**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 177 Hospital's Medical Staff/Open-heart Surgery
**SPONSOR(S):** D. Davis and others
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 56 (i)

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Health Standards (Sub) | 8 Y, 0 N | Rawlins | Collins |
| 2) Health Care | | | |
| 3) Health Appropriations (Sub) | | | |
| 4) Appropriations | | | |
| 5) | | | |

**SUMMARY ANALYSIS**

This bill prohibits the transfer of open-heart surgery programs from an open medical staff, as defined in the bill as a hospital in which physicians in the community can apply for admitting privileges, to a closed-staff hospital, as defined in the bill as a hospital in which the physicians are salaried employee.

This bill creates a new distinction between “open” and “closed” hospital medical staffs. Staff membership and clinical privileges for each category of provider would not be based solely on the applicant's background, experience, health, training, demonstrated competency, adherence to professional ethics, reputation and ability to work with others pursuant to established and nationally recognized criteria such as those contained in section 395.0191, F.S., 42 CFR 482.22, and the accreditation standards of the Joint Commission on Accreditation of Healthcare Organizations and the American Osteopathic Association.

The bill specifies that the closing of a hospital staff or the removal of open-heart program from an open-staff general hospital to a closed-staff hospital is “prima facie evidence”[1] or evidentiary presumption, that the licensed general hospital no longer makes its facilities and services available to the general population and that the hospital is no longer a general hospital; consequently, the hospital’s license is subject to revocation or suspension by the agency as authorized in s. 395.003(8), F.S.

This bill further provides, in the event of a transfer of an open-heart program, the Agency for Health Care Administration may allow a shared open-heart certificate of need between the two licensed general hospitals to prevent interruption of services at either of the two hospitals.

This bill provides for an effective date of July 1, 2003.

On March 12, 2003, the Subcommittee on Health Standards adopted a “strike-everything” amendment. See Section IV. for explanation of amendment.

[1] Evidence that is sufficient to raise a presumption of fact or to establish the fact in question unless rebutted. A prima-facie case is a lawsuit that alleges facts adequate to prove the underlying conduct supporting the cause of action and thereby prevail.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

| | | | |
|---|---|---|---|
| 1. Reduce government? | Yes[] | No[x] | N/A[] |
| 2. Lower taxes? | Yes[] | No[] | N/A[x] |
| 3. Expand individual freedom? | Yes[] | No[x] | N/A[] |
| 4. Increase personal responsibility? | Yes[] | No[x] | N/A[] |
| 5. Empower families? | Yes[] | No[] | N/A[x] |

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

This bill allows the agency to revoke or suspend a general hospital’s license in the event the hospital transfers its open-heart program to another facility, which is currently permissible by law, and therefore expands the authority of government and restricts business transactions.

This bill prohibits a transfer of services and limits a corporation’s freedom. The bill increases regulation for some hospitals in the area of medical staff organization and governance. The bill limits a hospital's ability to organize its medical staff if it offered open-heart surgery services.

B. EFFECT OF PROPOSED CHANGES:

***Hospital Licensure***

Chapter 395, F.S., and the Code of Federal Regulations, 42 CFR 482, governing hospitals, address the issue of "open" or "closed" medical staff. The law specifies that all physicians can apply for admitting privileges to all hospitals and the approval or disapproval of privileges for all physicians, salaried employees or not, must be based on criteria for each specialty established by the hospital's governing body.

This bill creates a new distinction between “open” and “closed” hospital medical staffs. Staff membership and clinical privileges for each category of provider would not be based solely on the applicant's background, experience, health, training, demonstrated competency, adherence to professional ethics, reputation and ability to work with others pursuant to established and nationally recognized criteria such as those contained in state and federal law and the accreditation standards of the Joint Commission on Accreditation of Healthcare Organizations and the American Osteopathic Association.

This bill prohibits the transfer of open-heart surgery programs from an open medical staff, as defined in the bill as a hospital in which physicians in the community can apply for admitting privileges, to a closed-staff hospital, as defined in the bill as a hospital in which the physicians are salaried employee.

As well, the bill specifies that the closing of a hospital staff or the removal of open-heart program from an open-staff general hospital to a closed-staff hospital is “prima facie evidence” or evidentiary presumption, that the licensed general hospital no longer makes its facilities and services available to the general population and that the hospital is no longer a general hospital; consequently, the hospital’s license is subject to revocation or suspension by the agency as authorized in s. 395.003(8), F.S.

Revoking or suspending a hospital's license based solely on the services provided or not provided by a general hospital is not addressed or authorized by section 395.003(8), Florida Statutes. This section does authorize the agency to deny, modify, suspend or revoke a license, or that part of a license which is limited to a separate premises, as designated on the license or licensure approval limited to a facility,

building or portion thereof, or a service, within a given premises whenever there has been a substantial failure to comply with the requirements established under Chapter 395, Part I or in rules.

***Certificate of Need***

Current law specifies that a shared service or contract [2] and the transfer[3] of a CON are subject to an expedited review in the Certificate of Need process. As well, an application for the addition of open-heart surgery program must be submitted to and approved by the agency's Certificate of Need Office in accordance with the requirements contained in Chapter 408, F. S., and Rule 59C-1, Florida Administrative Code. Such approvals are subject to administrative challenge by any hospital that offers open-heart surgery in the district. All Florida districts currently include at least three and up to eight open-heart programs.

As a historical example of both a shared service program and a transfer of service, AHCA recently approved a program in Jacksonville, whereby Shands Jacksonville Medical Center (SJMC) operated a licensed kidney transplant program, called The Jacksonville Transplant Center, at Methodist. The application for shared service between SJMC University and Methodist for a kidney transplant program that SJMC operated at Methodist. Under the terms of the Shared Services Agreement, SJMC continues to operate one kidney transplant program, but operates the inpatient surgery component of the program at University and the outpatient components of the program at Methodist. In a separate CON application, SJMC transferred the kidney transplant program that operated at Methodist to University.

According to AHCA, it appears this bill affects the current situation between Mayo Clinic and St. Luke's Hospital in Jacksonville. Inpatient hospital services for the Mayo Clinic in Jacksonville – including adult open-heart surgery – are presently provided at St. Luke's Hospital. The Mayo Clinic has a CON approval to construct a replacement hospital at the site of its outpatient clinic, and then transfer open-heart surgery (and other services) from St. Luke's to the new hospital. It is expected that the new hospital will have a closed medical staff, consistent with the definition in HB 177, meaning that all physicians on the medical staff are salaried employees of the hospital. A recommended order for the approval of the replacement hospital was issued by the Division of Administrative Hearings on February 5, 2003, supporting approval of the replacement hospital. This same order recommended approval of the St. Vincent's Hospital proposal to establish a new hospital in the St. Luke's Hospital building.

Under approved plans, the present facilities of St. Luke's Hospital will be acquired by St. Vincent's Hospital once the new facility is operational at the Mayo Clinic site. St. Vincent's will also continue to operate at its present location, which is the site of the St. Vincent's open-heart surgery program. There is no current intention to relocate that particular service to the site acquired from St. Luke's. Such a proposal would require certificate-of-need approval, but the application date could occur no sooner than the first batching cycle after St. Vincent's Hospital completes its acquisition of St. Luke's Hospital. Jacksonville (Duval County) is located in CON District 4 along with six other northeast Florida counties. There are currently seven operational and one approved open-heart surgery programs in the District.

A "shared" certificate-of-need approval for open-heart surgery, as suggested by subsection (3) of the bill, would presumably be shared by:

- The new Mayo Clinic Hospital and St. Vincent's Hospital in its role as the new owner of the current St. Luke's Hospital facilities; or
- St. Vincent's in both its current location and its new facility to be housed in the St. Luke's Hospital facility.

Shared services may currently be applied for under section 408.032(2)(b), F.S., but the application could not be processed until St. Vincent's was the owner and license holder of the facilities at that location. Under the current law, that cannot happen until the new Mayo Clinic Hospital is built and

[2] s. 408.036(2)(b), F.S.
[3] s. 408.036(2)(c), F.S.

licensed. According to AHCA, it is also probable that, if such an application was submitted and approved, there would be an administrative challenge to that approval.

This suggests the likelihood of a period from one to three years between St. Vincent's Hospital's acquisition of St. Luke's Hospital and their ability to begin operating the new shared open-heart program. Because of these expected procedural delays, it would likely be necessary to authorize a specific exemption from CON review, or to enable the shared program to be created without CON review, in order to allow the uninterrupted delivery of open-heart surgery services at St. Luke's Hospital. However, there are 7 operational open heart programs in this district.

This bill further provides, in the event of a transfer as described above, the Agency for Health Care Administration may allow a shared open-heart certificate of need between the two licensed general hospitals to prevent interruption of services at either of the two hospitals.

C. SECTION DIRECTORY:

**Section 1.** Creates an undesignated section of law, creating definitions of "closed" and "open" medical staff, prohibiting the transfer of open-heart surgery services to closed staff hospital, provides for shared open-heart certificate of need in specified circumstances; provides evidentiary presumption; and provides for a penalty.

**Section 2**. Provides for an effective date of July 1, 2003.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   According to the Agency for Health Care Administration, there will not be an increase in revenues.

2. Expenditures:

   According to the Agency for Health Care Administration, no state funds will be expended as a result of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The license of a hospital with a closed medical staff could be revoked or suspended if a CON-approved open-heart surgery program is transferred to that hospital. The bill eliminates a hospital's ability to operate an open-heart surgery program if it has a closed medical staff.

D. FISCAL COMMENTS:

None.

## 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:

New rules would be required regarding the organization and governance of hospital medical staffs, although rulemaking authority is not specified in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 12, 2003, the Subcommittee considered HB 177 and adopted a strike all amendment and an amendment to the amendment.

**Amendment #1** (strike-all) differs from the original bill in that it creates an exemption to the CON review process in s. 408.036(3) for open-heart surgery programs. The exemption may only be granted if the facility meets specified standards:

- The facility is a "closed-staff" facility;
- The facility maintains current licensure standards;
- The facility must maintain appropriate equipment and provide emergency services;
- The applicant is a newly-licensed hospital in a physical location previously owned and licensed to perform open-heart procedures;
- The program will perform 300 open-heart procedures each year;
- The program can perform more than 300 diagnostic cardiac catheterizations a year; and
- The facility maintains the payor mix of the community for open heart services or provides a minimum of 5% to Medicaid, charity and self pay patients.

Failing to meet the requirements, the facility must show cause why the exemption should not be revoked.

**Amendment #1a** (amendment to the amendment ) was offered by Representative Harrell, clarifying that programs applying for the exemption, must meet all current open-heart program rules as promulgated by the agency, and any future licensure requirements adopted by the agency.