

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 1482

INTRODUCER: Senator Hays

SUBJECT: Skilled Nursing Facilities

DATE: March 28, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Pre-meeting
2.			AHS	
3.			AP	
4.			RC	
5.				
6.				

I. Summary:

SB 1482 provides for a certificate of need (CON) exemption for additional skilled nursing facility (SNF) beds located within a retirement community that is deed-restricted for older persons, has a population of at least 20,000 residents, provides a continuum of health care services for older persons within its boundaries, and which has an agreement with a state university to coordinate and assist in providing comprehensive health care services to the retirement community's residents.

This bill substantially amends section 408.036 of the Florida Statutes.

II. Present Situation:

Certificates of Need

A CON is a written statement issued by the Agency for Health Care Administration (AHCA or Agency) evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice.¹ Under this regulatory program, the Agency must provide approval through the CON review and approval process prior to a provider establishing a new nursing home or adding nursing home beds.

¹ S. 408.032(3), F.S.

The Florida CON program has three levels of review: full, expedited, and the granting of an exemption.² The nursing home projects addressed in s. 408.036, F.S., related to CONs are as follows:

Projects Subject to Full Comparative Review

- Adding beds in community nursing homes; and
- Constructing or establishing new health care facilities, which include SNFs.³

Projects Subject to Expedited Review

- Replacing a nursing home within the same district; and
- Relocating a portion of a nursing home's licensed beds to a facility within the same district.

Exemptions from CON Review

- Converting licensed acute care hospital beds to Medicare and Medicaid certified skilled nursing beds in a rural hospital;
- Adding nursing home beds at a SNF that is part of a retirement community which had been in operation on or before July 1, 1949, for the exclusive use of the community residents;
- Combining licensed beds from two or more licensed nursing homes within a district into a single nursing home within that district if 50 percent of the beds are transferred from the only nursing home in a county and that nursing home had less than a 75 percent occupancy rate;⁴
- State veteran's nursing homes operated by or on behalf of the Florida Department of Veterans' Affairs;
- Combining into one nursing home, the beds or services authorized by two or more CONs issued in the same planning subdistrict;
- Separating into two or more nursing homes in the subdistrict, the beds or services that are authorized by one CON;
- Adding no more than 10 total beds or 10 percent of the licensed nursing home beds of that facility, whichever is greater; or if the nursing home is designated as a Gold Seal nursing home, no more than 20 total beds or 10 percent of the licensed nursing home beds of that facility for a facility with a prior 12-month occupancy rate of 96 percent or greater; and
- Replacing a licensed nursing home on the same site, or within three miles, if the number of licensed beds does not increase.

The CON program applies to all nursing home beds, regardless of the source of payment for the beds (private funds, insurance, Medicare, Medicaid, or other funding sources).

Determination of Need

A CON is predicated on a determination of need. The future need for community nursing home beds is determined twice a year and published by the agency as a fixed bed need pool for the applicable planning horizon. The planning horizon for CON applications is 3 years. Need determinations are calculated for subdistricts within the Agency's 11 service districts⁵ based on a

² S. 408.036, F.S.

³ S. 408.032(16), F.S., defines an SNF as an institution, or a distinct part of an institution, which is primarily engaged in providing, to inpatients, skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

⁴ This exemption is repealed upon the expiration of the moratorium by operation of s. 408.036(3)(f), F.S.

⁵ The nursing home subdistricts are set forth in Rule 59C-2.200, F.A.C.

formula⁶ and estimates of current and projected population as published by the Executive Office of the Governor.

Moratorium on Nursing Home CONs

In 2001, the Legislature enacted the first moratorium on the issuance of CONs for additional community nursing home beds until July 1, 2006.⁷ The legislation reenacted the moratorium in 2006,⁸ and then again in 2011.⁹ The current moratorium lasts until October 1, 2016, or until Medicaid managed care is implemented statewide.

The Legislature provided for additional exceptions to the moratorium to address occupancy needs that might arise including:

- Adding sheltered nursing home beds;
- Beds may be added in a county that has no community nursing home beds and the lack of beds is the result of the closure of nursing homes that were licensed on July 1, 2001;¹⁰
- Adding the greater of no more than 10 total beds or 10 percent of the licensed nursing home beds of a nursing home located in a county having up to 50,000 residents, if:
 - The nursing home has not had any class I or class II deficiencies within the 30 months preceding the request for addition;
 - The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility has not had any class I or class II deficiencies since its initial licensure; or
 - For a facility that has been licensed for less than 24 months, the prior 6-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility has not had any class I or class II deficiencies since its initial licensure; and
- Adding the greater of no more than 10 total beds or 10 percent of the number of licensed nursing home beds if:
 - The facility has not had any class I or class II deficiencies within the 30 months preceding the request for addition;
 - The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 96 percent;
 - The prior 12-month occupancy rate for the nursing home beds in the subdistrict is 94 percent or greater; and
 - Any beds authorized for the facility under this exception in a prior request have been licensed and operational for at least 12 months.¹¹

⁶ Rule 59C-1.036, F.A.C.

⁷ Ch. 2001-45, L.O.F. s. 52.

⁸ Ch. 2006-161, L.O.F.

⁹ Ch. 2011-135, L.O.F.

¹⁰ The request to add beds under this exception to the moratorium is subject to the full competitive review process for CONs.

¹¹ The request to add beds under the exception to the moratorium is subject to the procedures related to an exemption to the CON requirements.

III. Effect of Proposed Changes:

SB 1482 amends s. 408.036, F.S., to provide for a CON exemption for additional SNF beds located within a retirement community that is deed-restricted for older persons,¹² has a population of at least 20,000 residents, provides a continuum of health care services for older persons within its boundaries, and which has an agreement with a state university to coordinate and assist in providing comprehensive health care services to the retirement community's residents.

The bill provides for an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill may be challenged on constitutional grounds as a special law passed as a general law. A general law operates universally throughout the state, or uniformly upon subjects as they may exist throughout the state, or uniformly within permissible classifications by population of counties or otherwise, or is a law relating to a state function or instrumentality.¹³ Conversely, special and local laws operate within a very narrow classification of persons or on a limited geographic region of the state. The Florida Supreme Court defines special and local laws as:

[A law] relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal; a local law is one relating to, or designed to operate only in, a specifically indicated part of the state, or one that purports to operate within classified territory when classification is not permissible or the classification adopted is illegal.¹⁴

While general laws are enacted through the ordinary legislative process, a special law or local law must be noticed according to s. 11.02, F.S., as required by Art. III, s. 10 of the State Constitution.

¹² As defined in part II of ch. 760, F.S.

¹³ *St. Vincent's Medical Center, Inc. v. Memorial HealthCare Group, Inc.*, 967 So.2d 794 (Fla. 2007).

¹⁴ *Id.* Additionally, Art. X, s. 10 of the State Constitution, defines "special law" as "a special or local law."

The legal test to determine if a law is a special law or a general law is a reasonableness test. A general law may, when first enacted, only apply to one locality or one party and still be constitutional if the law can be reasonably expected to apply to other locations or parties in the future.¹⁵

This bill provides that a skilled nursing facility for the addition of skilled nursing homes beds may be constructed if it is located in a retirement community which meets all of the following criteria:

- Is deed restricted for older persons;
- Has a population of at least 20,000 residents;
- Provides within its boundaries a continuum of health care services for older persons; and,
- Has an agreement with a state university to coordinate and assist in providing comprehensive health care services to its residents.

Given these criteria, it is unclear how many retirement communities the bill may be reasonably expected to apply to when enacted or in the future.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1482 may have a positive fiscal impact for persons or entities that will be able to open a SNF or add SNF beds where they are now currently restricted by the CON process.

The bill may have a negative fiscal impact on SNFs that are currently serving the area where new nursing facilities are opened if demand decreases due to the increase in the number of skilled nursing beds. In addition, if the SNF beds are included in the calculations for future SNF bed need, it could impact the ability of other providers to compete for beds in the district.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

¹⁵ Id.

VII. Related Issues:

The bill provides for a CON exemption for certain SNF beds, but does not provide for a cap on the number of beds exempted. Presumably, this would allow an unlimited number of facilities and additional beds to be added in a retirement community which meets the criteria in the bill. There is also no restriction on these facilities bringing in residents from outside of the retirement community.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
