

STORAGE NAME: h0591s2.grr

DATE: April 4, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES & REGULATIONS
ANALYSIS**

BILL #: CS/CS/HB 591

RELATING TO: Certificates of Need

SPONSOR(S): Committee on Governmental Rules & Regulations, Committee on Health Care Licensing & Regulation, Representative Minton, and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE LICENSING & REGULATION YEAS 10 NAYS 3
- (2) GOVERNMENTAL RULES & REGULATIONS YEAS 6 NAYS 1
- (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

This bill amends the Certificate of Need (CON) statutes by identifying an additional type of project subject to expedited rather than competitive CON review and by identifying several other types of currently reviewable projects that would become exempt from CON review. The bill also proposes a significant reduction and clarification of the review criteria used to evaluate applications for a CON and removes other obsolete provisions. Furthermore, this bill authorizes a certificate of need workgroup to study issues regarding the CON program.

Prior to making the bill a committee substitute for committee substitute, the total fiscal impact on the Agency for Health Care Administration was estimated to be a loss of \$74,000 annually. New total fiscal impact estimates were not received prior to reporting this bill favorably as a committee substitute for committee substitute by the Committee on Governmental Rules & Regulations on March 23, 2000.

In addition, this bill provides authority for municipalities to issue Certificates of Public Convenience and Necessity (COPCN) to ambulance service providers to operate within the boundaries of the municipality.

The bill takes effect July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Section 408.032(2), F.S., defines "certificate of need" as a written statement issued by the Agency for Health Care Administration (agency) evidencing community need for a new, converted, expanded or otherwise significantly modified health care facility, health service, or hospice. The purpose of the CON process is to avoid costly duplication of services and unnecessary capital expenditures as it relates to hospitals, nursing homes, acute care hospital services, psychiatric or rehabilitative beds, and tertiary health services. As part of the CON review process, the financial feasibility of a project is assessed, the under served population group is determined, and the overall reasonableness of proposed revenues and expenses is evaluated. Applicants generally propose a specified level of care to indigent and Medicaid patients as a condition placed upon the award of a CON. These activities are consistent with the agency's mission to champion accessible, affordable, quality health care for all Floridians. The agency is charged with carrying out the CON review process on the applicable facilities.

Hospitals - Currently, s. 408.036, F.S., requires hospitals to make application for the establishment of new hospitals and the addition of beds to existing hospitals. The agency publishes a need for acute care hospital beds twice a year for the 11 planning districts. Hospitals can respond to published need, or demonstrate special circumstances unique to their hospital and the service area. In order to determine future bed need, the agency has to establish a complete inventory of acute care beds and look at the current and projected utilization of each hospital in the respective service area. All proposals are evaluated against statutory, rule, and local health plan CON review criteria.

Overall, most Floridians have adequate geographical access to acute care hospital services. The statewide average acute care bed occupancy rate remains low at 50%. The CON program lacks authority to de-license underutilized beds. However, in some areas of the state a few hospitals have experienced increasing occupancy rates especially during the winter season.

Over the past five years, the agency reviewed 37 proposals to add general acute care beds to existing hospitals. A total of 1,214 new acute care beds were proposed, at a cost of \$306 million. During the same time period, the agency reviewed 17 proposals for new acute care hospitals excluding replacement facilities. A total of 815 new acute care beds were proposed, at a cost of \$826 million.

According to the agency, the CON review for acute care beds was originally implemented when reimbursement for acute care services was cost-based and fears of over utilization were prevalent. These market conditions have clearly changed, and better cost control mechanisms have been implemented. However, nearly 60% of all hospital care is funded by Medicare and Medicaid, and the CON program ensures public input into the allocation of resources.

Nursing Homes - Section 408.036, F.S., requires CON review of proposals to establish new nursing homes, and proposals to add beds to existing nursing homes. The agency publishes a need for nursing home beds twice a year for 38 planning areas. Nursing home applicants generally respond to published need. In order to determine future bed need, the agency has to establish a complete inventory of nursing home beds and look at the current and projected utilization of all nursing homes in the respective service area. Future bed need is primarily determined based on population growth in each respective service area. Since it takes about three years to establish a new facility, bed need is projected three years into the future. All proposals are evaluated against statutory, rule, and local health plan CON review criteria. The construction of state veterans' nursing homes is exempted from CON review provided certain conditions are met.

The primary rationale for nursing home market controls is to contain capacity, ensure access to care regardless of income, promote the location of nursing homes in areas with need, ensure efficient occupancy levels, and avoid costs associated with duplicative services and facilities. Additionally, the CON program allows the state to assess the financial soundness of a potential provider and to evaluate his/her past quality of care record.

According to the agency, Florida's CON program for nursing homes has been one of the most effective CON programs. Most Floridians have adequate geographic access to nursing home care. At the same time, Florida has maintained one of the lowest nursing home bed-to-population ratios in the country, while several other states had to resort to moratoria to contain the bed supply. Florida has approximately 29 beds per 1,000 65+ population compared to the national average of 50 beds.

It is in the interest of most growing states to control the nursing home bed supply, since nearly 50% of all nursing home care is funded by Medicaid and another 15% by Medicare. Florida's annual Medicaid nursing home budget exceeds \$1 billion even with the low bed ratio and an overall low nursing home utilization rate.

Over 330 nursing homes have received CONs predicated on the condition that they provide a specified level of care to Medicaid patients. This is an important program feature in view of recent events in Florida when a nursing home attempted to evict Medicaid patients.

Over the past 5 years, the agency has reviewed 220 proposals for new freestanding nursing homes. A total of 20,998 new nursing home beds were proposed, at a cost of \$1.4 billion. During the same period, there were 216 proposals to add beds to existing nursing homes. A total of 8,220 new nursing home beds were proposed, at a cost of \$454 million. Thus, there were 5,844 new nursing home beds proposed in an average year.

Other current provisions - Current statutes specifically require review of any increase in the number of psychiatric or rehabilitation beds at hospitals. Also, a review of the establishment of tertiary health services is required. Currently, tertiary health services with dedicated inpatient beds include Level II neonatal intensive care, Level III neonatal intensive care, specialty burn units, and comprehensive rehabilitation.

Except for proposals from rural hospitals under specified circumstances, the agency also reviews proposals to establish or expand hospital-based skilled nursing units (SNU's).

Emergency Medical Services - Emergency Medical Services are regulated by the Department of Health under ch. 401, F.S. Currently, only county governments are authorized to issue Certificates of Public Convenience and Necessity to ambulance service providers. Counties are required to consider the recommendations of municipalities located within the county when issuing a certificate.

C. EFFECT OF PROPOSED CHANGES:

This bill amends the Certificate of Need (CON) statutes by identifying additional types of projects subject to **expedited** rather than competitive CON review. These projects include conversion of mental health services beds or hospital-based distinct part skilled nursing unit beds to acute care beds, conversion between or among the categories of mental health services beds, and conversion of acute care beds to mental health services beds.

It identifies several other types of currently reviewable projects that will become **exempt** from CON review. These include combination within one nursing home of the beds authorized by two or more CONs within the same planning subdistrict; division into two or more nursing homes in the same planning subdistrict of the beds authorized by a CON; addition of hospital beds in a number not to exceed 10 beds or 10 percent of the licensed capacity of the service being expanded, except beds for specialty burn units, neonatal intensive care units, or comprehensive rehabilitation, and provided there was a prior 12-month occupancy of at least 80 percent in that service or at least 96 percent for hospital-based distinct part skilled nursing units; and addition of nursing home beds in a number not exceeding 10 beds or 10 percent of the licensed capacity of beds at the nursing home, whichever is greater, provided that the facility has been designated as a Gold Seal nursing home pursuant to s. 400.235, F.S., and there was a prior 12-month occupancy of at least 96 percent.

CON oversight is **eliminated** by this bill for provision of respite care, expenditure for outpatient services, Medicare certified home health agencies, acquisitions, and cost overruns. The bill also proposes a significant reduction and clarification of the review criteria used to evaluate applications for a CON and removes other obsolete provisions.

In addition, this bill amends s. 401.25, F.S., to allow certain municipalities to issue Certificates of Public Convenience and Necessity (COPCN) for ambulance service providers to operate within the boundaries of the municipality.

The bill creates a CON workgroup consisting of 30 members, including representatives from health care provider organizations, health care facilities, individual health care practitioners, local health councils, consumer organizations, and persons with health care market expertise as a private-sector consultant. The workgroup is to study issues pertaining to the CON program, including the impact of trends in health care delivery and financing. The workgroup is to submit an interim report by December 31, 2001, and a final report by December 31, 2002. The workgroup is abolished on July 1, 2003.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 400.471, F.S., to delete the requirement for CON approval as a prerequisite for licensure of a Medicare certified home health agency.

Section 2. Amends s. 400.606, F.S., to conform to changes relating to hospices in ss. 408.031 through 408.045, F.S.

Section 3. Amends s. 408.032, F.S., providing definitions of “exemption” and “mental health services,” and deleting the definitions of “home health agency,” “institutional health service,” “intermediate care facility,” “multifacility project,” and “respite care.”

Section 4. Amends s. 408.033, F.S., deleting references to the state health plan.

Section 5. Amends s. 408.034, F.S., deleting a reference to Medicare certified home health agencies.

Section 6. Amends s. 408.035, F.S., deleting obsolete review criteria and clarifying other criteria.

Section 7. Amends s. 408.036, F.S., clarifying “capacity,” specifying types of beds subject to review, and eliminating CON review for Medicare certified home health agencies, acquisitions, and cost overruns. Deletes review of cost overruns, combination of nursing home certificates of need, and creates new category of review. Exempts three new categories from review and amends 5 current exemptions. Provides for procedures and fees.

Section 8. Amends s. 408.037, F.S., to delete a reference to the state health plan.

Section 9. Amends s. 408.038, F.S., to replace “department” with “agency.”

Section 10. Amends s. 408.039, F.S., to replace “department” with “agency” and to clarify procedures to intervene in administrative hearing.

Section 11. Amends s. 408.040, F.S., to require conditions imposed on CON to be stated on face of CON. Deletes obsolete reference to psychiatric or rehabilitation beds. Modifies Medicaid patient condition from percentage of beds to percentage of days.

Section 12. Amends s. 408.044, F.S., to replace “department” with “agency.”

Section 13. Amends s. 408.045, F.S., to replace “department” with “agency.”

Section 14. Creates a CON workgroup consisting of 30 members, to study issues pertaining to the CON program. Requires the workgroup to submit an interim report by December 31, 2001, and a final report by December 31, 2002. Abolishes the workgroup effective July 1, 2003.

Section 15. Effective upon becoming law, amends s. 401.25, F.S., to provide authority for a municipality with a population over 30,000 to issue Certificates of Public Convenience and Necessity to ambulance service providers to operate within the boundaries of the municipality.

Section 16. Repeals s. 400.464(3), F.S., relating to home health agency licenses provided to CON exempt entities.

Section 17. Provides an effective date of July 1, 2000, except as otherwise provided.

III. **FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

A. **FISCAL IMPACT ON STATE GOVERNMENT:**

1. **Revenues:**

Prior to making the bill a committee substitute for committee substitute, there was an estimated loss of \$350,000 annually to the Agency for Health Care Administration in lost CON fees. New revenue estimates were not received prior to reporting this bill favorably as a committee substitute for committee substitute by the Committee on Governmental Rules & Regulations on March 23, 2000.

2. **Expenditures:**

Prior to making the bill a committee substitute for committee substitute, approximately \$276,276 in expenditures were estimated to be saved annually by the elimination of 4 FTEs. New expenditure estimates were not received prior to reporting this bill favorably as a committee substitute for committee substitute by the Committee on Governmental Rules & Regulations on March 23, 2000.

B. **FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. **Revenues:**

None.

2. **Expenditures:**

None.

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

The elimination of CON review eliminates fees that range from \$5,000 to \$22,000 per project. The fee for a letter of exemption is only \$250.

D. **FISCAL COMMENTS:**

Prior to making the bill a committee substitute for committee substitute, the total fiscal impact on the Agency for Health Care Administration was estimated to be a loss of \$74,000 annually. New total fiscal impact estimates were not received prior to reporting this bill

favorably as a committee substitute for committee substitute by the Committee on Governmental Rules & Regulations on March 23, 2000.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a county or municipality to expend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Comments by the Committee on Health Care Licensing & Regulation

During the 1999 legislative session, HB 1517 by Representative Minton was introduced to revise the CON review process. The bill as amended by the Health Care Licensing & Regulation Committee created a 12-member Florida Commission on Quality Hospital Services. Although the bill failed to pass the Legislature, the Executive Director of the Agency for Health Care Administration appointed a 28-member Certificate of Need Work Group to assist the agency in "making better policy decisions for the program." The agency released a report to the Legislature in December proposing to exempt from the review process many of the health care facilities, health services, and hospice presently subject to CON review.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The original bill only expressed the intent of the Legislature to revise laws relating to the issuance of certificates of need (CON) by the Agency for Health Care Administration. The Committee on Health Care Licensing & Regulation adopted a "strike everything" amendment discussed above and reported the bill favorably as a committee substitute.

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On March 23, 2000, the Committee on Governmental Rules & Regulations adopted several amendments and reported the bill favorably as a committee substitute for committee substitute. The amendments made the following changes:

Clarified that obstetric services are not considered health services for the purposes of this section; allowed the addition of temporary acute care beds to address high seasonal demand, emergencies, or exigent circumstances; revised and clarified membership and duties of CON workgroup; allowed for a sheltered nursing home to continue to use beds designated for hospice beyond the 5-year limit allowed for community usage; clarified requirements necessary for a nursing home to add beds; and deleted the sunset date for review of the establishment of a hospice program or hospice inpatient facility.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Wendy Smith Hansen

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

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