

**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 Appropriations

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BILL: CS/SB 1344

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Senator Harrell

SUBJECT: Intermediate Care Facilities

DATE: March 4, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<b>Favorable</b>
2.	<u>McKnight</u>	<u>Kidd</u>	<u>AHS</u>	<b>Recommend: Fav/CS</b>
3.	<u>McKnight</u>	<u>Kynoch</u>	<u>AP</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1344 establishes a new certificate of need (CON) exemption for an intermediate care facility for the developmentally disabled (ICFDD) for use by individuals exhibiting severe maladaptive behaviors and co-occurring psychiatric diagnoses requiring increased levels of behavioral, medical, and therapeutic oversight. The bill specifies requirements that the ICFDD must meet in order to obtain the CON exemption and establishes additional licensure criteria for an ICFDD that has been granted the CON exemption.

The bill prohibits the AHCA from granting more than three CON exemptions, and requires the CON exemptions to terminate 18 months after being issued, unless construction on the project has begun.

The bill will have a negative yet indeterminate fiscal impact on the Florida Medicaid program and the Agency for Health Care Administration.

The CON exemption provided under the bill sunsets on July 1, 2022, unless saved from repeal by the Legislature.

The bill takes effect on July 1, 2020.

## II. Present Situation:

### Intermediate Care Facilities for the Developmentally Disabled

An intermediate care facility for the developmentally disabled (ICFDD) provides care and residence for individuals with developmental disabilities. A developmental disability is a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.<sup>1</sup>

The licensure of ICFDDs is controlled by Part VIII of ch. 400, F.S., and Chapter 59A-26, F.A.C. Additionally, as a health care facility, as defined in s. 408.032, F.S., prior to obtaining licensure, the ICFDD applicant must obtain a CON from the Agency for Health Care Administration (AHCA).

### CON Overview

In Florida, a CON is a written statement issued by the 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: comparative, expedited, and exempt.<sup>2</sup> Florida's CON program has existed since July 1973. From 1974 through 1986, the specifics of the program were largely dictated by the federal National Health Planning and Resources Development Act of 1974 (Act), which established minimum requirements regarding the type of services subject to CON review, review procedures, and review criteria.<sup>3</sup> Each state was required to have a CON program in compliance with the Act as a condition for obtaining federal funds for health programs. The Act was repealed in 1986.<sup>4</sup>

### *Determination of Need, Application, and Review Processes*

A CON is predicated on a determination of need. The future need for services and projects is known as the "fixed need pool,"<sup>5</sup> which the AHCA publishes for each batching cycle. Rule 59C-1, F.A.C., provides need formulas to calculate the fixed need pool for certain services, including NICU services,<sup>6</sup> adult and child psychiatric services,<sup>7</sup> adult substance abuse services,<sup>8</sup> and comprehensive rehabilitation services.<sup>9</sup>

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<sup>1</sup> See s. 393.063(12), F.S.

<sup>2</sup> See s. 408.036, F.S. and Rule 59C-1.004, F.A.C.

<sup>3</sup> Pub. Law No. 93-641, 42 U.S.C. s. 300k et seq.

<sup>4</sup> Mitchell, Matthew D., Certificate of Need Laws: Are They Achieving Their Goals? Mercatus Center, George Mason University, available at: [www.mercatus.org > system > files > mitchell-con-qa-mop-mercatus-v2](http://www.mercatus.org/system/files/mitchell-con-qa-mop-mercatus-v2) (last visited January 30, 2020).

<sup>5</sup> Rule 59C-1.002(19), F.A.C., defines "fixed need pool" as the identified numerical need, as published in the Florida Administrative Register, for new beds or services for the applicable planning horizon established by the AHCA in accordance with need methodologies which are in effect by rule at the time of publication of the fixed need pools for the applicable batching cycle.

<sup>6</sup> Rule 59C-1.042(3), F.A.C.

<sup>7</sup> Rule 59C-1.040(4), F.A.C.

<sup>8</sup> Rule 59C-1.041(4), F.A.C.

<sup>9</sup> Rule 59C-1.039(5), F.A.C.

Upon determining that a need exists, the AHCA accepts applications for CON based on batching cycles. CON application fees include a base fee of \$10,000 and an additional fee of 1.5 cents for each dollar of the proposed project expenditures up to a maximum combined total of \$50,000.<sup>10</sup> A batching cycle is a means of grouping, for comparative review, of CON applications submitted for beds, services, or programs having a like CON need methodology or licensing category in the same planning horizon and the same applicable district or subdistrict.<sup>11</sup>

### **Severe Maladaptive Behaviors**

Maladaptive behaviors are those behaviors that are disruptive, destructive, aggressive, or significantly repetitive.<sup>12</sup> The Florida Agency for Persons with Disabilities (APD) has developed a Global Behavioral Service Need Matrix (Matrix) in order to classify the severity of person's maladaptive behavior.<sup>13</sup> The Matrix categorizes symptoms of maladaptive behaviors such as behavior frequency, behavioral impact, physical aggression to others, police involvement, property destruction, and elopement/wandering, among others. Each symptom is ranked on a scale of one to six, with one being the least severe and six being the most severe. If a symptom is not present, it is ranked as a zero. Based on their behavior score, the person will be evaluated for services. The initial evaluation period is 12 months and then the frequency of evaluations afterwards depends on the severity of the person's score, with a need level of six being evaluated more frequently than a need level of one.<sup>14</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 408.036, F.S., to create a CON exemption for a new ICFDD which has a total of 24 beds, comprising three eight-bed homes, for use by individuals exhibiting severe maladaptive behaviors and co-occurring psychiatric diagnoses requiring increased levels of behavioral, medical, and therapeutic oversight. In order to obtain the exemption, The ICFDD must not have had a license denied, revoked, or suspended within the 36 months preceding the request for an exemption and must have at least 10 years of experience serving individuals with severe maladaptive behaviors in this state. The AHCA is prohibited from granting an additional exemption to an ICFDD that has been granted an exemption under these provisions unless the facility has been licensed and operational for a period of at least two years. Additionally, the bill specifies that the exemption does not require a specific appropriation.

The bill also amends s. 400.962, F.S., to establish additional licensure and application requirements for an ICFDD that has been granted the CON exemption, including:

- The total number of beds per home within the facility may not exceed eight, with each resident having his or her own bedroom and bathroom. Each eight-bed home must be co-

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<sup>10</sup> Section 408.038, F.S.

<sup>11</sup> Rule 59C-1.002(5), F.A.C. Note: s. 408.032(5), F.S., establishes the 11 district service areas in Florida.

<sup>12</sup> Fulton, Elizabeth et al. "Reducing maladaptive behaviors in preschool-aged children with autism spectrum disorder using the early start denver model." *Frontiers in pediatrics* vol. 2 40., available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4023017/> (last visited on Jan. 24, 2020).

<sup>13</sup> Available at <http://apdcares.org/news/news/2011/ib-matrix-instructions.pdf> (last visited on February 3, 2020).

<sup>14</sup> *Id.*

located on the same property with two other eight-bed homes and must serve individuals with severe maladaptive behaviors and co-occurring psychiatric diagnoses.

- A minimum of 16 beds within the facility must be designated for individuals with severe maladaptive behaviors who have been assessed using the Matrix with a score of at least Level 4 and up to Level 6, or assessed using criteria deemed appropriate by the AHCA regarding the need for a specialized placement in an ICFDD.
- The applicant has not had a facility license denied, revoked, or suspended within the 36 months preceding the request for exemption.
- The applicant must have at least 10 years of experience serving individuals with severe maladaptive behaviors in the state.
- The applicant must implement a state-approved staff training curriculum and monitoring requirements specific to the individuals whose behaviors require higher intensity, frequency, and duration of services.
- The applicant must make available medical and nursing services 24 hours per day, 7 days per week.
- The applicant must demonstrate a history of using interventions that are least restrictive and that follow a behavioral hierarchy.
- The applicant must maintain a policy prohibiting the use of mechanical restraints.

The bill prohibits the AHCA from granting more than three CON exemptions to eligible ICFDDs, and requires the CON exemptions to terminate 18 months after being issued, unless construction on the project has begun. The bill also requires the AHCA to monitor CON exemption certificate holder construction projects and allows the AHCA to extend project time periods if the exemption holder demonstrates that the project is being delayed by:

- Litigation; or
- Governmental action or inaction regarding regulations or permitting.

The CON exemption provided under the bill sunsets on July 1, 2022, unless saved from repeal by the Legislature.

The bill takes effect on July 1, 2020.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

CS/SB 1344 may have a positive but indeterminate fiscal impact on ICFDD applicants that obtain the newly created CON exemption.

**C. Government Sector Impact:**

The bill will have a negative yet indeterminate fiscal impact on the Florida Medicaid program by incentivizing the creation of ICFDDs that accept individuals with developmental disabilities who have severe maladaptive behaviors or mental health issues. The negative fiscal impact to the Medicaid program may be offset by the positive fiscal impact to the Home and Community-Based Services (HCBS) Waiver as a result of transferring individuals from the HCBS Waiver to Medicaid.

The AHCA may incur costs related to the licensing and surveying of additional ICFDDs.<sup>15</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 400.962 and 408.036.

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<sup>15</sup> Agency for Health Care Administration, *Senate Bill 1344 Fiscal Analysis* (January 26, 2020) (on file with the Senate Subcommittee on Health and Human Services).

**IX. Additional Information:**

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

**CS by Appropriations on March 3, 2020:**

The committee substitute:

- Increases the severity of maladaptive behaviors an ICFDD must serve in order to be eligible for the CON exemption from a level 3 to 6 on the Matrix, to a level 4 to 6;
- Limits the number of CON exemptions authorized under the bill to three;
- Requires the CON exemption authorized under the bill to terminate 18 months after being issued, unless construction has begun;
- Requires the AHCA to monitor the projects of CON exemption certificate holders and allows the AHCA to extend project time periods under certain circumstances; and
- Sunsets the CON exemption July 1, 2022, unless saved from repeal by the Legislature.

- B. **Amendments:**

None.