

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1417 CS

Hospices

SPONSOR(S): Sansom

TIED BILLS:

IDEN./SIM. BILLS: CS/SB 1598

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|-----------------------------------------|-----------------|---------|----------------|
| 1) Elder & Long-Term Care Committee | 8 Y, 0 N, w/CS | DePalma | Walsh |
| 2) Health Care Appropriations Committee | 11 Y, 0 N, w/CS | Speir | Massengale |
| 3) Health & Families Council | | DePalma | Moore |
| 4) _____ | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ |

SUMMARY ANALYSIS

House Bill 1417 CS amends the definition of "hospice" contained in s. 400.601(3), F.S., to remove the requirement that hospices be organized as not-for-profit corporations, and directs the Office of Program Policy Analysis and Government Accountability to submit a report by January 1, 2010 analyzing the impact of for-profit hospices on the delivery of care to terminally ill patients in the state. Additionally, the CS provides legislative intent that no change in law be made to licensure and certificate of need provisions until 2012.

The CS requires all entities in the state offering, describing or advertising hospice services to state the year of initial state licensure.

The CS permits the Agency for Health Care Administration to deny a license to any hospice that fails to meet any condition imposed by the agency in the certificate of need. It requires hospices to use trained volunteers in an amount equal to at least 5 percent of total patient care or administrative hours of all paid employees and staff.

The CS also requires the Department of Elderly Affairs, in conjunction with the Agency for Health Care Administration and all hospices licensed in Florida, to develop quality and effectiveness outcome measures, consider and adopt national initiatives, and develop an annual report.

The CS appears to have no fiscal impact on state or local government.

The CS provides a severability clause, and an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty—The CS allows for-profit hospices to be licensed in Florida, subject to certificate of need requirements.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Hospice Care for Terminally ill Patients

Hospice care is an alternative approach to the traditional medical model for end-of-life care. Hospice programs specialize in providing basic medical care, palliation and pain management, and social, psychological, and spiritual support to terminally-ill¹ individuals and their families. In Fiscal Year 2004-2005, Florida hospice programs provided care to more than 98,000 individuals with terminal illnesses.² Nationally, the number of individuals receiving hospice care has increased 300 percent in the last decade, from 340,000 hospice patients in 1994 to 1,060,000 patients in 2004.³

With one exception, s. 400.601(3), F.S., requires hospice programs to operate as not-for-profit corporations, as defined in chapter 617, F.S.⁴ Section 400.602(5), F.S., authorizes a hospice that was incorporated on or before July 1, 1978 to be transferred to a for-profit or not-for-profit entity, while s. 400.602(6), F.S., further permits any entity entitled to licensure under s. 400.602(5), F.S., to obtain a license for up to two additional hospices.⁵

Two for-profit entities, Vitas Healthcare Corporation of Florida and Vitas Healthcare Corporation of Central Florida, each purchased a not-for-profit hospice established before July 1, 1978 in accordance with s. 400.602(5), F.S. Both Vitas Healthcare Corporation of Florida and Vitas Healthcare Corporation of Central Florida have obtained licenses for two additional hospices,⁶ as permitted in s. 400.602(6), F.S. There are only four remaining hospices that were incorporated on or before July 1, 1978, that could be sold to for-profit hospices pursuant to s. 400.602(5), F.S.:

- Hospice of the Florida Suncoast (Pinellas County).
- Hospice of St. Francis (Brevard County).
- Hospice of Palm Beach County.
- Hospice of Gold Coast Home Health Services (Broward County).

¹ To be eligible for hospice services in Florida, patients must receive a referral from their attending or primary physician for hospice care based on a diagnosis of a terminal illness with a life expectancy of one year or less, per s. 400.601(10), F.S.

² *Florida's Certificate of Need Process Ensures Qualified Hospice Programs; Performance Reporting Is Important to Assess Hospice Quality*, Report 06-29, March 2006, Office of Program Policy Analysis and Government Accountability.

³ *NHPCO's 2004 Facts and Figures*, accessed March 23, 2006, National Hospice and Palliative Care Organization, available at: http://www.nhpc.org/files/public/Facts_Figures_for2004data.pdf.

⁴ A not-for-profit corporation is defined in s. 617.01401(5), F.S., as a corporation, no part of the income or profit of which is distributable to its members, directors, or officers.

⁵ Such entity may obtain a license for up to two additional hospices "in accordance with the other requirements of this part and upon receipt of any certificate of need that may be required under the provisions of ss. 408.031-408.045, F.S."

⁶ On March 23, 2006, the license status of the hospice run by Vitas Healthcare Corporations of Florida in Boynton Beach, Florida (Palm Beach County) indicated that the facility had received a provisional license pending necessary background screening. Hospice licenses can be reviewed at <http://facilitylocator.floridahealthstat.com/FacilityFind.aspx?pFacIType=22&pFacIName=&pFacICity=&pFacIZip=&pCounty=ALL&pFacIInspectionRegion=ALL>.

All entities desiring a license to provide hospice services in the state must first obtain a certificate of need (CON) from the Agency for Health Care Administration (AHCA). Under s. 408.043(2), F.S., the need for a new or expanded hospice must be determined on the basis of the need for, and availability of, hospice services in the community. Other guidelines provide the following:

- The formula on which the CON is based must discourage regional monopolies and promote competition.
- The inpatient hospice care component of a hospice which is a freestanding facility, or a part of a facility, which is primarily engaged in providing inpatient care and related services and is not licensed as a health care facility, must also be required to obtain a CON.
- Provision of hospice care by any current provider of health care is a significant change in service, and therefore requires a CON for such services.

AHCA has established 27 service areas for hospices⁷ as follows:

- Service Area 1 consists of Escambia, Okaloosa, Santa Rosa, and Walton Counties.
- Service Area 2A consists of Bay, Calhoun, Gulf, Holmes, Jackson, and Washington Counties.
- Service Area 2B consists of Franklin, Gadsden, Jefferson, Leon, Liberty, Madison, Taylor, and Wakulla Counties.
- Service Area 3A consists of Alachua, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Putnam, Suwannee, and Union Counties.
- Service Area 3B consists of Marion County.
- Service Area 3C consists of Citrus County.
- Service Area 3D consists of Hernando County.
- Service Area 3E consists of Lake and Sumter Counties.
- Service Area 4A consists of Baker, Clay, Duval, Nassau, and St. Johns Counties.
- Service Area 4B consists of Flagler and Volusia Counties.
- Service Area 5A consists of Pasco County.
- Service Area 5B consists of Pinellas County.
- Service Area 6A consists of Hillsborough County.
- Service Area 6B consists of Hardee, Highlands, and Polk Counties.
- Service Area 6C consists of Manatee County.
- Service Area 7A consists of Brevard County.
- Service Area 7B consists of Orange and Osceola Counties.
- Service Area 7C consists of Seminole County.
- Service Area 8A consists of Charlotte and DeSoto Counties.
- Service Area 8B consists of Collier County.
- Service Area 8C consists of Glades, Hendry and Lee Counties.
- Service Area 8D consists of Sarasota County.
- Service Area 9A consists of Indian River County.
- Service Area 9B consists of Martin, Okeechobee, and St. Lucie Counties.
- Service Area 9C consists of Palm Beach County.
- Service Area 10 consists of Broward County.
- Service Area 11 consists of Dade and Monroe Counties.

OPPAGA Review of Florida's Hospice Care Industry

Pursuant to a legislative request, the Office of Program Policy Analysis and Government Accountability (OPPAGA) performed a review of the state's hospice industry in March 2006, as well as a survey of the

⁷ Rule 59C-1.0355, F.A.C.

various approaches to regulating hospice facilities utilized by eight other states,⁸ in an effort to evaluate Florida's system of providing hospice care to terminally-ill patients.⁹ According to the report,

Florida's method of regulating hospice programs differs from other states in two major ways. Florida is the only state that requires new hospice programs to operate as not-for-profit corporations and is one of only 12 states that comprehensively regulates the growth of hospice programs using a Certificate of Need process.¹⁰

OPPAGA reports ownership status does not appear to affect performance of hospice programs

Noting that available information on the issue is limited, OPPAGA reported that "ownership status does not appear to affect hospice care in Florida or in other states." Hospice officials in states authorizing both not-for-profit and for-profit hospice facilities reported having no evidence suggesting that ownership status affects the quality of hospice care provided.

Additionally, OPPAGA noted that there was no significant difference in the number of complaints or allegations received by AHCA relating to either not-for-profit or for-profit hospice programs, though the total number of hospice allegations in the state was small.¹¹

OPPAGA recommended that the Legislature direct AHCA and the Department of Elderly Affairs (DOEA) to work with Florida hospice programs to develop standardized quality and outcome measures, as well as a mechanism for collecting and maintaining such information. Moreover, the report urged hospice programs in the state to consider participating in national initiatives such as those developed by the National Hospice and Palliative Care Organization (NHPCO).

OPPAGA recommends continued CON approval for new hospice programs

OPPAGA further recommended that, if it elected to license new for-profit hospice programs in the state, the Legislature should maintain its current CON process. The OPPAGA report indicated that such process "ensures that new hospice programs operate only in areas of the state where current hospice programs are not able to meet projected hospice needs," thereby preventing an excess of hospice facilities within a single geographic locale. OPPAGA reported that the CON process also ensures that "hospice programs have the expertise, financial resources, and commitment to meet the needs of their communities."

OPPAGA noted that AHCA is currently exploring modifications to its methodology for identifying areas of the state where existing programs may not be meeting the need for hospice care services.

EFFECT OF PROPOSED CHANGES

House Bill 1417 CS amends the definition of "hospice" contained in s. 400.601(3), F.S., to remove the requirement that hospices be organized as a not-for-profit corporation, as defined in chapter 617, F.S.

The CS directs OPPAGA to submit a report analyzing the impact of for-profit hospices on the delivery of care to terminally ill patients in the state by January 1, 2010 to the President of the Senate and the Speaker of the House of Representatives. This report is required to include a review of the quality of care offered by for-profit hospices, changes in the competitive marketplace in hospice service areas, and any other information deemed pertinent.

⁸ The eight states surveyed (Alabama, Illinois, Maryland, Virginia, Ohio, Tennessee, Texas, and California) are similar to Florida in terms of either size and/or elderly population.

⁹ *Florida's Certificate of Need Process Ensures Qualified Hospice Programs; Performance Reporting Is Important to Assess Hospice Quality*, Office of Program Policy Analysis and Government Accountability, *supra*.

¹⁰ *Ibid.*

¹¹ Between August, 2002 and July, 2005, AHCA received a total of only 279 allegations pertaining to hospice operations.

The CS also deletes ss. 400.602(5) and (6), F.S., relating to the ability of hospices incorporated prior to July 1, 1978 to be transferred to a for-profit entity, and thereafter obtain licensure for up to two additional hospices.

The CS requires all entities in the state offering, describing, or advertising hospice services to state the year of initial licensure as a hospice in the state or the year of initial licensure of the hospice entity or affiliate based in the state that owns the hospice, both directly beneath the name of the licensed entity in a font no less than 25 percent of the font size for the entity's name or other indication of hospice services, and prominently at least one time on any document, item, or other medium offering, describing, or advertising hospice services or hospice-like services. Materials relating to the care and treatment of an existing hospice patient are excluded from this requirement.

The CS permits AHCA to deny a license to a hospice that fails to meet any condition for the provision of hospice care or services imposed by the agency in the certificate of need, unless such hospice is able to demonstrate that good cause exists for the failure.

Hospices are required by the CS to use trained volunteers in defined roles and under the supervision of a designated hospice employee, in an amount that equals at least 5 percent of total patient care or administrative hours provided by all paid hospice employees and contract staff in the aggregate. The CS also requires a hospice to document and report the use of volunteers, including a record of the number of volunteers and the number of hours and the tasks performed by each.

The CS provides legislative intent that no change in law be made to the hospice licensure and certificate of need provisions until 2012, in order to correctly analyze and evaluate the impact of this act on the quality of hospice care in the state.

By December 31, 2007, the Department of Elderly Affairs (DOEA), in consultation with AHCA and all hospices licensed in the state, is required to develop outcome measures to determine the quality and effectiveness of hospice care in Florida. At a minimum, the CS requires these outcome measures to include a requirement that 50 percent of patients reporting severe pain on a 0 to 10 scale report a reduction to 5 or less by the end of the fourth day of care.

The CS requires DOEA, in conjunction with AHCA and all hospices licensed in the state, to consider and adopt national initiatives, such as those developed by the National Hospice and Palliative Care Organization, to set benchmarks for measuring the quality of hospice care provided in the state; and to develop an annual report that analyzes and evaluates information collected under various data collection or reporting provisions.

The CS provides a severability clause, and an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 400.601(3), F.S., deleting the requirement that a hospice be a not-for-profit corporation, organized pursuant to Chapter 617, F.S.

Section 2. Amends s. 400.602, F.S., specifying certain advertising and distribution requirements; deleting provisions relating to the ability of hospices incorporated prior to July 1, 1978 to be transferred to a for-profit entity.

Section 3. Amends s. 400.606, F.S., permitting AHCA to deny a license where a hospice fails to meet any condition for the provision of hospice care or services imposed by the agency in the certificate of need.

Section 4. Amends s. 400.6105, F.S., requiring a hospice to use trained volunteers, and establishing documentation and reporting requirements.

Section 5. Directing OPPAGA to submit a report analyzing the impact of for-profit hospices on the delivery of care to terminally-ill patients by January 1, 2010.

Section 6. Providing legislative intent that no change in law be made to the hospice licensure and certificate of need provisions until the year 2012.

Section 7. Requiring DOEA, in conjunction with AHCA and all hospices licensed in Florida, to develop certain outcome measures by December 31, 2007, as well as consider and adopt certain national initiatives, and develop an annual report.

Section 8. Providing severability.

Section 9. Providing an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Both the Department of Elderly Affairs and AHCA report that, although department staff will need to evaluate data and generate certain reports, such tasks can be completed within current department and agency resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

While the fiscal impact of allowing for-profit hospice facilities in the state is presently unknown, the CS directs OPPAGA to submit a report analyzing the impact of for-profit hospices on the delivery and quality of hospice care, as well as reviewing changes in the competitive marketplace in hospice service areas, by January 1, 2010.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Counties and municipalities are unaffected by this legislation.

2. Other:

See "Drafting Issues" below.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The legislative intent provided in Section 6 of the CS that "no change in law be made to the hospice licensure and certificate of need provisions until the year 2012 ..." leaves unanswered the question of when in the year 2012 the Legislature intends to permit or pursue legislative changes. Further, to the extent the intent seeks to bind the action of future legislatures, it is likely that the language will be viewed as aspirational in effect.¹²

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its March 28, 2006 meeting, the Committee on Elder and Long-Term Care adopted a strike-all amendment to House Bill 1417:

- Amends the definition of "hospice" in s. 400.601, F.S., to remove the requirement that a hospice be organized as a not-for-profit corporation under chapter 617, F.S..
- Provides that an entity offering hospice services must state the year of initial state licensure directly beneath the name of the licensed entity in a font no less than 25 percent of the font size for the entity's name, and prominently at least one time on any document, item, or other medium offering, describing, or advertising hospice services.
- Requires that a hospice serve the entire service area for which it is licensed and, for counties in the service area with a population of 50,000 or less, requiring a hospice to have a plan for providing hospice care and meeting the needs for hospice care and for reporting access and utilization for the county residents, and to locate an office in the county with local hospice staff or trained volunteers within six months of initial licensure.
- Deletes sections (5) and (6) of s. 400.602, F.S., relating to the ability of hospices incorporated prior to July 1, 1978 to be transferred to a for-profit entity, and thereafter obtain licensure for up to two additional hospices.
- Requires AHCA to deny a license or renewal of a license to any hospice that fails to meet any commitment for the provision of hospice care or services made in the application for certificate of need or any condition for the provision of hospice care or services specified in the certificate of need, unless such hospice can demonstrate that meeting a commitment or condition is premature to the initial issuance of a license.
- Requires hospices to use trained volunteers in an amount that equals 5 percent of total patient care hours of all paid hospice employees and contract staff, and providing certain documentation and reporting requirements.

¹² See *Neu v. Miami Herald Pub. Co.*, 462 So. 2d 821 (Fla. 1985).

- Directs OPPAGA to submit a report by January 1, 2010 to the President of the Senate and the Speaker of the House of Representatives that analyzes the impact of for-profit hospices on the delivery and quality of care to terminally-ill patients and reviews changes in the competitive marketplace in hospice service areas.
- Provides legislative intent that no change in law or in administrative rule be made to the hospice licensure and certificate of need provisions until the year 2012.
- Requires DOEA, in conjunction with AHCA and all hospices licensed in the state, to develop certain outcome measures to determine the quality and effectiveness of hospice care in Florida by December 31, 2007, to consider and adopt national initiatives setting benchmarks for measuring the quality of hospice care provided in the state, and to develop an annual report that analyzes and evaluates information collected under various data collection or reporting provisions.
- Provides a severability clause.

The committee favorably reported a committee substitute for the bill.

At its April 11, 2006 meeting, the Health Care Appropriations Committee adopted a strike-all amendment to House Bill 1417 CS that was different in the following ways:

- Excludes materials relating to the care of an existing hospice patient from the initial year of licensing disclosure requirements.
- Removed language that requires a hospice to serve the entire service area for which it is licensed and, for counties in the service area with a population of 50,000 or less, requiring a hospice to have a plan for providing hospice care and meeting the needs for hospice care and for reporting access and utilization for the county residents, and to locate an office in the county with local hospice staff or trained volunteers within six months of initial licensure.
- Removed language that allows AHCA to deny a license or renewal of a license to any hospice that fails to meet any commitment for the provision of hospice care.
- Removed language that allows AHCA to deny a license renewal to any hospice that fails to meet any condition for the provision of hospice care or services specified in the certificate of need, unless such hospice can demonstrate that meeting a commitment or condition is premature to the initial issuance of a license.

The committee favorably reported a committee substitute, and this analysis is drafted to that committee substitute.