

**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.)

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

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BILL: SB 414

INTRODUCER: Senator Grimsley

SUBJECT: Hospice Services

DATE: March 24, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	<b>Pre-meeting</b>
2.			CF	
3.			RC	

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**I. Summary:**

SB 414 creates a new exemption from the certificate of need process for a not-for-profit retirement community to offer hospice services if the retirement community shares a controlling<sup>1</sup> interest in a teaching nursing home<sup>2</sup> that has been designated as a teaching nursing home for at least five years.

**II. Present Situation:**

**Florida's Certificate of Need (CON) Program**

*Overview*

In Florida, a CON is a written statement issued by the Agency for Health Care Administration (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.<sup>3</sup> 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.

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<sup>1</sup> Section 408.803(7), F.S., defines "controlling interest" to mean the applicant or licensee; a person or entity that serves as an officer of, is on the board of directors of, or has a 5 percent or greater ownership interest in the applicant or licensee; or a person or entity that serves as an officer of, is on the board of directors of, or has a 5 percent or greater ownership interest in the management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider. The term does not include a voluntary board member.

<sup>2</sup> Section 430.80, F.S., defines "teaching nursing home" to mean a nursing home facility licensed under ch. 400, F.S., which contains a minimum of 170 licensed nursing home beds; has access to a resident senior population of sufficient size to support education, training, and research relating to geriatric care; and has a contractual relationship with a federally funded accredited geriatric research center in this state or operates in its own right a geriatric research center.

<sup>3</sup> Section 408.036, F.S.

### ***Full CON Review Process***

Currently, prior to establishing a hospice or a hospice inpatient facility, an applicant is required to follow AHCA requirements for a full CON review.<sup>4</sup>

Full CON review is a lengthy 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.<sup>5</sup> A letter of intent must describe the proposal, specify the number of beds sought, if applicable, and identify the services to be provided and the location of the project.<sup>6</sup> Applications for CON review must be submitted by the specified deadline for the particular batch cycle.<sup>7</sup> The AHCA must review the application within 15 days of the filing deadline and, if necessary, request additional information for an incomplete application.<sup>8</sup> The applicant then has 21 days to complete the application or it is deemed withdrawn from consideration.<sup>9</sup>

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.<sup>10</sup> The AHCA must then publish the decision, within 14 days, in the Florida Administrative Register.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup> In addition to the base fee, an applicant must pay a fee of .15 percent of each dollar of the proposed expenditure; however, the total fee may not exceed \$50,000.<sup>14</sup>

### ***Hospice Need Calculations***

Need for a new hospice program is part of the applicant's review criteria pursuant to s. 408.035(1)(a), F.S. Need for a new hospice program can be identified through publication of the fixed need pool (pursuant to Rule 59C-1.0355(4), F.A.C.) or in the absence of numeric need the applicant must demonstrate that circumstances exist to justify approval of a new hospice program. Those circumstances must include documentation of a specific terminally ill population

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<sup>4</sup> Section 408.036(1)(d), F.S. However, s. 408.036(3)(a), F.S., establishes an exemption to this process for hospice services in a rural hospital.

<sup>5</sup> Section 408.039(2)(a), F.S.

<sup>6</sup> Section 408.039(2)(c), F.S.

<sup>7</sup> Rule 59C-1.008(1)(g), F.A.C.

<sup>8</sup> Section 408.039(3)(a), F.S.

<sup>9</sup> Id.

<sup>10</sup> Section 408.039(4)(b), F.S.

<sup>11</sup> Section 408.039(4)(c), F.S.

<sup>12</sup> Section 408.039(4)(d), F.S.

<sup>13</sup> Section 408.038, F.S.

<sup>14</sup> Id.

that is not being served or that a county/counties within the service area of a licensed hospice program are not being served.<sup>15</sup>

### ***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.

### **Teaching Nursing Homes**

A teaching nursing home is a nursing home facility licensed under chapter 400 which contains a minimum of 170 licensed nursing home beds; has access to a resident senior population of sufficient size to support education, training, and research relating to geriatric care; and has a contractual relationship with a federally funded accredited geriatric research center in this state or operates in its own right a geriatric research center.<sup>16</sup> The AHCA is required to develop a program for the designation of teaching nursing homes and to be designated, a nursing home must:

- Provide a comprehensive program of integrated senior services that include institutional services and community-based services;
- Participate in a nationally recognized accrediting program and hold a valid accreditation, such as the accreditation awarded by the Joint Commission, or, at the time of initial designation, possess a Gold Seal Award as conferred by the state on its licensed nursing home;
- Have been in business in this state for a minimum of 10 consecutive years;
- Demonstrate an active program in multidisciplinary education and research that relates to gerontology;
- Have a formalized contractual relationship with at least one accredited health profession education program located in this state;
- Have senior staff members who hold formal faculty appointments at universities, which must include at least one accredited health profession education program; and
- Maintain insurance coverage pursuant to s. 400.141(1)(q), F.S., or proof of financial responsibility in a minimum amount of \$750,000. Such proof of financial responsibility may include:
  - Maintaining an escrow account consisting of cash or assets eligible for deposit; or
  - Obtaining and maintaining an unexpired, irrevocable, nontransferable and nonassignable letter of credit. The letter of credit shall be used to satisfy a final judgment indicating liability and awarding damages or a settlement agreement when such final judgment or settlement is a result of a liability claim against the facility.<sup>17</sup>

Additionally, a teaching nursing home must be primarily operated and established to offer, afford, and render a comprehensive multidisciplinary program of geriatric education and research to residents of the state and certify to the AHCA each school year the name, address, and educational history of each trainee approved and accepted for enrollment in the institution.<sup>18</sup>

<sup>15</sup> AHCA, *Senate Bill 414 Analysis*, (January 23, 2017) (on file with the Senate Committee on Health Policy).

<sup>16</sup> Section 403.80(1), F.S.

<sup>17</sup> Section 403.80(3)(a)-(g), F.S.

<sup>18</sup> Section 430.80(6)(a) and (b), F.S.

Currently there are two nursing homes in the state designated as teaching nursing homes: Miami Jewish Health Systems (hospice service area 11, Miami-Dade County) and The Joseph L. Morse Health Center (hospice service area 9C, Palm Beach County).<sup>19</sup> Of the two, the controlling interest of the Joseph L. Morse Health Center has an open CON application with the AHCA to provide hospice services. The application was preliminarily denied on February 17, 2017, and the denial was timely appealed on March 10, 2017.<sup>20</sup>

### III. Effect of Proposed Changes:

SB 414 creates a new exemption from the certificate of need process for a not-for-profit retirement community to offer hospice services if the retirement community shares a controlling<sup>21</sup> interest in a teaching nursing home<sup>22</sup> that has been designated as a teaching nursing home for at least five years.

### 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 414 may have a positive fiscal impact on a non-profit retirement community that is able to provide hospice services under the new exemption without first obtaining a CON

<sup>19</sup> See supra note 15.

<sup>20</sup> Id.

<sup>21</sup> As defined in s. 408.803(7), F.S., “controlling interest” means The applicant or licensee; a person or entity that serves as an officer of, is on the board of directors of, or has a 5 percent or greater ownership interest in the applicant or licensee; or a person or entity that serves as an officer of, is on the board of directors of, or has a 5 percent or greater ownership interest in the management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider. The term does not include a voluntary board member.

<sup>22</sup> As defined in s. 430.80, F.S., “teaching nursing home” means a nursing home facility licensed under ch. 400, F.S., which contains a minimum of 170 licensed nursing home beds; has access to a resident senior population of sufficient size to support education, training, and research relating to geriatric care; and has a contractual relationship with a federally funded accredited geriatric research center in this state or operates in its own right a geriatric research center.

from the AHCA due to eliminating the requirement to pay fees associated with obtaining a CON and due to being able to provide hospice services in an area where the AHCA may or may not have determined a need for such services.

The bill may have a negative fiscal impact on existing hospices in a service area where this exemption is applied due to a loss of patients that begin using the new hospice.

**C. Government Sector Impact:**

SB 414 may have a negative fiscal impact of approximately \$35,000 to the AHCA due to loss of revenues from the CON application fees if both providers applied for the CON exemption.<sup>23</sup>

**VI. Technical Deficiencies:**

SB 414 appears to require that a teaching nursing home be designated as such for at least 5 years prior to qualifying for the CON exemption provided in the bill. However, the bill is unclear as to whether the requirement to be designated applies to the teaching nursing home or to the not-for-profit retirement community. The bill should be clarified to ensure that the requirement to be designated for at least 5 years applies to the teaching nursing home and not to the not-for-profit retirement community.

**VII. Related Issues:**

It is unclear what entities the bill is referring to with the term “not-for-profit retirement communities.” This term should be clarified.<sup>24</sup>

It is unclear from the bill who would be providing the hospice services allowed by the CON exemption and in what setting. The bill should be clarified so that it is clear who will provide the services and to whom the services may be provided.

The bill uses the definition for controlling interest in s. 408.803, F.S. However, this definition may be overbroad in the context of a CON exemption as it includes “a person or entity that serves as an officer of, is on the board of directors” of the entity, as well as requiring only a 5 percent ownership interest of the entity or the entities’ management company. In conjunction with the lack of clarity of the term “not-for-profit retirement community,” this definition may allow more entities to provide hospice services through the CON exemption than intended.

**VIII. Statutes Affected:**

This bill substantially amends section 408.036 of the Florida Statutes.

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<sup>23</sup> See supra note 15

<sup>24</sup> Id.

**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.

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

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