

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 267 Health Care Facilities  
**SPONSOR(S):** Murman  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 1062 (s)

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care		Rawlins	Collins
2) Future of Florida's Families			
3) Health Appropriations			
4) Appropriations			
5)			

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### SUMMARY ANALYSIS

Over the last 10 years, the Medicaid budget for long-term care has more than doubled and expenditures for elderly care are expected to continue to double in inflation-adjusted dollars through 2018.

This bill authorizes nursing home facilities, subject to approval, to use licensed nursing home beds for purposes other than nursing home care for extended periods of time. A nursing home is authorized to use a contiguous portion of the facility to meet the needs of the elderly through adult day care, assisted living, extended congregate care, or limited nursing services. A nursing home that converts beds to an alternative use may return those beds to nursing home operations upon notice to the Agency for Health Care Administration (AHCA). The proposed alternate use of nursing home beds is expected to have positive implications for the state Medicaid budget allocations for long-term care.

This bill amends s. 400.021, F.S., allowing the Director of Nursing or another registered nurse employee with institutional responsibilities, the ability to sign the resident care plan on behalf of the facility. The bill removes the "presumption of guilt" applied to the nursing home's licensure denial, suspension, revocation, moratorium or fine actions by requiring that Agency records, reports, ranking system, internet information, and publications reflect the most current agency actions. The bill removes conflicting language from the nursing home statute regarding the in-service standards for Certified Nursing Assistants (CNAs).

The Certificate-of-Need (CON) regulatory process is governed by chapter 408, F.S. The bill amends several sections of the CON process by: expanding the current need methodology used for granting a CON request for nursing homes by allowing for the consideration of a district maintaining a goal of a 94 percent occupancy rate; and providing for an expedited review for the replacement of a nursing home within the same district, within specified requirements and an expedited review for the relocation of a portion of a nursing home's licensed beds to a facility within the same district. The bill creates an exemption from CON review by:

- ✓ Allowing hospitals to provide emergency percutaneous interventions.
- ✓ Expanding the conditions whereby a nursing home may receive an exemption.
- ✓ Allowing for replacement of a licensed nursing home on the same site.
- ✓ Allowing for the consolidation or combination of licensed nursing homes or transfer of beds between licensed nursing homes.

The bill provides an exemption to the current CON moratorium for nursing homes.

The bill provides an effective date of upon becoming law.

According to AHCA, the fiscal impact of the bill is \$69,186 in FY 04-05 and \$66,357 in FY 05-06.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

**STORAGE NAME** h0267.hc.doc  
**DATE** February 3, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### Nursing Homes

Over the last 10 years, the Medicaid budget for long-term care has more than doubled. Yet, there was a slowing rate of growth in Medicaid-funded resident days in nursing homes between 1991 and 2000 with an absolute decline in the number of Medicaid resident days in 2001. Medicaid long-term care expenditures for the elderly are expected to more than double in inflation-adjusted dollars between 1993 and 2018 due to the growth in the aging population and health care cost increases in excess of inflation.

Such price level increases place a strain on the Medicaid budget. Further reducing reliance on nursing home care is essential. Also, given a choice, individuals would rather not move to institutional care settings. Three out of four Americans aged 50 and older expressed a strong preference for receiving services in their homes as long as possible if they or a family member had a disability or needed help with daily activities (American Association of Retired Persons [AARP], 2002).

To reduce Medicaid-funded nursing home bed days and minimize state spending on nursing home care, Florida must avoid admitting individuals to nursing homes unless there are no alternatives and must encourage nursing home residents to transfer to less intensive levels of residential or community care when appropriate. The only way to minimize Medicaid nursing home bed use is to divert people from, or transition people out of, nursing homes — but there must be appropriate alternative services available.

Reducing Medicaid-funded nursing home expenditures is challenging due to the basic facts about Florida’s population and Florida’s long-term care system. These include:

- ✓ Continued growth in older age groups, particularly those aged 85 and older, will inevitably increase demand for all long-term care services in Florida.
- ✓ Florida has had one of the lowest rates of nursing home utilization in the United States for many years.
- ✓ Florida’s nursing homes already serve a very frail population.
- ✓ The rate of growth in Florida Medicaid nursing home bed days has slowed over the last ten years, with an absolute decline in 2001. There is little left in the system to cut.
- ✓ The state may be able to stabilize or reduce the proportion of nursing home beds it pays through Medicaid, although long-term growth in the aged population may increase the absolute numbers of nursing home beds funded by Medicaid.

The 2002 Legislature, in CS/SB 1276, directed the Agency for Health Care Administration (AHCA), in consultation with the Department of Elderly Affairs (DOEA), to report on Medicaid-funded nursing home

bed days. The legislation required the report to contain proposals for reducing the number of Medicaid-funded nursing home bed days purchased by the state and replacing such nursing home care with care provided in less costly settings.

The report, "Proposals to Reduce Medicaid-Funded Nursing Home Bed Days in Florida," was presented to the Governor, President of the Senate, and Speaker of the House of Representatives on December 1, 2002. The report proposed five ways to reduce Medicaid nursing home utilization:

- Restrict the supply of nursing home beds;
- Promote cost-effective independent living for at-risk older people;
- Increase nursing home diversion and transitioning;
- Make Medicaid a more selective purchaser of long-term care services; and
- Increase private spending for nursing home care.

The report proposed four ways to restrict the supply of nursing home beds:

- Continue the nursing home certificate-of-need moratorium, but allow limited expansions in rural areas where overall occupancy is 95 percent or greater;
- Establish a priority system for the renovation or replacement of existing nursing home beds;
- Allow nursing homes to voluntarily convert underutilized space to assisted living, adult day health care, or other uses through bed banking; and
- Increase regulatory oversight of assisted living facilities and adult day health care.

Bed banking is a way to temporarily convert licensed nursing home beds to another use without losing the ability to use the beds as nursing home beds at a later time. Two options for bed banking are suggested in the report. The first option allows a nursing home with low occupancy rates to convert unoccupied nursing home beds to assisted living facility (ALF) beds, adult day health care services, adult day personal care services, or other uses. The second option allows a nursing home to convert an occupied bed to an ALF bed when the resident's need for care decreases to levels below skilled nursing care. The report also suggests the possibility of using banked beds in an emergency situation, such as when a nursing home closes and its residents must find a new placement.

Nursing homes, governed by part II of ch. 400, F.S., provide nursing care, personal care or custodial care to residents. Assisted living facilities, under part III of ch. 400, F.S., provide housing, meals, and one or more personal services to residents. Adult day care centers, under part V of ch. 400, F.S., provide basic services to adults in a protective, noninstitutional setting for a part of a day. The services provided in adult day care centers may include therapeutic social and health programs, leisure activities, self-care training, rest, and respite care.

As of February 2004, there are 670 nursing homes in Florida. The total number of beds in Florida nursing homes is approximately 82,000. The number of nursing home beds decreased from a total of 84,012 at the end of 2001 to a total of 82,138 at the end of 2002. The overall occupancy rate is 85 percent, with the Medicaid bed occupancy being 85.4 percent and the non-Medicaid bed occupancy being 70.1 percent.

The bill creates s. 400.244, F.S., which authorizes nursing home facilities the ability to use licensed nursing home beds for purposes other than nursing home care for extended periods of time exceeding 48 hours. A nursing home is authorized to use a contiguous portion of the facility to meet the needs of the elderly through less restrictive and less institutional methods of long-term care, including, but not limited to, adult day care, assisted living, extended congregate care, or limited nursing services.

Funding under assisted living Medicaid waivers may be used to provide extended congregate care or limited nursing services only to residents who have resided in the facility for a minimum of 90 consecutive days.

Nursing home beds that are used to provide alternative services may share common areas, services, and staff with beds that are designated for nursing home care. The fire and life safety codes applicable to nursing homes would apply to the portion of the facility that is used for alternative services. In addition, if the facility were used for an alternative service, it would have to meet the requirements specified by law for that use.

The bill requires that before using nursing home beds for an alternative service, a nursing home must submit a written request to AHCA in a format specified by the Agency, and AHCA is required to approve the request unless it is determined that the alternative use of the nursing home beds adversely affects access to nursing home care in the geographical area in which the nursing home is located.

The bill amends s. 400.244, F.S., requiring that the converted beds shall continue to be maintained as part of the total licensed beds for a nursing home for the purposes of health planning and for the calculation of licensing fees that are based "per bed." The bill requires nursing homes to report to the Agency at the end of each calendar quarter, the total number of patient days that occurred in each month of the quarter and the number of such days that were Medicaid patient days.

Currently, Florida regulation requires that a nursing home's Director of Nursing or administrator provide oversight to a wide array of services for the home which include development and implementation of policy and procedures concerning:

- ✓ Patient Activities;
- ✓ Advance directives;
- ✓ Consultant services;
- ✓ Death of residents in the facility;
- ✓ Dental services;
- ✓ Staff education, including HIV/AIDS training;
- ✓ Diagnostic services;
- ✓ Dietary services;
- ✓ Disaster preparedness;
- ✓ Fire prevention and control;
- ✓ Housekeeping;
- ✓ Infection control;
- ✓ Laundry service;
- ✓ Loss of power, water, air conditioning or heating;
- ✓ Medical director/consultant services;
- ✓ Medical records;
- ✓ Mental health;
- ✓ Nursing services;
- ✓ Pastoral services;
- ✓ Pharmacy services;
- ✓ Podiatry services;
- ✓ Resident care planning;
- ✓ Resident identification;
- ✓ Resident's rights;
- ✓ Safety awareness;
- ✓ Social services;
- ✓ Specialized rehabilitative and restorative services;
- ✓ Volunteer services;
- ✓ The reporting of accidents or unusual incidents involving any resident, staff member, volunteer or visitor; and
- ✓ Staff Education.

The facility is responsible to develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, mental and psychosocial needs that are identified in the comprehensive assessment. The care plan must describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental and social well-being. The care plan must be completed within 7 days after completion of the resident assessment.

The Nursing Director's responsibilities for residents care plans require the development of a plan that includes:

- ✓ Physician's orders, diagnosis, medical history, physical exam and rehabilitative or restorative potential.
- ✓ A preliminary nursing evaluation with physician's orders for immediate care, completed on admission.

- ✓ A complete, comprehensive, accurate and reproducible assessment of each resident's functional capacity which is standardized in the facility, and is completed within 14 days of the resident's admission to the facility and every twelve months, thereafter.

Currently, Florida law allows only the Director of Nursing to sign a patient's resident care plan; this bill amends s. 400.021, F.S., allowing the Director of Nursing or another registered nurse employee with institutional responsibilities, the ability to sign the resident care plan on behalf of the facility.

The Agency produces printed documents such as the "Watch List" and the "Nursing Home Guide;" which provide information regarding nursing home facilities' ratings and licensure status. This information is also posted on the Agency's website. Rating and licensing status information is often variable depending on legal rulings and other situational changes. In circumstance in which a facility has had a disciplinary action against the facility, and subsequently the facility has corrected the problem, printed materials may not reflect the most current data. According to AHCA, current procedures provide changes to the information located on the internet upon notification and a retraction notice in the subsequent published editions of printed material. The survey frequency for the 670 nursing homes averages one per year with a minimum of one half of those requiring a follow-up survey. The total number of survey reports from these visits would be in excess of 1,000 over the twelve month period.

The nursing home industry has expressed concerns regarding the "presumption of guilt" applied to the nursing home's licensure denial, suspension, revocation, moratorium or fine actions that lingers even after corrective action has been taken to rectify the problem cited in previously published documents.

This bill requires that the Agency's records, reports, ranking system, internet information, and publications must reflect the most current agency actions.

The bill eliminates the specific requirement in Chapter 400, F.S., for 18 hours per year of in-service training for certified nursing assistants (CNA), and includes a reference to the requirements in Chapter 464, F.S., the Nurse Practice Act, which specifies training required for CNAs. The subsection retains the five specific topics that are presently required as a minimum in that training.

### **Certificate-of-Need (CON) Regulatory Process**

In the past few years, the Legislature has considered proposals related to CON that call into question whether or not CON is still an appropriate market entry and quality control mechanism for Florida hospitals. Several issues are brought to the discussion. One issue is the question of whether the CON process is a mechanism for maintaining quality or an outdated planning mechanism that thwarts competition among providers. The 2000 Legislature established a CON Workgroup to deliberate the issues pertaining to the Certificate of Need program, including the impact of trends in health care delivery and financing and to "study issues relating to implementation of the CON Program." The workgroup was directed to prepare an interim report by December 31, 2001 and a final report was provided to the Governor and the Legislature December 31, 2002. The Workgroup's final report included some of the following recommendations: revising the definition of tertiary care; amending the expedited review process; amending the exemption process that, among other things, integrated an exemption for percutaneous coronary intervention; increasing CON application fees; amending the administrative hearing process; and amending the judicial review process.

As a result of the workgroup efforts, many bills were filed and debated in the 2003 legislative session, which included proposals to redesign the CON process, and proposals that provided exemptions to CON review. Although the legislation that passed created a number of exemptions to the CON process, no real reform was created out of the passage of the 2003 legislative proposals. This year, the Governor has proposed to reform the CON program and develop a core licensure program designed to establish licensing requirements based on quality outcomes rather than limiting market entry.

Currently, the Certificate-of-Need (CON) regulatory process under chapter 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). Section 408.036, F.S., specifies which health care projects are subject to review. Subsection (1) of that section lists the projects that are subject to full comparative review in batching cycles by AHCA against specified criteria. Subsection (2) lists the kinds of projects that can undergo an expedited review. These include: research, education, and training programs; shared services contracts or projects; a transfer of a certificate of need; certain increases in nursing home beds; replacement of a health care facility when the proposed project site is located in the same district and within a 1-mile radius of the replaced facility; and certain conversions of hospital mental health service beds to acute care beds. Subsection (3) lists projects that may be exempt from full comparative review upon request. Currently, there are 20 exemptions to the CON review process.

The bill expands the current need methodology used for granting a CON request for nursing homes by allowing for the consideration of a district maintaining a goal of a 94 percent occupancy rate.

This bill modifies the list of projects subject to expedited review as follows:

- ✓ Replacement of a nursing home within the same district provided the proposed project site is located within a geographic area that contains at least 65 percent of the facility's current residents and is within a 30-mile radius of the replaced nursing home.
- ✓ Relocation of a portion of a nursing home's licensed beds to a facility within the same district provided the relocation is within a 30-mile radius of the existing facility and the total number of nursing home beds in the district does not increase.

The bill modifies the list of projects that may be exempted from CON review by:

- ✓ Allowing hospitals to provide emergency percutaneous interventions<sup>1</sup> for patients presenting with an emergency myocardial infarction in a facility that does not provide open heart surgery. Specifying that the department adopt by rule licensure requirements for these services that are consistent with the American College of Cardiology, and requires the facility to meet specific cardiac care standards relating to personnel and equipment, requires a written transfer agreement, and specifies that if the facility does not meet the volume requirements within 18 months after the program begins offering the service that it will result in the immediate expiration of the exemption.
- ✓ Expanding the conditions whereby a nursing home may receive an exemption by allowing or for the addition of nursing home beds licensed under chapter 400, F.S., at a facility that has been designated as a Gold Seal nursing home under s. 400.235, F.S., in a number not exceeding 20 total beds or 10 percent of the number of beds licensed in the facility being expanded, whichever is greater.
- ✓ Allowing for replacement of a licensed nursing home on the same site, or within 3 miles of the same site, provided the number of licensed beds does not increase.
- ✓ Allowing for consolidation or combination of licensed nursing homes or transfer of beds between licensed nursing homes within the same planning subdistrict, by providers that operate multiple nursing homes within that planning subdistrict, provided there is no increase in the planning subdistrict total of nursing home beds and the relocation does not exceed 30 miles from the original location.

The 2001 Legislature created a moratorium of the issuance of CONs for nursing homes. The continued growth in the Medicaid budget for nursing home care has constrained the ability of the state to meet the needs of its elderly residents through the use of less restrictive and less institutional methods of long-term care. The intent of the Legislature is 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

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<sup>1</sup> Also known as : PCI; primary percutaneous coronary interventions ; and angioplasty.

services in a manner that is both more cost-effective and more in keeping with the wishes of the elderly residents of this state. This moratorium on certificates of need does apply to sheltered nursing home beds in a continuing care retirement community pursuant to chapter 651, Florida Statutes. Notwithstanding the establishment of need as provided for in chapter 408, Florida Statutes, no certificate of need for additional community nursing home beds shall be approved by the agency until July 1, 2006.<sup>2</sup>

The bill allows an exemption to the moratorium for a nursing home that is located in a county that has no community nursing home beds due to closure of all nursing home beds in that county that were licensed on July 1, 2001. The certificate-of-need review for such circumstances is subject to the comparative review process consistent with the provisions of s. 408.039, Florida Statutes, and the number of beds may not exceed the number of beds lost by the county after July 1, 2001.

#### C. SECTION DIRECTORY:

**Section 1.** Creates s. 400.244, F.S., allowing nursing homes to convert beds to alternative uses as specified; providing restrictions on uses of funding under assisted-living Medicaid waivers; providing procedures; providing for the applicability of certain fire and life safety codes; providing applicability of certain laws; requiring a nursing home to submit to the Agency for Health Care Administration a written request for permission to convert beds to alternative uses; providing conditions for disapproving such a request; providing for periodic review; providing for retention of nursing home licensure for converted beds; providing for reconversion of the beds; providing applicability of licensure fees; and requiring quarterly reports to the agency relating to patient days.

**Section 2.** Amends s. 400.021, F.S., redefining the term "resident care plan," as used in part II of ch. 400, F.S.

**Section 3.** Amends s. 400.23, F.S., providing that certain information from the Agency for Health Care Administration must reflect the most current agency actions.

**Section 4.** Amends s. 400.211, F.S., revising in-service training requirements for persons employed as nursing assistants in a nursing home facility.

**Section 5.** Amends s. 408.034, F.S., requiring the nursing-home-bed-need methodology established by the Agency for Health Care Administration by rule to include a goal of maintaining a specified district average occupancy rate.

**Section 6.** Amends s. 408.036, F.S., relating to health-care-related projects subject to review for a certificate of need; subjecting certain projects relating to replacement of a nursing home and relocation of nursing home beds to expedited review; revising requirements for certain projects relating to the addition of nursing home beds which are exempt from review; exempting from review certain projects relating to provision of percutaneous coronary intervention for certain emergency patients, replacement of a licensed nursing home bed on the same site or nearby, and consolidation or combination of licensed nursing homes or transfer of beds between licensed nursing homes within the same planning subdistrict; providing rulemaking authority; and providing for assessment of exemption-request fees.

**Section 7.** Amends s. 52 of Chapter 2001-45, Laws of Florida, as amended by section 1693 of Chapter 2003-261, Laws of Florida, specifying nonapplication of a moratorium on certificates of need and authorizing approval of certain certificates of need for certain counties under certain circumstances; and providing review requirements and bed limitations.

**Section 8.** Provides that this act shall take effect upon becoming law.

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<sup>2</sup> Section 52 of Ch. 2001-45, Laws of Florida.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

See "Fiscal Comments" section of the bill analysis.

#### 2. Expenditures:

According to AHCA, a review of these survey reports, the current legal actions related to the facility surveyed, the current internet and printed data on the facility, and concurrent revision of the internet data and preparation of revisions to publications would require one and one-half to two hours for each of these reports. That workload would be approximately 1,750 hours, based on a one and three-quarter hour average per report. Additional expense funding would be required to update and republish existing publications if that were to be determined necessary.

	<b>Amount Year 1 (FY 04-05)</b>	<b>Amount Year 2 (FY 05-06)</b>
Sub-Total Non-Recurring Expenditures	\$ 2,623	\$ 0
Sub-Total Recurring Expenditures	\$ 66,563	\$ 66,357
<b>Total Expenditures</b>	<b>\$ 69,186</b>	<b>\$ 66,357</b>

Funding of the expenditures related to the additional reporting requirements described in Section 3 would require authorization for assessment of additional fees from the nursing homes regulated under this statutory part. The General Revenue Service Charge of 7.3% would apply to these additional fees as required by Florida Statute.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

Counties are responsible for a percentage of Medicaid nursing homes days. By allowing nursing home facilities to utilize existing resources to provide alternative levels of care that are less costly, this bill may reduce a small portion of the overall contribution counties pay for Medicaid nursing home expenditures

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

With regard to the nursing home provisions of this bill, staffing costs and other nursing home costs may be reduced when the beds are used for a less costly service.

### D. FISCAL COMMENTS:

Pursuant to the nursing home provisions of this bill, it is anticipated that a less costly use of licensed nursing home beds should result in the reduction of the state's cost for Medicaid nursing home bed days.

According to AHCA, in Section 1, the bill requires nursing homes to continue to pay fees associated with maintaining the nursing home license, but not those associated with the alternative use of the beds. A true fiscal impact is not assessed because it cannot be determined how many facilities might

seek and qualify to convert beds at this time. The Agency's annual expenditures to regulate assisted living facilities are well over \$5 million while fees associated with ALF licensure generate only a little over \$2.6 million annually resulting in a recurring and increasing annual loss. If a significant number of new assisted living facilities are created by this bill, it will be necessary to consider an appropriation or additional fee in the future.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The Agency for Health Care Administration is directed to adopt rules pursuant to ss.120.436(1) and 120.54, F.S., regarding licensure requirements for facilities providing emergency percutaneous coronary interventions at facilities that do not have an open-heart surgery program, consistent with the recommendations from the American College of Cardiology.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None..

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**