



The Florida Senate

Interim Project Report 2006-138

September 2005

Committee on Health Care

Senator Durell Peaden, Jr., Chair

REVIEW THE MORATORIUM ON CERTIFICATES OF NEED FOR NURSING HOMES

SUMMARY

The 2001 Legislature imposed a moratorium on the approval of certificates of need (CONs) for additional community nursing home beds until July 1, 2006. The moratorium is found in s. 651.1185, F.S. The purpose of this moratorium is to slow the increase of nursing home placements and to encourage other forms of assistance to elderly individuals who need assistance. Limiting the number of nursing home beds limits the state's obligation to fund nursing home bed days for Medicaid recipients, thereby freeing state funds to pay for other types of noninstitutional community support for the elderly. If the 2006 Legislature does not extend the moratorium on CONs for nursing homes, the moratorium will expire on July 1, 2006.

This report recommends that s. 651.1185, F.S., should be moved to ch. 408, F.S., and amended to extend the moratorium on the approval of certificates of need for additional nursing home beds until July 1, 2011. In order to ensure access to needed nursing home services, an exception to the moratorium should be permitted to allow nursing homes with a 96 percent or greater occupancy rate to add 10 beds or 10 percent of the number of licensed beds if the home had no class I or class II deficiencies in the past 30 months and the occupancy rate in the planning subdistrict is 94 percent or greater. This exception is the same policy as the exemption to CON review under s. 408.036(3)(j), F.S., which is not currently available to nursing homes because of the moratorium. If the Legislature enacts this recommendation, the moratorium would stay in effect for five more years, and AHCA would have the authority to grant an exception to the moratorium for nursing homes that provide a good quality of care and that are operating at what is essentially full capacity.

BACKGROUND

Florida's Supply of Nursing Home Beds

Florida regulates the entry of nursing homes into the market and the expansion of those nursing homes through the certificate-of-need (CON) process. Since 1973, the CON process has limited Florida's nursing home bed supply in accordance with projected need. The number of community nursing home beds per 1,000 individuals age 65 and older during the past 10 years is shown in the chart below¹:

Year	Population Age 65 and Older	Community Beds per 1,000 Population Age 65 and Older
1994	2,552,428	28.72
1995	2,587,344	29.15
1996	2,627,624	29.49
1997	2,667,509	29.98
1998	2,715,591	30.04
1999	2,778,024	29.78
2000	2,840,445	29.34
2001	2,899,099	28.54
2002	2,990,031	27.30
2003	3,057,275	26.47
2004	3,120,312	25.8

The Moratorium on Certificates of Need for Nursing Home Beds

The CON regulatory process under ch. 408, F.S., requires that before specified health care services and facilities may be offered to the public they must be approved by the Agency for Health Care Administration (AHCA). The establishment of a new nursing home or the addition of beds in a community nursing home is subject to CON review, which includes determination of the level of need that exists

¹ Source of data: Florida Agency for Health Care Administration. 2005.

for such services in a geographical area known as a planning district. These CON reviews are not currently being conducted for nursing homes and nursing home beds because of a legislatively-imposed moratorium on the approval of CONs for additional nursing home beds through June 30, 2006.² The 2001 Legislature's intent in enacting the moratorium was "to limit the increase in Medicaid nursing home expenditures in order to provide funds to invest in long-term care that is community-based and provides supportive services in a manner that is both more cost-effective and more in keeping with the wishes of the elderly residents of this state."³ The moratorium does not apply to sheltered nursing home beds in a continuing care retirement community.

Two exceptions to the moratorium have been enacted since 2001; these exceptions are specified in s. 651.1185, F.S.:

- Under s. 651.1185(4), F.S., additional community nursing home beds may be added in a county that has no community nursing home beds and the lack of community nursing home beds occurs because all nursing home beds in the county that were licensed as of July 1, 2001, have subsequently closed.
- Under s. 651.1185(5), F.S., additional community nursing home beds can be added to nursing homes located in counties of up to 50,000 residents, in a number that may not exceed 10 total beds or 10 percent of the nursing home's current licensed capacity under certain conditions. Documentation accompanying the application to AHCA must:
 - Certify that the facility has not had any class I or class II deficiencies within the 30 months preceding the request for addition.
 - Certify that the prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility had not had any class I or class II deficiencies since its initial licensure.
 - For a facility that has been licensed for less than 24 months, certify that the prior 6-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and that the facility has not had any class I or class II deficiencies since its initial licensure.

Such specificity limits the application of the exceptions to only a few nursing homes and thus, the exceptions

have had minimal impact on the addition of community nursing home beds licensed under ch. 400, pt. II, F.S.

Requirements for CON Review for Nursing Home Beds

Section 408.036, F.S., specifies those health care projects that are subject to full comparative review in batching cycles by AHCA, those that can undergo an expedited review, and those that may be exempt from full comparative review upon request. The nursing home projects addressed in s. 408.036, F.S., are as follows:

Projects Subject to Full Comparative Review

- Adding beds in community nursing homes (*AHCA does not accept applications for additional community nursing home beds under this provision because of the moratorium.*)
- Constructing or establishing new health care facilities, which include skilled nursing facilities (*AHCA does not accept applications for new nursing homes under this provision because of the moratorium.*)

Projects Subject to Expedited Review

- Replacement of a nursing home within the same district
- Relocation of a portion of a nursing home's licensed beds to a facility in the same district

Exemptions from CON Review

- Addition of beds at a facility that is part of a retirement community which was established for 65 years prior to 1994 (*AHCA does not accept applications for additional nursing home beds under this provision because of the moratorium.*)
- State veterans nursing homes if 50 percent of the construction is federally funded
- Combining in one nursing home the beds or services authorized by two or more CONs in the same subdistrict
- Dividing into two or more nursing homes the beds or services licensed under one CON issued in the same planning subdistrict
- Adding 10 nursing home beds or 10 percent of the number of licensed beds (or for a Gold Seal facility 20 beds or 10 percent of the licensed beds) if:
 - The nursing home had no class I or class II deficiencies in the 30 months preceding the application
 - The occupancy rate for the previous 12 months was 96 percent or above

² S. 651.1185, F.S.

³ S. 651.1185(2), FS.

- All beds previously authorized under this exemption have been operational for at least 12 months
(AHCA does not accept applications for additional nursing home beds under this provision because of the moratorium.)

- Replacement of a nursing home on the same site or within 3 miles of the site provided the number of beds does not increase
- Consolidation or combination of nursing homes or transfer of beds within the same subdistrict by providers that operate multiple homes in the subdistrict provided there is no increase in the total number of beds in the subdistrict

The expedited reviews and exemptions provided in s. 408.036, F.S., have given nursing homes the flexibility to relocate nursing home beds during the years the moratorium has been in effect.

Nursing Home Bed Need Methodology

Under s. 408.032(5), F.S., the state is divided into 11 planning districts, and under rule 59C-2.200, F.A.C., the planning districts are further divided into subdistricts. Rule 59C-1.036, F.A.C., establishes the CON review procedures for nursing facility beds. An application for nursing facility beds will not be approved in the absence, or insufficiency of, a numeric need, unless the absence or insufficiency of numeric need is outweighed by other information presented in a CON application showing special circumstances consistent with review criteria under s. 408.035, F.S. The planning horizon for applications is 3 years subsequent to the year the application is submitted. The estimate of projected population is the estimate for the planning horizon.

The need formula for nursing facility beds is based on the expected increase in the planning district's population age 65 to 74 and age 75 and over, with the age group 75 and over given 6 times more weight in projecting the population increase. The projected district bed need total is then allocated to its subdistricts consistent with the current subdistrict distribution of the total. The result for a given subdistrict is adjusted to reflect the current subdistrict occupancy of licensed beds and a desired standard of 94 percent occupancy. This subdistrict total of allocated beds is then reduced by the current number of nursing home beds in the subdistrict that are licensed or approved, resulting in the net need for additional

nursing facility beds. If the current occupancy of licensed beds is less than 85 percent, the net need in the subdistrict is zero regardless of whether the formula otherwise would show a net need.⁴

⁴ The formula for determining the net need in a subdistrict for nursing home beds is as follows:

$$1. A = (POPA \times BA) + (POPB \times BB)$$

where:

A is the projected age-adjusted total number of nursing facility beds to be licensed under Chapter 400, F.S., at the planning horizon for the district in which the subdistrict is located.

POPA is the projected population age 65-74 years in the district.

POPB is the projected population age 75 years and older in the district.

BA is the estimated current bed rate for facilities licensed under Chapter 400, F.S., for the population age 65-74 years in the district.

BB is the estimated current bed rate for facilities licensed under Chapter 400, F.S., for the population age 75 years and over in the district.

$$2. BA = LB / (POPC + (6 \times POPD))$$

where:

LB is the number of nursing facility beds licensed under Chapter 400, F.S., in the district as of January 1, for fixed bed need pools published between January 1 and June 30, or as of July 1 for fixed bed need pools published between July 1 and December 31.

POPC is the current population age 65-74 years in the district.

POPD is the current population age 75 years and over in the district.

$$3. BB = 6 \times BA$$

$$4. SA = A \times (LBD/LB) \times (OR/.94)$$

where:

SA is the subdistrict allocation of community nursing facility beds to be licensed under Chapter 400, F.S., at the planning horizon.

LBD is the number of nursing facility beds licensed under Chapter 400, F.S., in the subdistrict as of January 1, for fixed bed need pools published between January 1 and June 30, or as of July 1 for fixed bed need pools published between July 1 and December 31.

OR is the average 6 month occupancy rate for nursing facility beds licensed in the subdistrict

.94 equals the desired average 6 month occupancy rate for licensed nursing home beds in the subdistrict.

5. The net bed need allocation for a subdistrict at the planning horizon is determined by subtracting the total number of licensed and approved beds for facilities licensed under Chapter 400, F.S., in the subdistrict from the bed allocation determined under subparagraphs (c)1. through (c)4. unless OR, as defined in subparagraph (c)4. is less than 85 percent, in which case the net bed need allocation is zero. The number of licensed beds that is subtracted from the bed need allocation shall be the

METHODOLOGY

Committee staff reviewed national trends in nursing home placement and occupancy rates for nursing homes in Florida during the moratorium. Staff reviewed other types of assistance to the elderly that the state has provided during the years the moratorium has been in effect; consulted with representatives of the state’s three nursing home industry associations concerning the effects of the moratorium on the providers they represent; and consulted with AHCA staff concerning nursing home quality indicators, occupancy rates, service for Medicaid recipients, and nursing home bed-need projections.

FINDINGS

The Need for New Nursing Home Beds

The statewide occupancy rate for nursing homes was 88.63 percent for the first half of 2004 and it was 87.62 percent for the second half of that year⁵. For the planning horizon January 2008, four areas of the state have a nursing home occupancy rate above 94 percent, as follows:

Leon County	96.97%
Columbia/Hamilton/Suwannee Counties	96.78%
Nassau/N. Duval Counties	94.70%
Seminole County	94.44%

The number of beds required to address the need in these four areas will be:

Leon County	68 beds
Columbia/Hamilton/Suwannee Counties	70 beds
Nassau/N. Duval Counties	30 beds
Seminole County	111 beds

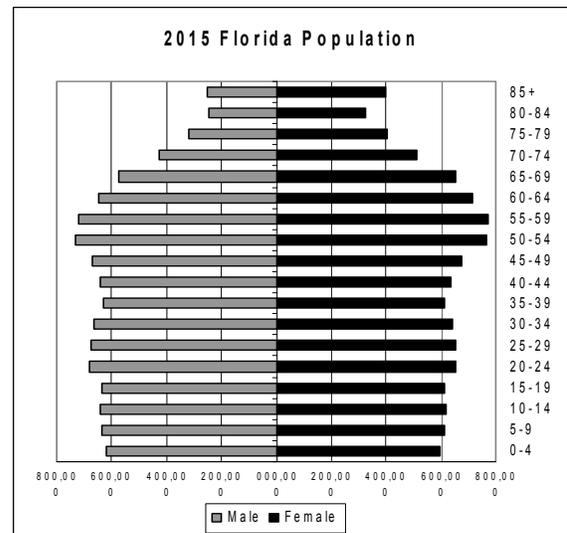
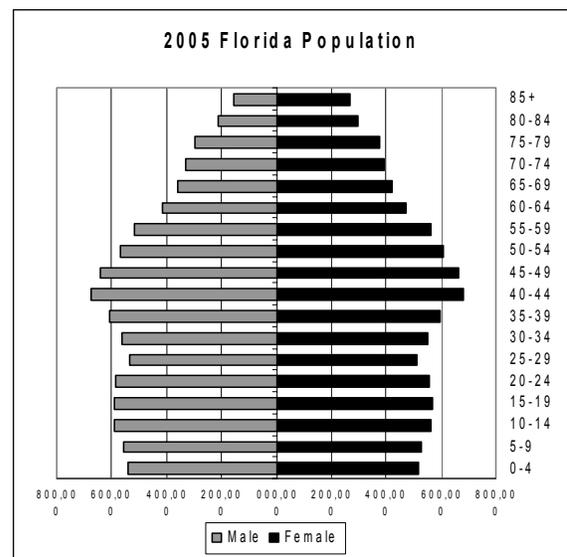
In the next 10 years, Florida’s total population will increase by 19.1 percent (from 17.8 million in 2005, to 21.2 million in 2015). The population age 65 and older

number licensed under Chapter 400, F.S., as of the most recent published deadline for agency initial decisions prior to publication of the fixed bed need pool. The number of approved beds that is subtracted shall be the number for which the agency has issued a certificate of need, a letter stating the agency’s intent to issue a certificate of need, a signed stipulated agreement, or a final order granting a certificate of need, as of the most recent published deadline for agency initial decisions prior to publication of the fixed bed need pool. (Rule 59C-1.036, F.A.C.)

⁵ Florida Agency for Health Care Administration. 2005.

will increase at a faster rate than the population as a whole. The population age 65 or older will increase by 32.2 percent (from 3.1 million in 2005 to 4.1 million in 2015). The population age 75 and older, which receives heavier weighting in the nursing home bed-need methodology, will increase by 21.1 percent (from 1.6 million in 2005 to 1.9 million in 2015). And the oldest segment of the population—those 80 years old or older—will increase by 53.3 percent (from 422,166 in 2005 to 647,044 in 2015).

The charts below⁶ show the age and gender distribution of Florida’s total population in 2005 and 2015.



⁶ Source: Florida Legislature. Office of Economic and Demographic Research. Demographic Estimating Conference Database, updated July 2005.

Within the next 10 years, Florida will need more nursing home beds. Predicting how many, when, where, and what type is difficult because the factors that affect the health and independence of Florida's elderly population will be changing during that decade. A 2002 report by AHCA predicted that, based on bed ratios per 1,000 individuals aged 65 and older and assuming a 95 percent occupancy rate, Florida would need 33,046 more nursing home beds by 2015.⁷ At 95 percent of the 2002 bed ratio, the report projected that Florida would need 27,305 more nursing home beds in 2015, and at 75 percent of the 2002 bed ratio, Florida would need 4,300 beds by that date. The use of bed-to-population ratios in the AHCA report could be considered a conservative method because Florida's nursing home bed supply had been limited by CON regulation throughout the decade preceding the study. However, national predictions of the number of older Americans who would be in nursing homes by a certain date assumed that utilization rates would be the same in the future as they were at the time of the prediction, and that did not turn out to be the case. "The number of older persons in nursing homes in 1999 was more than half a million below the number that would have been expected if 1973-74 utilization rates had continued."⁸ Nationally, utilization of nursing home beds by persons aged 65 and older has declined for the total population but has increased for Black or African American residents.⁹

The factors that could have contributed to lower national utilization rates in nursing homes include declining disability among the elderly and changes in policies for the provision of long term-care that emphasize helping the individual to stay autonomous in his or her own home. The disability that accompanies old age has been declining for the past several decades.¹⁰ That is, the current population age 65 and older is less disabled than comparable age cohorts in previous generations. They are able to function and live independently to a greater extent and to a later age than was the case for members of previous generations. The factors that could contribute to the decline of disability include:

- Medical care improvements such as pharmaceutical drugs to address chronic diseases and procedures such as joint replacement to permit mobility;
- Changes in health behavior such as a decline in smoking and trends toward low-fat and reduced-salt foods;
- Increased use of aids such as walkers, handrails, and bathrooms and kitchens that are accessible by persons with disabilities
- Higher socioeconomic status accompanied by increased levels of education and jobs that pose fewer health hazards
- Disease exposure throughout the lifespan, which declined in the 20th century because of discoveries for prevention and treatment; and
- Social support that improves social engagement and cognitive functioning and reduces stress.¹¹

Alternative types of long-term care probably have contributed to a reduction in nursing home admissions by providing support for elderly individuals. These alternatives include:

- Assisted living facilities (ALFs)
- Home health care
- Home and community-based services

Florida's "oldest old" population, those age 85 and older, is projected to be 647,044 in 2015. "The size of the oldest-old population is a somewhat better indicator of the level of need for long-term care than the elderly population in general, since frailty increases with age."¹² A need for new nursing home beds may well occur coincidentally with the aging of the oldest old.

Nursing home access for Medicaid recipients is required in the criteria used to evaluate CON applications. At present, nursing homes throughout Florida serve Medicaid recipients and none reports a lack of capacity to do so. A likely first signal that the bed supply is becoming inadequate will be when providers cannot find a nursing home placement for Medicaid recipients.

The state's total Medicaid nursing home bed days for each of the past five years are shown in the chart below:

⁷ Florida Agency for Health Care Administration. *Proposal to Reduce Medicaid-Funded Nursing Home Bed Days in Florida*. 2002. p. 26.

⁸ Redfoot, D. and Pandya, S. *Before the Boom; Trends in Long-Term Supportive Services for Older Americans with Disabilities*. AARP. 2002. p. 5

⁹ National Center for Health Statistics. *Chartbook on Trends in the Health of Americans*. 2004, p. 305

¹⁰ Cutler, D. "Declining Disability among the Elderly". *Health Affairs*. Vol. 20, No. 6, 2001

¹¹ *Ibid.*

¹² Florida Agency for Health Care Administration. *Proposal to Reduce Medicaid-Funded Nursing Home Bed Days in Florida*. 2002. p.15.

Year	Medicaid Bed Days
2000	16,429,814
2001	16,281,639
2002	16,270,629
2003	16,476,569
2004	16,356,782

Representatives of the state's three nursing home associations—the Florida Health Care Association, the Florida Association of Homes for the Aging, and the Florida Long-Term Health Care Association—reported that their industry does not see a need to lift the moratorium at this time. They agreed that an exception to the moratorium should be provided for nursing homes where the occupancy rate exceeds 96 percent and the home has a record of providing high-quality care. They recommended that in such circumstances, a minimum occupancy level for the subdistrict should be a criterion for the exception.

While there is not currently a need for nursing home beds in Florida, and the projected need is for 279 beds in 2008, there will be a need for many more beds as the elderly population increases. In 2003, Florida ranked 48th in the nation in the number of beds per 1,000 population age 65 and older.¹³ If Florida is to continue a policy of closely coordinating the number of beds to the need for beds, the state must plan within the next 5 years for the increase in the elderly population.

Planning for new nursing homes must take into account Florida's ethnic make-up and the differences in utilization of nursing homes and other health care services by White non-Hispanic, Black non-Hispanic, and Hispanic elderly. The ethnic make-up of Florida's population age 75 and over will change over the next 10 years. White non-Hispanic residents age 75 and older who comprise 7.6 percent of the population in 2005 will decline to 7.3 percent of the population in 2015 (from 1,351,621 in 2005, to 1,563,507 million in 2015, representing an increase in number but a decline in proportion relative to other groups). Black non-Hispanic residents age 75 and older will increase from .5 percent of the population in 2005 to .6 percent in 2015 (from 83,046 in 2005, to 124,893 in 2015). Hispanic residents who comprise .9 percent of the population in 2005 will increase to 1.1 percent of the population in 2015 (from 155,790 in 2005, to 232,020 in 2015).

Statutory Placement of the Moratorium

The moratorium on approval of certificates of need for additional nursing home beds was enacted in s. 52 of ch. 2001-45, L.O.F.; this section was omitted from the statutes because it was a temporary provision that will expire in 2006. However, after s. 52 of ch. 2001-45, L.O.F., was amended by the 2004 Legislature, the Division of Statutory Revision codified s. 52 and the subsequent amendments to it at s. 651.1185, F.S., in a chapter that governs continuing care contracts. With the publication of the 2004 Florida Statutes, it became appropriate to cite s. 651.1185, F.S., as the law that imposes a moratorium on approval of certificates of need for additional nursing home beds.

In reviewing the moratorium, staff found that the placement of the moratorium in ch. 651, F.S., amid statutes for continuing care contracts, rather than in ch. 408, F.S., which governs health care administration, including certificate-of-need review, is confusing. In fact, a number of experts on the subject did not know that the moratorium had been codified in ch. 651, F.S. If the moratorium is continued, s. 651.1185, F.S., should be moved to ch. 408, F.S.

RECOMMENDATION

Section 651.1185, F.S., should be moved to ch. 408, F.S., and amended to extend the moratorium on the approval of certificates of need for additional nursing home beds until July 1, 2011. In order to ensure access, an exception to the moratorium should be permitted to allow nursing homes with a 96 percent or greater occupancy rate to add 10 beds or 10 percent of the number of licensed beds if the home had no class I or class II deficiencies in the past 30 months and the occupancy rate in the planning subdistrict is 94 percent or greater. This exception is the same policy as the exemption to CON review under s. 408.036(3)(j), F.S., which is not currently available to nursing homes because of the moratorium. If the Legislature enacts this recommendation, the moratorium would stay in effect for five more years, and AHCA would have the authority to grant an exception to the moratorium for nursing homes that provide a good quality of care and that are operating at what is essentially full capacity.

¹³ Gibson, M. Gregory, S. Houser, A. and Fox-Grange, W. *Across the States: Profiles of Long-Term Care 2004*. AARP. 2004.