HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 309 Rural Emergency Hospitals
SPONSOR(S): Select Committee on Health Innovation, Shoaf and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 644

FINAL HOUSE FLOOR ACTION: 113 **Y's** 0 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/SB 644 passed the Senate on February 28, 2024, and subsequently passed the House on March 6, 2024.

Rural hospital closures result in patients having to travel farther for medical care, which delays or reduces their health care access. Since 2020, five rural hospitals in Florida have closed. In response to rural hospital closures, in 2020, Congress created a special Rural Emergency Hospital (REH) licensure provision in Medicare. Once designated as an REH, the facility qualifies for a supplemental monthly payment which is re-calibrated every year based on hospital market basket pricing, as well as a five percent increase over Medicaid rates compared to rates for a general, acute care hospital.

Hospitals, including rural hospitals, are licensed by the Agency for Health Care Administration (AHCA) under Ch. 395, F.S. Current law does not recognize rural emergency hospitals as a licensure category. In addition, under Ch. 395, licensed hospitals must provide inpatient and other non-emergency services; not just emergency services.

The bill changes Florida licensure requirements to allow rural hospitals complying with federal REH requirements to be licensed as a hospital by AHCA. The bill updates statutory definitions to conform to the federal parameters. The bill exempts licensed REHs from requirements applicable to all licensed hospitals but which REHs cannot meet under the federal standards.

The bill extends the licensure expiration date for rural hospitals that were licensed in Fiscal Years 2010-2011 or 2011-2012, from June 30, 2025 to June 30, 2031, if the hospital continues to have up to 100 licensed beds and an emergency room.

The bill has indeterminate, insignificant negative impact on the state Medicaid program and no fiscal impact on local government.

Subject to the Governor's veto powers, the effective date of the bill is July 1, 2024.

The bill was approved by the Governor on May 28, 2024, ch. 2024-201, L.O.F., and will become effective on July 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Rural Hospitals

More than 60 million Americans live in what is considered a rural area.[1] As a population, rural residents tend to be sicker and older, therefore needing more health care services. However, access to these services in a rural area can be difficult and often require travel of greater than 20 miles. Since 2020, at least 120 rural hospitals closed. The worst year occurred in 2019 when 19 rural hospitals closed nationwide.[2] Many other hospitals nationally, and some in Florida, are considered "vulnerable" to closure. In Florida, one report identified 10 vulnerable hospitals and of those, five were considered the "most vulnerable"[3] and the other five were designated as "at risk". [4]

Hospital Licensure

Chapter 395, F.S. and Part II of ch. 408, F.S., govern licensure of hospitals in Florida, including authorizing the Agency for Health Care Administration (AHCA) to provide administrative oversight. Under s. 395.002, F.S., a "hospital" is any establishment that:

> (a) Offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and
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> (b) Regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent, except that a critical access hospital, as defined in s. 408.07, F.S., shall not be required to make available treatment facilities for surgery, obstetrical care, or similar services as long as it maintains its critical access hospital designation and shall be required to make such facilities available only if it ceases to be designated as a critical access hospital.[5]

A hospital licensure applicant may apply online or through a paper application, whether seeking initial licensure, renewal of a license, or re-activation of a license. However, before AHCA will accept an

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[1] United States Government Accountability Office, *Why Health Care is Harder to Access in Rural America,* available at: Why Health Care Is Harder to Access in Rural America | U.S. GAO (May 16, 2023 Blog) (last visited January 30, 2024). The definition of "rural" varies based on its purpose and which federal or state agency is using the word as a measurement. For hospitals, rural is defined by the Health Resources and Services Administration and means a non-metropolitan county; or a census tract that is a Rural Urban Community Code (RUCA) of 4 or greater; or a census tract in a metropolitan county that is (a) at least 400 square miles, (b) has a population density of 35 or fewer persons per square mile, and (c) has a RUCA code of 2 or 3; or an outlying county in a metropolitan area that does not have an urbanized area. This last criterion was added in 2022, causing several dozen hospitals to be reclassified as rural instead of urban.

[2] The Chartis Center for Rural Health, *The Rural Health Safety Net Under Pressure,* available at https://www.chartis.com/insights/rural-health-safety-net-under-pressure-rural-hospital-vulnerability, last visited January 20, 2024).

[3] *Id.* The report defined the "most vulnerable" group as those hospitals whose median percentage change in total revenue was -1.4 percent, the median occupancy rate was 20,7, the median capital efficiency was -6.3, the percentage of outpatient revenue was 75.9 percent, and the median operating margin was -8.6 percent.

[4] *Id.* The report defined the "at risk" group as those hospitals have a lower likelihood of closure compared to the most vulnerable group. This group had a median change in total revenue of 1.7 percent, median occupancy 26.9 percent, the median capital efficiency was -1.1 percent, the median percentage of outpatient revenue is 77.6, and the median operating margin was -2.6 percent.

[5] Exceptions include any institution conducted by or for the adherents of any well-recognized church or religious denomination that depends exclusively upon prayer or spiritual means to heal, care for, or treat any person. Additionally, for purposes of local zoning matters, the term "hospital" includes a medical office building located on the same premises as a hospital facility, provided the land on which the medical office building is constructed is zoned for use as a hospital; provided the premises were zoned for hospital purposes on January 1, 1992.

application for initial licensure, AHCA's Office of Plans and Construction (OPC) must have received plans and specifications from the applicant.[6]

The OPC reviews the plans to ensure compliance with ch. 395, F.S., including standards for the delivery of the minimum-level of required services and a physical review for the capacity, security and sufficiency of the building itself.[7] In addition to providing this evidence, the applicant organization must submit financial information. The financial component includes detailed information about management of cash flow, staffing levels and salary costs, anticipated billing hours and billing charges for professional health care services, and expected budgets by department.[8]

An applicant must identify the hospital's classification from one of four categories:

- Class I is a general hospital category which includes general acute care, long term care, rural hospitals, and a subcategory of rural hospitals, critical access hospitals.
- Class II Hospitals are the Specialty Hospitals for Children and the Specialty Hospitals for Women.
- Class III Specialty Hospitals include the specialty medical, rehabilitation, psychiatric, and substance abuse hospitals.
- Class IV Specialty Hospitals are intensive residential treatment facilities for children and adolescents.[9]

All Class I hospitals are considered general acute care hospitals, and as licensed hospital facilities, are required to have at least:

- Inpatient beds.
- A governing authority legally responsible for the conduct of the hospital.
- A chief executive officer or other similarly titled official to whom the governing authority delegates full-time authority for the operation of the hospital in accordance with the policy of the governing authority.
- An organized medical staff which maintains proper standards of care.
- Maintenance of a complete and accurate medical record for each admitted patient.
- A policy requirement that patients be admitted under the authority and care of a member of the organized medical staff.
- Facilities and staff with ability to provide patients with food that meets patients' nutritional needs.
- Procedures for provisions of emergency care.
- Methods for infection control.
- An ongoing organized program to enhance quality of patient care.[10]

Class I hospitals are also required to have certain professional staff and services either in the facility or by contract to meet patient needs, including access to clinical laboratory, diagnostic, operating room, anesthesia, and pharmaceutical services.[11] Hospitals can also seek exemptions from providing designated services or requirements if they meet certain conditions, such as when a required medical professional is not available in a region and cannot be contracted for coverage in the emergency room or hospital staff, or if a hospital seeks an exemption from the requirement for an emergency department.[12]

Rural Hospital Licensure

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[6] 59A-3.066, F.A.C., Licensure Procedures.
[7] Agency for Health Care Administration, *Hospital and Outpatient Care Unit, available at* Hospitals (myflorida.com) (last visited January 29, 2024).
[8] Agency for Health Care Administration, *Health Care Policy and Oversight – Licensure and Forms,* Health Care Policy and Oversight Application for Licensure Forms (myflorida.com) (last visited January 29, 2024).
[9] 59A-3.252, F.A.C., Classification of Hospitals.
[10] *Id.*
[11] *Id.*
[12] S. 395.1041, F.S.

One type of Class I is a rural hospital. A rural hospital is an acute care hospital that has 100 or fewer beds and an emergency room, and also meets at least one of the criteria below. The hospital is:

- Sole provider within a county with a population density of up to 100 persons per square mile;
- An acute care hospital, in a county with a population density of up to 100 persons per square mile, which is at least 30 minutes of travel time, on normally traveled roads under normal traffic conditions, from any other acute care hospital within the same county;
- Supported by a tax district or sub-district whose boundaries encompass a population of up to 100 persons per square mile;
- Classified as a sole community hospital under 42 C.F.R. s. 412.92, regardless of the number of licensed beds;
- Within a service area[13] that has a population of up to 100 persons per square mile or
- Designated as a critical access hospital, as defined in s. 408.07, F.S.[14]

However, the current statutory definitions and provisions do not allow a rural hospital to seek an exclusion from any of the mandatory elements of being a hospital, such as providing inpatient services.[15] According to AHCA, there are currently 22 licensed rural hospitals in Florida accounting for 948 licensed beds.[16] Of these,10 are critical access hospitals, and an additional seven have 50 beds or fewer.[17]

Licensure Dates

A rural hospital which received federal disproportionate share funds or financial assistance funds under s. 409.9116, F.S., for any quarter beginning no later than July 1, 2002 was deemed to have been a rural hospital from that date through July 1, 2021 as long as the hospital maintained 100 beds and an emergency room.[18] Additionally, if an acute care hospital not previously designated as a rural hospital, meets the statutory criteria, AHCA must grant the hospital rural status upon its application. A hospital designated as a rural hospital during the 2010-2011 or 2011-2012 fiscal years shall continue to be licensed as a rural hospital with a licensure expiration date of June 30, 2025, as long as the hospital continues to have at least 100 licensed beds and an emergency room.[19]

Closure of Rural Hospitals

Rural hospitals face operational challenges due to low patient volumes, which can make it harder to meet fixed operating costs and performance standards, and because many of the patients treated in rural hospitals are older, sicker, and poorer when compared with the national average.[20]

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[13] The term "service area" means the fewest number of zip codes that account for 75 percent of the hospital's discharges for the most recent 5-year period, based on information available from the hospital discharge database in the Florida Center for Health Information and Transparency at the agency.

[14] A critical access hospital (CAH) is a federal Medicare designation established by Congress to reduce the financial vulnerability of rural hospitals and improve care access. CAH designation is for hospitals more than 35 miles from another hospital, with 25 or less inpatient beds and an average stay of 96 hours or less. CAH designation generates a greater Medicare payment rate and allows some regulatory flexibility. *See,* 42 U.S.C 1395i-4.

[15] Agency for Health Care Administration, *2024 Legislative Bill Analysis – HB 309* (November 7, 2023)(on file with Select Committee on Health Innovation).

[16] *Id.*

[17] *Id.*

[18] S. 395.602(2), F.S.

[19] The Medicaid disproportionate share hospital (DSH) program provides federally-matched funding for qualified hospitals that serve a large number of Medicaid and uninsured individuals, based on a federal allotment. *See,* 42 U.S.C. 1369r-4. Section 409.9116, F.S., establishes a similar state-funded assistance program for rural hospitals when they do not qualify for DSH funds.

[20] Rural Hospital Closures Threaten Access – Solutions to Preserve Care in Local Communities, The American hospital, September 2022, available at https://www.aha.org/system/files/media/file/2022/09/rural-hospital-closures-threaten-access-report.pdf (last visited March 24, 2024).

Nationally, in 2017-2021, the total number of rural hospitals declined by 75.[21] In 2020, a record number of 19 U.S. rural hospitals closed.[22] More than 100 rural hospitals have closed in the past 10 years, and another 400-600 rural hospitals are deemed "at risk" or vulnerable to closure by different health care analysts.[23] The chart below indicates rural hospital closures in Florida since 2000.

Rural Hospital Closures in Florida since 2000[24]		
Hospital	**City**	**Year Closed**
Gadsden Community Hospital	Quincy	2005
Gulf Pines Hospital	Port St Joe	2000
Trinity Community Hospital	Jasper	2008
Campbellton Graceville Hospital	Graceville	2017
Regional General - Williston	Williston	2019
Shands Lake Shore Regional	Starke	2019
Lake City Medical Center Suwanee	Lake City	2020
North Florida Regional Medical Center	Starke	2020

In addition to the low patient volume issue, rural hospitals also suffer from increased staffing shortages. For instance, only 10 percent of physicians practice in rural areas, despite 20 percent of the population residing in those areas.[25] The COVID-19 pandemic increased the severity of staffing shortages, increased costs, and worsened health outcomes.[26]

Medicare Rural Emergency Hospitals

To respond to rural hospital closures, Congress created a new Medicare provider type, the Rural Emergency Hospital (REH), [27] through the federal Consolidated Appropriations Act of 2021 (Act).[28] REH's are eligible for enhanced reimbursements through Medicare.

By federal rule, an REH is an entity that operates for the purpose of providing emergency department services, observation care, and other outpatient medical and health services specified by the Secretary of the Department of Health and Human Services in which the annual per patient average length of stay does not exceed 24 hours.[29] The Act and its implementing regulations specify that an REH may *not* provide inpatient services.[30] Only rural hospitals with 50 or fewer beds and critical access hospitals that were enrolled and certified to participate in Medicare on or before the date of the Act's enactment (December 27, 2020), qualify for certification as an REH.[31]

To be recognized as an REH, the Act requires the following:

- Compliance with applicable Federal laws and regulations related to the health and safety of patients.
- An assurance that personnel are licensed or meet other applicable standards that are required by state or local laws to provide services within the applicable scope of practice.

[21] American Hospital Association, *Fast Facts: U.S. Rural Hospitals Infographic, available at* Fast Facts: U.S. Rural Hospitals Infographic | AHA (last visited March 25, 2024).
[22] *Id*.
[23] Center for Healthcare Quality and Reform, *Saving Rural Hospitals,* available at https://ruralhospitals.chqpr.org/ (last visited January 30, 2024). *See also Supra,* note 3.
[24] Data run from *Saving Rural Hospitals, Data on Rural Hospitals, Size and Financial Status of Rural Hospitals,* (Center for Healthcare Quality and Reform), available at Saving Rural Hospitals - Data on Rural Hospitals (chqpr.org) (last visited January 30, 2024).
[25] *Supra,* note 20.
[26] *Id.*
[27] 42 U.S.C. §1395x(kkk).
[28] Pub. Law 116-260 (December 27, 2020).
[29] 42 CFR § 485.502.
[30] *Supra,* note 30, and *Id*.
[31] *Rural Emergency Hospitals MLN Fact Sheet (November 2023),* Centers for Medicare and Medicaid Services, available at https://www.cms.gov/files/document/mln2259384-rural-emergency-hospitals.pdf (last visited January 30, 2024).

- Maintenance of a Medicare provider agreement with the Centers for Medicare and Medicaid Services (CMS) as provided for in 42 CFR §485.5 through 42 CFR §485.546.
- Evidence of an organized medical staff which operates under bylaws approved by the governing body of the REH and which is responsible for the quality of medical care provided to patients in the REH. The medical staff must be composed of medical or osteopathic doctors, and may include other categories of physicians. Additionally, an REH may supplement the care provided through the use of telemedicine services provided by a distant site hospital as long as the distant-site hospital meets specified requirements.[32]
- Evidence of an organized nursing service that is available to provide 24 hour care to patients of an REH.[33]
- Provision of emergency, laboratory, radiological, pharmaceutical, and outpatient medical and other health services as detailed in the rule.[34] The Act specifically excludes inpatient services as a required component.
- Maintenance of an infection control program and a quality assessment and performance improvement program.[35]

In addition, each REH must be licensed by the state as an REH, or approved by the state licensing agency as meeting standards for state licensure.

Any REHs and critical access hospitals that closed or allowed their licenses to go inactive since December 27, 2020 are eligible to reactivate their Medicare CMS Medicare certification after completion of a special review by the Medicare Administrative Contractor and CMS.[36]

An REH is eligible for payment through the Medicare program for services at the amount that would be paid to a hospital providing the equivalent outpatient service, increased by five percent.[37] An REH also receives a supplemental monthly facility payment.[38] Starting October 1, 2023, for CY 2024 the monthly facility payment is $276,233.58.[39] Each year, the supplemental facility payment increases based on the hospital market basket percentage increase.[40]

The hospitals must maintain detailed information on how these supplemental payments are used in a reporting format determined by the HHS Secretary.[41] In addition to the payment reports, an REH must also submit data through the Rural Emergency Hospital Quality Reporting Program (REHQR).[42] The REHQR requires the REHs to submit data on all quality measures required by CMS. Data reported by to the REHQR will be posted by CMS on a public website.[43]

Currently, Florida rural hospitals are ineligible to become Medicare Rural Emergency Hospitals because Florida law does not include a licensure category or other approval mechanism for REHs. In addition, current law requires licensed hospitals to regularly make available inpatient services, facilities

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[32] 42 CFR § 485.512.
[33] 42 CFR § 485.530.
[34] 42 CFR §§ 485.516 – 485.524.
[35] 42 CFR § 485.508.
[36] *Supra,* note 31.
[37] 42 CFR § 419.92.
[38] *Id.*
[39] U.S. Department of Health & Human Services, Centers for Medicare & Medicaid Services, *CMS Manual System, Pub. 100-04, Medicare Claims Processing*; Subject: January 2024 Annual Rural Emergency Hospital (REH) Monthly Facility Payment Amount, https://www.cms.gov/files/document/r12373cp.pdf (last visited January 31, 2024).
[40] *Supra,* note 29. The term "hospital market basket" means all of the components in the overall costs of healthcare used to determine the consumer price index. Produced by the Office of the Chief Actuary at CMS, the calculation measures the change in price, over time, of the same mix of goods and services purchased in the base period. *See also FAQs Market Basket Based Definitions and General Information,* Centers for Medicare & Medicaid Services, Office of the Actuary, National Health Statistics Group (September 2023) available at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/Downloads/info.pdf (last visited January 30, 2024).
[41] *Id.*
[42] 42 CFR § 419.95.
[43] *Id.*

for surgery or obstetrical care clinical laboratory services, and similar services,[44] whereas Medicare prohibits these types of services at REHs.

Effect of Proposed Changes

Rural Emergency Hospitals

The bill authorizes AHCA to designate eligible rural hospitals and critical access hospitals as REHs, and defines the requirements for a rural or critical access hospital to apply for AHCA for that designation. The bill requires an REH to provide emergency services and care for any emergency medical condition in accordance with current law.

The bill creates an opportunity for rural and critical access hospitals which meet the federal requirements to qualify for increased reimbursement rates from Medicare and Medicaid for the designated emergency and outpatient services in rural areas.

Rural Hospital Licensure Dates

The bill extends the licensure ending date for rural hospitals that were licensed in Fiscal Years 2010-2011 to 2011-2012. For those hospitals, the bill extends the license expiration date from June 30, 2025, to June 30, 2031.

The bill removes the 2021 license expiration date for rural hospitals receiving federal disproportionate share funds or state financial assistance funds after July 2002, as this language is now obsolete.

Subject to the Governor's veto powers, the effective date of the bill is July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an indeterminate, likely insignificant, fiscal impact on Medicaid expenditures due to the availability of higher reimbursement rates associated with rural emergency hospitals.

   Changes in the Medicaid payment for REH services may require FMMIS system programming with an indeterminate, but insignificant fiscal impact, that can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   To the extent that a rural hospital is supported by local government funds, increased federal reimbursement for a locally supported hospital as an REH may offset a portion of those funds.

2. Expenditures:

   None.

[44] S. 395.002(12), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private hospitals achieving an REH designation may receive a five percent increase in Medicare reimbursement in the current year and adjusted annually, and a monthly supplemental facility payment that is modified each year based on the hospital market basket rate.

A previously closed or inactive licensed entity in a rural area may be able to reopen as an REH.

D. FISCAL COMMENTS:

None.