

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1633 CS Hospices
SPONSOR(S): Jennings and others
TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|-----------------|---------|----------------|
| 1) Elder & Long-Term Care Committee | 5 Y, 2 N, w/CS | Walsh | Liem |
| 2) Health Care Appropriations Committee | (W/D) | | |
| 3) Health & Families Council | 10 Y, 0 N, w/CS | Walsh | Moore |
| 4) _____ | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ |

SUMMARY ANALYSIS

Council Substitute for HB 1633 amends s. 400.602, F.S., to allow licensure of for-profit hospices in hospice service areas where a for-profit hospice is currently licensed to operate.

The CS also requires a report to the legislature by the Office of Program Policy and Government Accountability analyzing the impact of hospices on the delivery of care to terminally ill patients.

The effective date is July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Hospices are licensed under pt. VI of Chapter 400, F.S. Under s. 400.601(3), F.S., hospice is defined as “a centrally administered corporation **not for profit**, as defined in Chapter. 617, F.S.,¹ providing a continuum of palliative and supportive care for the terminally ill patient and his or her family.” [Emphasis supplied.]

An exception to the definition is found in s. 400.602(5), F.S., which allows a hospice that was incorporated on or before July 1, 1978 to be transferred to a for-profit or not-for-profit entity. Section 400.602(6), F.S., further permits any licensed hospice entity to obtain a license for up to two additional hospices.

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. Vitas Healthcare Corporation of Central Florida has received a license for one additional hospice and has an application pending for a second hospice as permitted under 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 as permitted in s. 400.602(5), F.S.:

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

All entities desiring a license to provide hospice services 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.

- 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 hospices² as follows:

- Service Area 1 consists of Escambia, Okaloosa, Santa Rosa, and Walton Counties.

¹ A corporation not for profit 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.

² Rule 59C-1.0355, F.A.C.

- 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.

Florida has 42 licensed hospices, most of which are operated as not-for-profit corporations. Five are organized as for-profit hospices.

- Vitas Healthcare Corporation of Florida has licenses for three hospices: one in Dade (Service Area 11), one in Broward (Service Area 10), and one in Palm Beach (Service Area 9C).
- Vitas Healthcare Corporation of Central Florida holds two licenses: one serving Orange, Osceola (Service Area 7B) and Seminole (Service Area 7C), and one for Brevard (Service Area 7A).
- A CON has been approved for Vitas Healthcare Corporation of Central Florida to establish a hospice program serving Flagler and Volusia (Service Area 4B) and the license application is pending approval.

Effect of Proposed Changes

Council Substitute for HB 1633 provides that notwithstanding the provisions of s. 400.601(3), F.S. (*i.e.*, that a hospice be a not for profit corporation), any for profit hospice may obtain a license in a hospice service area where a for profit hospice is currently licensed to operate under subsections (5) and (6) of s. 400.602, F.S., if it meets other statutory requirements and receives a CON to provide care.

Accordingly, for profit hospices could be licensed in the following hospice service areas:

- 7A, 7B, 7C, 9C, 10, and 11
- When the license application is approved for Vitas Healthcare Corporation of Central Florida to serve Flagler and Volusia counties, in 4B

- Should a for-profit acquire the license of Hospice of the Suncoast in Pinellas County, in 5B³

The CS requires OPPAGA submit a report to the Legislature by January 1, 2006, which analyzes the impact of for profit hospices on the delivery of care to terminally ill patients, including a statistical analysis of Florida hospice care from January 1, 1999 to June 30, 2005; an analysis of the scope and quality of services provided by Florida hospices; an analysis of hospice service areas; an analysis of services provided to patients of for-profit hospices in Florida and other states; an analysis of potential changes to the Florida market place which may be produced by additional for-profit hospices; an analysis of the effect that the presence of for-profit hospices has had on service delivery and quality in other states; and the projected cost to the Medicaid program of introduction of additional for-profit hospices in Florida.

The act is effective July 1, 2005.

C. SECTION DIRECTORY:

Section 1: Amends s. 400.602, F.S.; creates new subsection (7) relating to licensure of for-profit hospices in certain areas of the state; requires a report to the Legislature.

Section 2: Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For profit corporations will be able to compete for a certificate of need to become a hospice in areas of the state where for-profit hospices already exist.

While the actual number of licensed hospices will continue to be regulated by the certificate-of-need process, the changes in this bill likely will increase competition among prospective providers in the hospice service areas where for-profit hospices are licensed.

³ Pursuant to s. 400.602(6), F.S., that for profit hospice could license two additional hospices in any one of the enumerated hospice service areas upon receipt of certificates of need.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its April 6, 2005, meeting, the Committee on Elder & Long-Term Care adopted a strike-all amendment to the bill as filed and favorably reported the Committee Substitute. The CS amends s. 400.602, F.S., to create new subsection (7) relating to licensure of for-profit hospices in certain geographic areas of the state, and requiring a report by the Agency for Health Care Administration.

At its April 22, 2005, meeting, the Health & Families Council adopted a strike-all amendment to the CS for HB 1633 and favorably reported a Council Substitute. The Council Substitute amends s. 400.602, F.S., to create new subsection (7) relating to licensure of for-profit hospices in hospice service areas where a for-profit hospice is currently licensed to operate, and requires a report by the Office of Program Policy and Government Accountability analyzing the impact of hospices on the delivery of care to terminally ill patients.

This analysis is drafted to the Council Substitute.