, but are not limited to, pediatric cardiac catheterization, pediatric open-heart surgery, organ transplantation, neonatal intensive care units, comprehensive rehabilitation, and medical or surgical services which are experimental or developmental in nature to the extent that the provision of such services is not yet contemplated within the commonly accepted course of diagnosis or treatment for the condition addressed by a given service. Pursuant to this section, the AHCA established a list of all tertiary health services in Rule 59C-1.002, F.A.C.

[19] Section 408.036(2), F.S.

[20] Section 395.602(2)(c), F.S., defines "swing bed" as a bed which can be used interchangeably as either a hospital, skilled nursing facility (SNF), or intermediate care facility (ICF) bed pursuant to 42 C.F.R. parts 405, 435, 440, 442, and 447.

[21] Section 395.4001(15), F.S., defines "trauma center" as a hospital that has been verified by the Department of Health to be in substantial compliance with the requirements in s. 395.4025, F.S., and has been approved to operate as a Level I trauma center, Level II trauma center, or pediatric trauma center, or is designated as a Level II trauma center pursuant to s. 395.4025(15), F.S.

Determination of Need, Application, and Review Processes

A CON is predicated on a determination of need. The future need for services and projects is known as the "fixed need pool,"[22] which the AHCA publishes for each batching cycle. Rule 59C-1, F.A.C., provides need formulas to calculate the fixed need pool for certain services, including NICU services,[23] adult and child psychiatric services,[24] adult substance abuse services,[25] and comprehensive rehabilitation services.[26]

Upon determining that a need exists, the AHCA accepts applications for CON based on batching cycles. A batching cycle is a means of grouping, for comparative review, of CON applications submitted for beds, services, or programs having a like CON need methodology or licensing category in the same planning horizon and the same applicable district or subdistrict.[27]

The CON review process consists of four batching cycles each year, including two batching cycles each year for two project categories: hospital beds and facilities, and other beds and programs.[28] The "hospital beds and facilities" batching cycle includes applicants for new or expanded:

- Comprehensive medical rehabilitation beds;
- Adult psychiatric beds;
- Child and adolescent psychiatric beds;
- Adult substance abuse beds;
- NICU level II beds; and
- NICU level III beds.[29]

The "other beds and programs" batching cycle includes:

- Nursing home beds;
- Hospice beds;
- Pediatric open heart surgery;
- Pediatric cardiac catheterization services; and
- Organ transplantation services.[30]

Requests for an expedited review or exemption may be made at any time and are not subject to batching requirements.[31]

[22] Rule 59C-1.002(19), F.A.C., defines "fixed need pool" as the identified numerical need, as published in the Florida Administrative Register, for new beds or services for the applicable planning horizon established by the AHCA in accordance with need methodologies which are in effect by rule at the time of publication of the fixed need pools for the applicable batching cycle.
[23] Rule 59C-1.042(3), F.A.C.
[24] Rule 59C-1.040(4), F.A.C.
[25] Rule 59C-1.041(4), F.A.C.
[26] Rule 59C-1.039(5), F.A.C.
[27] Rule 59C-1.002(5), F.A.C. Note: s. 408.032(5), F.S., establishes the 11 district service areas in Florida.
[28] Rule 59C-1.008(1)(g), F.A.C.
[29] Rule 59C-1.008(1), F.A.C.
[30] Id.
[31] Section 408.036, F.S., and Rule 59C-1.004(1), F.A.C.

At least 30 days prior to the application deadline for a batch cycle, an applicant must file a letter of intent with the AHCA.[32] A letter of intent must describe the proposal, specify the number of beds sought, and identify the services to be provided, and the location of the project.[33]

Applications for CON review must be submitted by the specified deadline for the particular batch cycle.[34] The AHCA must review the application within 15 days of the filing deadline and, if necessary, request additional information for an incomplete application.[35] The applicant then has 21 days to complete the application or it is deemed withdrawn from consideration.[36]

Within 60 days of receipt of the completed applications for that batch, the AHCA must issue a State Agency Action Report and Notice of Intent to grant a CON for a project in its entirety, to grant a CON for identifiable portions of a project, or to deny a CON for a project.[37] The AHCA must then publish the decision, within 14 days, in the Florida Administrative Register.[38] If no administrative hearing is requested within 21 days of the publication, the State Agency Action Report and the Notice of Intent become a final order of the AHCA.[39]

In 2008, the Legislature significantly modified the application and review process for hospital CONs. The revisions included new and separate requirements for general hospital CONs, including:

- Revised contents for CON applications;
- Revised criteria which the AHCA must consider when reviewing a CON application;
- Prohibiting an applicant with a current CON application from submitting a letter of intent for to file another application;
- Requiring the AHCA to hold a public hearing upon the request of any applicant or substantially affected person;
- Limiting the period of a continuance for any CON related hearings to four months; and
- Requiring a party appealing a final order for a CON to post a $1 million bond, which is forfeited for attorney's fees and costs if the appellant loses.[40]

Fees

An applicant for CON review must submit a fee to the AHCA at the time of application submission. The minimum CON application filing fee is $10,000.[41] In addition to the base fee, an applicant must pay a fee of 1.5 percent of each dollar of the proposed expenditure; however, the total fee may not exceed $50,000.[42] A request for a CON exemption must be accompanied by a $250 fee payable to the AHCA.[43]

[32] Section 408.039(2)(a), F.S.
[33] Section 408.039(2)(c), F.S.
[34] Rule 59C-1.008(1)(g), F.A.C.
[35] Section 408.039(3)(a), F.S.
[36] Id.
[37] Section 408.039(4)(b), F.S.
[38] Section 408.039(4)(c), F.S.
[39] Section 408.039(4)(d), F.S.
[40] Chapter 2008-29, L.O.F.
[41] Section 408.038, F.S.
[42] Id.
[43] Section 408.036(4), F.S., and Rule 59C-1.005(2)(g), F.A.C.

Litigation

Florida law authorizes competitors to challenge CON decisions. A Notice of Intent to Award may be challenged by a competing applicant in the same review cycle or an existing provider in the same district by submitting evidence that they will be substantially affected if the CON is awarded. For general hospital CONs, only competing applicants and existing hospitals that submitted a written statement of opposition may initiate or intervene in an administrative hearing.[44] A challenge to a CON decision is heard by an administrative law judge under the Division of Administrative Hearings.[45] A recommended order must be issued by the administrative law judge within 30 days after the receipt of the proposed recommended order or the deadline for submission for a proposed recommended order, whichever occurs first. The AHCA must render a Final Order within 45 days of receiving the recommended order of the administrative law judge.[46] A party to an administrative hearing may challenge a Final Order to the District Court of Appeals for judicial review within 30 days of receipt of a Final Order. Parties challenging a general hospital CON must post a $1 million bond, which will be used to pay attorney fees and costs if the appeal is lost.[47]

Nationwide

Thirty-five states have some form of CON program while 12 states do not have CON requirements for any type of health care facility or service.[48] The types of facilities covered and the requirements of each CON program vary from state to state.

Purpose and Effect of Certificate of Need

Cost Containment

Certificate of need programs are designed to restrain health care costs and provide for directed, measured planning for new services and facilities. Such programs were originally established to regulate the addition of new facilities, or new beds in hospitals and nursing homes, for example, and to prevent overbuying of expensive equipment, under the economic theory that excess capacity directly results in health care price inflation. When a hospital or health care service provider cannot meet its obligations, fixed costs must be met through higher charges for the beds that are used or for the number of patients using the service.[49]

In addition to cost containment, CON regulation is intended to create a "quid pro quo" in which profitability of covered medical services is increased by restricting competition and, in return, medical providers cross-subsidize specified amounts of indigent care, or medical services to the

[44] Section 408.039(5)(c), F.S.
[45] Id.
[46] Section 408.039(5)(e), F.S.
[47] Section 408.039(6), F.S.
[48] National Conference of State Legislators, *Certificate of Need State Laws* (February 28, 2019), *available at* http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx (last viewed April 3, 2019).
[49] Id.

poor that are unprofitable to the provider.[50] Some states address indigent care to underinsured or uninsured patients and the provision of care for the Medicaid program in their CON process.[51] In Florida applicants may apply conditions to increase their chances of being issued a CON, including by committing to providing services to Medicaid and charity patients at certain levels.

Some studies have found that CON programs do not meet the goal of limiting costs in health care. One study found that "at best, CON has had a modest cost-containing influence on hospital and other acute care services."[52] Additionally, a literature review conducted in 2004 by the Federal Trade Commission and the Department of Justice concluded that "[O]n balance, CON programs are not successful in containing health care costs, and that they pose serious anticompetitive risks that usually outweigh their purported economic benefits. . . .[i]ndeed, there is considerable evidence that CON programs can actually increase prices by fostering anticompetitive barriers to entry. Other means of cost control appear to be more effective and pose less significant competitive concerns."[53]

Indigent Care

Studies are split, however, on whether CON regulation has improved access to care for the underinsured and uninsured. One study found that access to care for the underserved populations has increased in states with CON programs,[54] while another found only insignificant evidence to support such a conclusion.[55]

III. Effect of Proposed Changes:

The bill amends and repeals multiple statutes related to hospital licensure and CON.

Repeal of the Ban on Certain Specialty Hospitals

Section 1 amends s. 395.003, F.S., to repeal provisions prohibiting the AHCA from licensing a hospital if:

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[50] Thomas Stratmann and Jacob Russ, *Do Certificate-of-Need Laws Increase Indigent Care?* Mercatus Center at George Mason University (July 2014) p. 2, *available at* https://www.mercatus.org/publication/do-certificate-need-laws-increase-indigent-care (last viewed April 3, 2019).

[51] For example, Delaware (Del. Code Ann. tit. 16 s. 9303), Georgia (Ga. Code Ann. §111-2-2.03) (providing an exemption from CON with a certain percentage of Medicaid and charity care), Rhode Island (216-RICR-40-10-22.14) (requiring findings of indigent and Medicaid care that will be offered), and Virginia (12 Va. Admin. Code §5-230-40 and §5-220-270) require CON applicants to comply with such provisions.

[52] Christopher J. Conover and Frank A. Sloan, *Does Removing Certificate-of-Need Regulations Lead to a Surge in Health Care Spending?* Journal of Health Politics, Policy, and Law: Vol. 23, No. 3, June 1998, p. 478, *available at* https://read.dukeupress.edu/jhppl/article-abstract/23/3/455/82081/Does-Removing-Certificate-of-Need-Regulations-Lead (last viewed April 3, 2019).

[53] Improving Health Care: *A Dose of Competition*: A Report by the Federal Trade Commission and the U.S. Department of Justice (July 23, 2004) p. 22, *available at* https://www.ftc.gov/reports/improving-health-care-dose-competition-report-federal-trade-commission-department-justice (last viewed April 3, 2019). Note: this report is based on 27 days of joint hearings, an FTC-sponsored workshop, and independent research (see p. 1).

[54] Tracy Yee, Lucy B. Stark, et al, *Health Care Certificate-of-Need Laws: Policy or Politics?*, Research Brief, National Institute for Health Care Reform, No. 4, (May 2011), *available at* http://nihcr.org/analysis/improving-care-delivery/prevention-improving-health/con-laws/ (last viewed April 3, 2019).

[55] *Supra* note 51.

- The diagnosis-related groups for 65 percent or more of the discharges from the hospital, in the most recent year for which data is available to the AHCA are for diagnosis, care, and treatment of patients who have:
  - Cardiac-related diseases and disorders classified as diagnosis-related groups in major diagnostic category 5;
  - Orthopedic-related diseases and disorders classified as diagnosis-related groups in major diagnostic category 8;
  - Cancer-related diseases and disorders classified as discharges in which the principal diagnosis is neoplasm or carcinoma or is for an admission for radiotherapy or antineoplastic chemotherapy or immunotherapy; or
  - Any combination of the above discharges.
- The hospital restricts its medical and surgical services to primarily or exclusively cardiac, orthopedic, surgical, or oncology specialties.

The bill also repeals provisions providing exceptions to the above prohibition.

This section is effective July 1, 2024.

Repeal of CON for General Hospitals

Sections 5, 6, 9, 11, 13, 16, 17, 18, and 19 amend and repeal various sections of the Florida Statutes to repeal the requirement to obtain a CON prior to establishing a new or replacement general hospital or converting a specialty hospital to a general hospital.

Section 19 amends s. 408.808, F.S., to clarify that a hospital may still receive an inactive license even if the hospital was not issued a CON.

These sections are effective July 1, 2021.

Repeal of CON for all Hospitals and Tertiary Services

Sections 2, 3, 4, 7, 8, 10, 12, 14, and 15 amend and repeal various sections of the Florida Statutes to repeal the requirement to obtain a CON prior to establishing a new or replacement hospital or prior to beginning to offer a tertiary service at an existing hospital.

Section 3 amends s. 395.1055, F.S., to incorporate all licensure standards for adult cardiac services that are currently established in s. 408.0361, F.S., into hospital licensure statutes. Section 408.0361, F.S., is repealed by the bill.

These sections are effective July 1, 2024.

Section 20 provides an effective date of July 1, 2021, except as otherwise specified.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/SB 1712 may have an indeterminate negative fiscal impact on existing hospitals if additional hospitals are licensed in the same area and if such hospital projects would not have been licensed under current law.

This bill may have an indeterminate positive fiscal impact on individuals who receive medical services in a hospital if the individual is paying for the services directly, or if there is an increase in the number of hospitals that are licensed under the provisions of the bill and such increase results in a decrease in the amount that hospital charge for such services.

C. Government Sector Impact:

This bill may have an indeterminate fiscal impact on the AHCA due to removing CON application fees (as much as $50,000 per new hospital).[56] However, should there be an increase in new hospital licensures, there will also be an increase in hospital licensure fees.

[56] Hospital CON application fees were $703,120 in CY 2018. See AHCA, *Senate Bill 1712 Analysis* (March 5, 2019) (on file with Senate Committee on Health Policy).

The bill may also have an indeterminate fiscal impact on the AHCA by potentially increasing the number of hospitals the AHCA will be required to regulate. The workload in the Hospital and Outpatient Services Unit, responsible for licensing, registering, and regulating hospitals and various other outpatient and health care service facilities, could increase depending on licensure growth and other associated duties of the bill. The AHCA also anticipates an increase in workload for the Office of the General Counsel due to the increase in sanctioning ability on condition compliance. Another area that may also experience increased workload includes the Office of Plans and Construction, charged with reviewing and approving facilities' plans and specifications and surveying construction. The AHCA plans to shift CON staff to assist with the new tasks in the bill and help manage potential program growth.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 395.003, 395.0191, 395.1055, 395.1065, 408.032, 408.033, 408.034, 408.035, 408.036, 408.037, 408.039, 408.043, and 408.808.

This bill repeals the following sections of the Florida Statutes: 395.6025 and 408.0361.

IX. 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 Appropriations on April 18, 2019:
The committee substitute:

- Repeals CON for general hospitals effective July 1, 2021.
- Repeals CON for all hospitals and tertiary services effective July 1, 2024.
- Repeals the prohibition on licensing hospitals that primarily provide cardiac, orthopedic, or cancer-related care effective July 1, 2024.
- Eliminates the requirement that a new general hospital must have 100 or more beds, have an emergency department, participate in Medicare and Medicaid, and provide charity care.
- Makes other conforming changes.

CS by Health Policy on April 1, 2019.
The CS:

- Narrows the repeal of CON to the construction of new general hospitals, rather than for all hospitals.

- Establishes additional licensure requirements applicable to new general hospitals licensed after July 1, 2019, without a CON, including that each such hospital:
  - Must have at least 100 beds and have intensive care, progressive care, and medical surgical beds. This requirement does not apply to rural hospitals, long-term care hospitals, and hospitals established in a MUA;
  - Must have an onsite emergency department that operates 24 hours a day, seven days a week. This requirement does not apply to long-term care hospitals; and
  - Must notify the AHCA before beginning construction.
- Requires each such new hospital to participate in the Medicaid and Medicare programs.
- Eliminates the definition of "charity care" established in the bill and instead refers to the definition of "charity care" as established for the disproportionate share program in s. 409.911(1), F.S.
- Grants the AHCA rulemaking authority to implement the new licensure requirements.
- Specifies that a currently licensed general hospital that was issued a CON with conditions related to providing charity care or providing care under the Florida Medicaid program must continue to meet those conditions as part of its licensure, regardless of the status of the hospital's CON.
- Creates a new unnumbered section of Florida law to:
  - Prohibit the AHCA from accepting any new applications for general hospital CONs;
  - Require the AHCA to issue a CON to all current general hospital applicants whose CON has been approved by the AHCA, regardless of litigation, if the applicant will have intensive care beds, progressive care beds, medical/surgical beds, and an onsite emergency department that operates 24 hours a day, seven days a week; and
  - Allow current CON applicants whose applications have been denied or whose status is pending to continue through the current CON process until a final outcome is reached.

B. Amendments:

None.