**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

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| BILL: | SB 1144 |
| INTRODUCER: | Senator Gaetz |
| SUBJECT: | Certificates of Need for Health Care-related Projects |
| DATE: | January 27, 2016 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Looke | Stovall | HP | **Favorable** |
| 2. | | | AHS | |
| 3. | | | AP | |

## I. Summary:

SB 1144 creates a new exemption from the Certificate of Need (CON) review process for any project subject to CON on the condition that the licensee commits to improved access to care for uninsured low-income residents in its service district. If a licensee chooses to use the exemption, the bill requires that the licensee sign an agreement with the Agency for Health Care Administration (AHCA) stating that the licensee will provide charity care to low-income patients within its service district as specified in the bill. The bill also establishes penalties for licensees that fail to provide the required charity care.

## II. Present Situation:

### Florida's CON Program

#### *Overview*

In Florida, a CON is a written statement issued by AHCA evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility or health service, including hospices. The Florida CON program has three levels of review: full, expedited and exempt.[1] Unless a project is exempt from the CON program, it must undergo a full comparative review. Expedited review is primarily targeted towards nursing home projects.

#### *Full CON Review Process*

Full CON review is a lengthy and difficult process that starts with the AHCA determining need for a specific facility type or service. Upon determining that a need exists, AHCA accepts applications for CON based on batching cycles. At least 30 days prior to the application deadline for a batch cycle, an applicant must file a letter of intent with AHCA.[2] A letter of intent must

[1] Section 408.036, F.S.
[2] Section 408.039(2)(a), F.S.

describe the proposal, specify the number of beds sought, and identify the services to be provided and the location of the project.[3] Applications for CON review must be submitted by the specified deadline for the particular batch cycle.[4] The AHCA must review the application within 15 days of the filing deadline and, if necessary, request additional information for an incomplete application.[5] The applicant then has 21 days to complete the application or it is deemed withdrawn from consideration.[6]

Within 60 days of receipt of the completed applications for that batch, the AHCA must issue a State Agency Action Report and Notice of Intent to grant a CON for a project in its entirety, to grant a CON for identifiable portions of a project, or to deny a CON for a project.[7] The AHCA must then publish the decision, within 14 days, in the Florida Administrative Register.[8] If no administrative hearing is requested within 21 days of the publication, the State Agency Action Report and the Notice of Intent become a final order of the AHCA.[9]

An applicant for CON review must submit a fee to the AHCA at the time of application submission. The minimum CON application filing fee is $10,000.[10] In addition to the base fee, an applicant must pay a fee of 1.5 percent of each dollar of the proposed expenditure, however the total fee may not exceed $50,000.[11]

***Projects Subject to Full CON Review***

Section 408.036(1) lists projects that are required to undergo a full comparative CON review, including:

- The addition of beds by new contraction or alteration in a community nursing home or intermediate care facility for the developmentally disabled;
- The new construction or establishment of additional health care facilities,[12] including the replacement of a health care facility that is not located within 1 mile of the existing health care facility, if the number of beds in each licensed bed category will not increase;
- The conversion from one type of health care facility to another, including from a general hospital to a specialty hospital;
- The establishment of a hospice or hospice in patient facility;
- An increase in the number of beds for comprehensive rehabilitation; and
- The establishment of tertiary health services,[13] including inpatient comprehensive rehabilitation.

[3] Section 408.039(2)(c), F.S.
[4] Rule 59C-1.008(1)(g), F.A.C.
[5] Section 408.039(3)(a), F.S.
[6] Id.
[7] Section 408.039(4)(b), F.S.
[8] Section 408.039(4)(c), F.S.
[9] Section 408.039(4)(d), F.S.
[10] Section 408.038, F.S.
[11] Id.
[12] Section 408.032, F.S., defines "health care facility" as a hospital, long-term care hospital, skilled nursing facility, hospice, or intermediate care facility for the developmentally disabled.
[13] Tertiary health services include: pediatric cardiac catheterization, pediatric open-heart surgery, organ transplantation, neonatal intensive care units, comprehensive rehabilitation, medical or surgical services which are experimental or developmental in nature to the extent that the provision of such services is not yet contemplated within the commonly

***Projects Subject to Expedited CON Review***

Section 408.036(2), F.S., permits certain projects to undergo expedited CON review. Applicants for expedited review are not subject to the application deadlines associated with full comparative review and may submit an application at any time. Projects subject to an expedited review include the transfer of a CON and certain replacements, relocations, and new construction of nursing homes.[14]

***Exemptions from CON Review***

Section 408.036(3), F.S., provides many exemptions to CON review. Exempted projects must only submit an application for exemption to the AHCA and pay a $250 fee. Exempted projects include:

***Hospital Exemptions***

- Adding hospice services or swing beds[15] in a rural hospital, the total of which does not exceed one-half of its licensed beds;
- Converting licensed acute care hospital beds to Medicare and Medicaid certified skilled nursing beds in a rural hospital, as defined in s. 395.602, F.S., so long as the conversion of the beds does not involve the construction of new facilities;
- Adding hospital beds licensed under ch. 395, F.S., for comprehensive rehabilitation, the total of which may not exceed 10 total beds or 10 percent of the licensed capacity, whichever is greater;
- Establishing a Level II neonatal intensive care unit (NICU) if the unit has at least 10 beds, and if the hospital had a minimum of 1,500 births during the previous 12 months;
- Establishing a Level III NICU if the unit has at least 15 beds, and if the hospital had a Level II NICU and a minimum of at least 3,500 births during the previous 12 months;
- Establishing a Level III NICU if the unit has at least five beds, and is a verified trauma center,[16] and if the applicant has a Level II NICU;
- Establishing an adult open heart surgery program in a hospital located within the boundaries of a health service planning district, which:[17]
    - Has experienced an annual net out-migration of at least 600 open heart surgery cases for three consecutive years; and
    - Has a population that exceeds the state average of population per licensed and operational open-heart programs by at least 25 percent;

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accepted course of diagnosis or treatment for the condition addressed by a given service, heart transplantation, kidney transplantation, liver transplantation, bone marrow transplantation, lung transplantation, pancreas and islet cells transplantation, heart/lung transplantation, adult open heart surgery, neonatal and pediatric cardiac and vascular surgery, and pediatric oncology and hematology. See s. 408.032(17), F.S., and rule 59C-1.002(41), F.A.C.

[14] See s. 408.036(2), F.S.

[15] Section 395.602(2)(g), F.S., defines "swing bed" as a bed which can be used interchangeably as either a hospital, skilled nursing facility (SNF), or intermediate care facility (ICF) bed pursuant to 42 C.F.R. parts 405, 435, 440, 442, and 447.

[16] Section 395.4001(14), F.S., defines "trauma center" as a hospital that has been verified by the Department of Health to be in substantial compliance with the requirements in s. 395.4025, F.S., and has been approved to operate as a Level I trauma center, Level II trauma center, or pediatric trauma center, or is designated as a Level II trauma center pursuant to s. 395.4025(14), F.S.

[17] This exemption is obsolete and is replaced by a licensure process under s. 408.0361, F.S.

- For the provision of percutaneous coronary intervention for patients presenting with emergency myocardial infarctions in a hospital that does not have an approved adult open-heart-surgery program;[18] and
- For the addition of mental health services or beds if the applicant commits to providing services to Medicaid or charity care patients as a level equal to or greater than the district average.

***Nursing Home Exemptions***

- Adding nursing home beds at a skilled nursing facility that is part of a retirement community that provides a variety of residential settings and supportive services and that has been incorporated and operated in Florida for at least 65 years on or before July 1, 1994, if the nursing home beds are for the exclusive use of the community residents;
- Adding nursing home beds up to the lesser of 30 total beds or 25 percent of the current facility's beds when a nursing home is being replaced;
- Combining or dividing facilities with nursing home beds;
- Adding nursing home beds up to the greater of 10 beds (20 beds for a designated Gold Seal nursing home) or 10 percent of the number of beds at the licensed facility;
- Replacing a licensed nursing home on the same site or within 5 miles in the same subdistrict if the new nursing home only has the lesser of 30 total beds or 25 percent of the current facility's beds; and
- Consolidating or combining of licensed nursing homes or transferring beds between licensed nursing homes with shared controlling interests within 30 miles and within the AHCA district where both nursing homes are located.

***State Run Facility Exemptions***

- Building an inmate health care facility that is for the exclusive use of the Department of Corrections (DOC);
- Adding mobile surgical facilities and related health care services under contract with the DOC or a private correctional facility;
- CON requirements for state veterans' nursing homes operated by or on behalf of the Florida Department of Veterans' Affairs;
- Adding beds in a state mental health facility or state mental health forensic facility; and
- Adding beds in state developmental disabilities centers.

***General Exemptions***

Renewing a CON for a licensed facility that lost its CON due to failing to renew its license under certain circumstances.

**Florida Health Choices Corporation, Inc.**

In 2008, the Legislature created the Florida Health Choices Program to address the issue of Florida's uninsured.[19] The Legislature created the Florida Health Choices Corporation

[18] Id.
[19] *See* Chapter 2008-32, Laws of Fla.

(corporation) to administer the program as a private, non-profit, corporation under s. 408.910, F.S. The corporation is to operate in compliance with part III of chapter 112 (Public Officers and Employees) and chapters 119 (Public Records), 286 (Public Business), and 617 (Corporations Not for Profit), F.S.[20]

The corporation is led by a 15-member board of directors, three of whom are ex-officio, non-voting board members. Board members may not include insurers, health insurance agents or brokers, health care providers, health maintenance organizations (HMOs), prepaid service providers, or any other entity or affiliate or subsidiary of eligible vendors. Conflict of interest provisions govern board member participation.

The program is designed as a single, centralized marketplace for the purchase of health products, including, but not limited to, health insurance plans, HMO plans, prepaid services, and flexible spending accounts. Policies sold as part of the program are exempt from regulation under the Insurance Code and laws governing HMOs. The following entities are authorized to be eligible vendors:

- Insurers authorized under ch. 624, F.S., of the Insurance Code, such as self-insurers, indemnity plans, life and health insurers, church benefit plans, disability, and multi-employer welfare arrangements, and the Florida Healthy Kids Corporation;
- HMOs authorized under part I of ch. 641, F.S., relating to Health Service Programs, including health maintenance organization contracts, limited benefit policies, and other risk bearing coverage, benefits, and products;
- Prepaid limited health service organizations and discount medical plans under ch. 636, F.S.;
- Prepaid health clinics licensed under part II, of ch. 641, F.S.;
- Health care providers, including hospitals and other licensed health facilities, health care clinics, pharmacies, licensed health care professionals, and other licensed health care providers;
- Provider organizations, including service networks, group practices, and professional associations; and
- Corporate entities providing specific health services.

The corporation's Florida Health Insurance Marketplace (marketplace) currently includes individual health plans, discount plans, and limited benefit plans.

The corporation is authorized to collect premiums and other payments from employers. The law further specifies who may participate as either an employer or an individual. Employers eligible to enroll include employers that meet criteria established by the corporation and their individual employees and other individuals meeting criteria established by the corporation.[21]

## III. Effect of Proposed Changes:

SB 1144 amends s. 408.036, F.S., to create a new exemption to the CON process for any project subject to CON on the condition that the licensee commits to improved access to care for

[20] Section 408.910(11), F.S.
[21] Section 408.910(4)(a), F.S.

uninsured low-income residents in its service district. In order to demonstrate such commitment, the facility must sign an agreement with the AHCA:

- To provide, once the project is operational and at the end of the first four calendar quarters after the project becomes operational, an amount equal to 1.5 percent of gross revenues earned by the project to the AHCA to be deposited in the Public Medical Assistance Trust Fund.
- To provide, beginning in the fifth calendar quarter after the project becomes operational, charity care in an amount equal or greater than the average for facilities in the same district that provide similar services.
    - The bill defines "charity care" as uncompensated care delivered to uninsured patients with incomes at or below 200 percent of federal poverty level[22] when preauthorized by the licensee and not subject to collection procedures.
    - The bill specifies that the valuation of charity care must be based on Medicaid reimbursement rates.
    - If the licensee provides less charity care than required, the licensee must donate:
        - Payments for charity care provided to residents of the service district pursuant to a written agreement with a charity care provider and equal to or greater than the difference between the value of the charity care provided by the licensee and the average among similar providers; or
        - Payments to Florida Health Choices for health care coverage financial assistance that are equal to or greater than the difference between the value of the charity care provided and the district average among similar providers.
            - These payments must be made in increments sufficient to purchase silver-level health care coverage for an individual for at least 1 year.
            - The individual receiving the assistance must have been uninsured during the previous 12 months.
            - The licensee and Florida Health Choices must cooperate to identify individuals from the service district who are qualified to receive the available assistance.
- To submit reports and data to the AHCA to monitor compliance with the charity care threshold.

The bill also establishes penalties for licensees that are noncompliant with the charity care requirements:

- For the first quarter of noncompliance, the fine is equal to twice the amount of the shortfall and is double for each subsequent quarter up to a maximum of four quarters.
- Following the fifth quarter of noncompliance, the AHCA is required to suspend the licensee's license until the licensee implements a corrective action plan approved by the AHCA.
- If the licensee fails to comply with the corrective action plan, the AHCA is required to revoke the licensee's license.

The bill establishes an effective date of July 1, 2016.

[22] At 200 percent the required annual income equals between $23,540 for individuals and $81,780 for a family of eight, see https://www.healthcare.gov/glossary/federal-poverty-level-FPL/ (last visited on Jan. 27, 2016).

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1144 may have a positive fiscal impact on Florida residents that would qualify for any new charity care services generated by the provisions in the bill.

The bill may have an indeterminate impact on facilities that are subject to CON review. Such facilities will be able to avoid costs related to the CON process but may incur additional costs related to providing the required charity care or due to penalties assessed by the AHCA for not providing such care as required.

C. Government Sector Impact:

SB 1144 will have an indeterminate fiscal impact on the AHCA.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends section 408.036 of the Florida Statutes.

## IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.