



Health & Family Services Policy Council

**Monday, March 22, 2010
1:00 PM - 1:30 PM
Webster Hall (212 Knott)**

**Larry Cretul
Speaker**

**Ed Homan
Chair**

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Health & Family Services Policy Council

Start Date and Time: Monday, March 22, 2010 01:00 pm
End Date and Time: Monday, March 22, 2010 01:30 pm
Location: Webster Hall (212 Knott)
Duration: 0.50 hrs

Consideration of the following bill(s):

HM 145 Emergency Room Staffing Initiative by Ambler
CS/HB 491 Teaching Nursing Homes by Health Care Regulation Policy Committee, Bogdanoff
HM 1349 Community-Based Services for Individuals with Developmental Disabilities by Skidmore
HR 1561 Federal Health Care Legislation by Eisnaugle

Pursuant to rule 7.13, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Friday, March 19, 2010.

By request of the Chair, all council members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Friday, March 19, 2010.

NOTICE FINALIZED on 03/18/2010 16:02 by Alison.Cindy



The Florida House of Representatives

Health & Family Services Policy Council

AGENDA

March 22, 2010
1:00 PM – 1:30 PM
Webster Hall (212 Knott)

- I. Opening Remarks by Chair Homan

- II. Consideration of the following Bill(s):
 - HM 145 – Emergency Room Staffing Initiative by Rep. Ambler

 - CS/HB 491 – Teaching Nursing Homes by Health Care Regulation Policy Committee;
Rep. Bogdanoff

 - HM 1349 – Community-Based Services for Individuals with Developmental Disabilities by
Rep. Skidmore

 - HR 1561 – Federal Health Care Legislation by Rep. Eisnaugle

- III. Closing Remarks

- IV. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 145

Emergency Room Staffing Initiative

SPONSOR(S): Ambler

TIED BILLS:

IDEN./SIM. BILLS: CS/SM 1746

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health & Family Services Policy Council		Shaw <i>JS</i>	Gormley <i>OG</i>
2) Rules & Calendar Council			
3) Policy Council			
4)			
5)			

SUMMARY ANALYSIS

The House Memorial urges the United States Congress to create a nationwide initiative to assist in reducing the existing shortage of physicians and medical specialists who provide on-call emergency room services by amending the nation's tax code to allow for all uncompensated emergency room work to be eligible as a charitable deduction against earned income for the practicing physician or medical specialist, up to a maximum of \$100,000.

The House Memorial does not amend, create, or repeal any provisions of the Florida Statutes.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The availability of physicians, especially physician specialists, in hospital emergency departments (EDs) has been a concern in Florida and nationwide for several years. The Florida Senate Committee on Health Regulation studied this situation in the 2007-2008 interim and issued Interim Project Report 2008-138, *Availability of Physicians and Physician Specialists for Hospital Emergency Services and Care* in November, 2007.¹ The report found that there are multiple reasons why physicians are unavailable for on-call coverage in hospital emergency departments (EDs) and the problem varies by locality, specialty, and hospital. However, in general, physicians are reluctant to provide emergency on-call coverage due to the negative impact on their lifestyle, the perceived hostile medical malpractice climate, and the inability to obtain adequate compensation for services rendered. All of these reasons are disincentives to assuming liability for treating emergency patients previously unknown to the physician. In some cases, however, the problem is simply an inadequate supply of a particular type of specialist in the market.

Among the consequences of having fewer on-call emergency providers is reduced patient access to timely specialty care in the nation's EDs. The findings of a 2006 report by the American College of Emergency Physicians' (ACEP) Emergency Medicine Foundation indicate that "on-call coverage in the nation's EDs has deteriorated and public policymakers should take note of the largely unintended consequences of the regulations governing the Emergency Medical Treatment and Labor Act (EMTALA)."² According to the ACEP, emergency care physicians provide on average \$140,000 in uncompensated care annually.³

¹ This report is available at: <http://www.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-138hr.pdf> (Last visited on March 19, 2010). An addendum to the report was subsequently published and is available at: <http://www.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-138ahr.pdf> (Last visited on March 19, 2010).

² American College of Emergency Physicians (ACEP). "On-Call Specialist Coverage in U.S. Emergency Departments." ACEP Survey of Emergency Department Directors, April 2006.

Available at: <<http://www.acep.org/WorkArea/downloadasset.aspx?id=33266>> (Last visited March 19, 2010).

³ See: ACEP, Health Care Reform Fact Sheet. Available at:

<<http://www.acep.org/pressroom.aspx?LinkIdentifier=id&id=45294&fid=3496&Mo=No&taxid=112443>> (Last visited March 19, 2010).

Federal Emergency Medical Treatment and Labor Act⁴

In 1986, Congress enacted the EMTALA to ensure public access to emergency services regardless of a person's ability to pay. The EMTALA applies to hospitals with an ED that participate in the Medicare program. The EMTALA specifies that a hospital with an ED must provide for an appropriate medical screening examination to determine whether an emergency condition exists for any individual who comes to an ED and requests examination or treatment of a medical condition. If an emergency medical condition exists, the hospital must provide, within the staff and facilities available at the hospital, further medical examination and treatment as may be required to stabilize the medical condition for transfer of the patient to another medical facility or discharge.

Emergency Departments

From 1996 to 2006, the number of people needing emergency care annually increased 32 percent, from 90.3 million to 119.2 million. At the same time, the number of hospital EDs in the country has dropped nearly 7 percent, from 4,109 to 3,833.⁵ The Centers for Disease Control and Prevention (CDC) has reported that the elderly population of emergency department users, who have the largest share of serious emergency medical conditions, is about to soar as baby boomers reach Medicare age. The CDC forecasts that this group will fuel demand for more specialty care in EDs.⁶

Effect of Proposed Changes

The House Memorial urges the United States Congress to create a nationwide initiative to assist in reducing the existing shortage of physicians and medical specialists who provide on-call emergency room services by amending the nation's tax code to allow for all uncompensated emergency room work to be eligible as a charitable deduction against earned income for the practicing physician or medical specialist, up to a maximum of \$100,000.

The memorial specifies that charges eligible for the charitable deduction should be based on a rate equivalent to 200 percent of the Medicare reimbursement rate at the time the service is rendered. In the absence of an applicable Medicare billing code, the charge for this deduction should be based on a fee not to exceed 100 percent of the average customary and reasonable charges allowed under private health insurance for any services rendered.

Copies of the memorial are to be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

B. SECTION DIRECTORY:

Not applicable as a memorial does not have sections.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁴ Section 1867 of the Social Security Act, 42 U.S.C. s. 1395dd.

⁵ ACEP. The National Report Card on the State of Emergency Medicine. 2009. Available at: <<http://www.emreportcard.com/uploadedFiles/ACEP-ReportCard-10-22-08.pdf.pdf>> (Last visited March 19, 2010).

⁶ Centers for Disease Control and Prevention (CDC). National Hospital Ambulatory Medical Care Survey: 2003 Emergency Department Summary. *Advance Data*, No. 358, May 2005. Available at: <<http://www.cdc.gov/nchs/data/ad/ad358.pdf>> (Last visited March 19, 2010).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable since as memorial does not amend, create, or repeal any provisions of the Florida Statutes.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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House Memorial

A memorial to the Congress of the United States, urging Congress to create a nationwide Emergency Room Staffing Initiative.

WHEREAS, a crisis exists whereby an insufficient number of physicians and medical specialists are available to provide on-call emergency room support, and

WHEREAS, in order to provide a more stable health care system in America, an incentive must be created to encourage physicians and medical specialists to more actively participate in these on-call emergency room responsibilities as part of their hospital staffing duties, and

WHEREAS, an increased number of indigent care cases and patients without health insurance seeking medical attention has helped to discourage many practitioners and specialists from desiring to serve in on-call services in emergency rooms, and

WHEREAS, when combined with already dramatically reduced reimbursement rates, the staffing crisis is exacerbated, NOW, THEREFORE,

Be It Resolved by the Legislature of the State of Florida:

That the Congress of the United States is urged to create a nationwide initiative in order to remedy this staffing crisis by amending the nation's tax code to allow for all uncompensated emergency room work to be eligible as a charitable deduction against earned income for the practicing physician or medical

HM 145

2010

29 | specialist up to a maximum of \$100,000. Charges eligible for
 30 | this deduction should be based on a rate equivalent to 200
 31 | percent of the Medicare reimbursement rate at the time the
 32 | service is rendered. In the absence of an applicable Medicare
 33 | billing code, hospitals may charge a fee not to exceed 100
 34 | percent of the average customary and reasonable charges allowed
 35 | under private health insurance for any services rendered.

36 | BE IT FURTHER RESOLVED that copies of this memorial be
 37 | dispatched to the President of the United States, to the
 38 | President of the United States Senate, to the Speaker of the
 39 | United States House of Representatives, and to each member of
 40 | the Florida delegation to the United States Congress.

CS/HB 491

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 491 Teaching Nursing Homes
SPONSOR(S): Health Care Regulation Policy Committee; Bogdanoff
TIED BILLS: IDEN./SIM. BILLS: SB 816

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Health Care Regulation Policy Committee, 14 Y, 0 N, As CS, Shaw, Calamas. Row 2: Health & Family Services Policy Council, Shaw, Gormley.

SUMMARY ANALYSIS

A teaching nursing home is a comprehensive multidisciplinary program of geriatric education and research in a nursing home facility. Presently, only one facility, the Miami Jewish Home and Hospital for the Aged at Douglas Gardens, is designated a teaching nursing home.

The bill revises the requirements for becoming a teaching nursing home which increases the number of facilities eligible for the designation. Under the revised requirements, the Miami Jewish Home and Hospital for the Aged at Douglas Gardens will remain eligible. Presently, Joseph L. Morse Geriatric Center, Inc., (MorseLife) in Palm Beach County, River Garden Hebrew Home for the Aged in Jacksonville, and Indian River Center in West Melbourne may also meet the requirements of the bill. In the future, other nursing homes may become eligible.

The bill will have no fiscal impact on state government.

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Teaching Nursing Home Pilot Program

In 1999, the Legislature enacted a "Teaching Nursing Home Pilot Project" to implement a comprehensive multidisciplinary program of geriatric education and research in a nursing home facility designated by the Agency for Health Care Administration (AHCA) as a teaching nursing home.¹ To receive the designation, a nursing home licensed under chapter 400, F.S., must: have at least 400 licensed nursing home beds; have access to a resident senior population of sufficient size to support education, training, and research relating to geriatric care; and have a contractual relationship with a federally funded accredited geriatric research center in this state.² The facility must also have a valid accreditation, such as the accreditation awarded by the Joint Commission on Accreditation of Healthcare Organizations, and have a contractual relationship with a teaching hospital.³

The Miami Jewish Home and Hospital for the Aged at Douglas Gardens was licensed in July 2000 as a teaching nursing home, and it remains the only nursing home so designated. Since that time, the teaching nursing home has received \$5.2 million to implement the program; however, state funding was discontinued in the 2007-2008 fiscal year.

General and Professional Liability Insurance

Nursing homes must meet the requirements for licensure in Part II of Chapter 400, Florida Statutes. Among the requirements is that a nursing home must maintain general and professional liability insurance coverage that is in force at all times.⁴ A state-designated teaching nursing home and its affiliated assisting assisted living facility may opt to meet this requirement by self insuring.⁵ The teaching nursing home must demonstrate financial responsibility in a minimum amount of \$750,000.⁶

¹ Ch. 99-394, L.O.F., creating s. 430.80, F.S.

² s. 430.80(1) and (2), F.S.

³ *Id.*

⁴ s. 400.101(1)(s), F.S.

⁵ s. 430.80(3), F.S.

⁶ *Id.*

Gold Seal Program

The Goal Seal Program is an award and recognition program for nursing home facilities that demonstrate excellence in long-term care over a sustained period.

Section 400.235, F.S., sets the requirements for receiving a Goal Seal Award. The facility must:

- Demonstrate a high quality of care and have no Class I⁷ or Class II⁸ deficiencies within the 30 months preceding application for the program;
- Evidence financial soundness and stability;
- Participate in a consumer satisfaction process;
- Evidence the involvement of families and members of the community in the facility on a regular basis; have a stable workforce;
- Evidence an outstanding record regarding the number and types of substantiated complaints reported to the State Long-Term Care Ombudsman Council within the 30 months preceding application for the program; and
- Provide targeted in-service training to meet needs identified by internal or external quality assurance efforts.

Effect of Proposed Changes

The bill amends s. 430.80, F.S., to revise the requirements for becoming a teaching nursing home. These changes increase the number of facilities eligible to be designated a teaching nursing home.

The bill makes the following changes to the designation requirements:

- The minimum number of licensed nursing home beds is reduced from 400 to 170.
- In lieu of participating in a nationally recognized accreditation program, the nursing home may possess a Gold Seal Award at the time of initial designation as a teaching nursing home.
- In lieu of having a contractual relationship with a federally-funded accredited geriatric research center, the nursing home may operate a geriatric research center itself.
- The nursing home need not have a formalized contractual relationship with an accredited hospital.

The Miami Jewish Home and Hospital for the Aged at Douglas Gardens will still qualify as a teaching nursing home. According to AHCA, there are currently 110 nursing homes with at least 170 beds. Of those only three currently have a Gold Seal Award: Joseph L. Morse Geriatric Center, Inc., (MorseLife) in Palm Beach County, River Garden Hebrew Home for the Aged in Jacksonville, and Indian River Center in West Melbourne. MorseLife and River Garden contend that they would meet the revised requirements to become a teaching nursing home.⁹ AHCA does not have sufficient information to assess whether all three facilities meet the bill requirements.

B. SECTION DIRECTORY:

Section 1: Amends s. 430.80, F.S., relating to teaching nursing homes.

Section 2: Amends s. 400.141, F.S., relating to the administration and management of nursing home facilities.

Section 3: Provides an effective date of July 1, 2010.

⁷ Class "I" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which AHCA determines present an imminent danger to the clients of the provider or a substantial probability that death or serious physical or emotional harm would result. See s. 408.813(2)(a), F.S.

⁸ Class "II" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which AHCA determines directly threaten the physical or emotional health, safety, or security of the clients. See s. 408.813(2)(b), F.S.

⁹ Testimony of the bill sponsor at the March 9, 2010, meeting of the Health Care Regulation Policy Committee.

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:

More Florida nursing homes may obtain the designation of a teaching nursing home which will allow them to self-insure.

D. FISCAL COMMENTS:

State funding was discontinued for teaching nursing homes in the 2007-2008 fiscal year.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 9, 2010, the Health Care Regulation Policy Committee heard the bill and adopted one amendment. The original bill reduced the minimum number of licensed beds required for a nursing home to qualify as a teaching nursing home from 400 to 275. The amendment reduces the minimum number of required licensed beds to 170.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

1 A bill to be entitled
 2 An act relating to teaching nursing homes; amending s.
 3 430.80, F.S.; revising the term "teaching nursing home" as
 4 it relates to the implementation of a teaching nursing
 5 home pilot project; revising the requirements to be
 6 designated as a teaching nursing home; amending s.
 7 400.141, F.S.; conforming a cross-reference; providing an
 8 effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsections (1) and (3) of section 430.80,
 13 Florida Statutes, are amended to read:

14 430.80 Implementation of a teaching nursing home pilot
 15 project.-

16 (1) As used in this section, the term "teaching nursing
 17 home" means a nursing home facility licensed under chapter 400
 18 which contains a minimum of 170 ~~400~~ licensed nursing home beds;
 19 has access to a resident senior population of sufficient size to
 20 support education, training, and research relating to geriatric
 21 care; and has a contractual relationship with a federally funded
 22 accredited geriatric research center in this state or operates
 23 in its own right a geriatric research center.

24 (3) To be designated as a teaching nursing home, a nursing
 25 home licensee must, at a minimum:

26 (a) Provide a comprehensive program of integrated senior
 27 services that include institutional services and community-based
 28 services;

29 (b) Participate in a nationally recognized accreditation
 30 program and hold a valid accreditation, such as the
 31 accreditation awarded by the Joint Commission on Accreditation
 32 of Healthcare Organizations, or, at the time of initial
 33 designation, possess a Gold Seal Award as conferred by the state
 34 on its licensed nursing home;

35 (c) Have been in business in this state for a minimum of
 36 10 consecutive years;

37 (d) Demonstrate an active program in multidisciplinary
 38 education and research that relates to gerontology;

39 (e) Have a formalized contractual relationship with at
 40 least one accredited health profession education program located
 41 in this state;

42 ~~(f) Have a formalized contractual relationship with an~~
 43 ~~accredited hospital that is designated by law as a teaching~~
 44 ~~hospital; and~~

45 ~~(f)(g)~~ Have senior staff members who hold formal faculty
 46 appointments at universities, which must include at least one
 47 accredited health profession education program; and-

48 ~~(g)(h)~~ Maintain insurance coverage pursuant to s.
 49 400.141(1)(s) or proof of financial responsibility in a minimum
 50 amount of \$750,000. Such proof of financial responsibility may
 51 include:

- 52 1. Maintaining an escrow account consisting of cash or
 53 assets eligible for deposit in accordance with s. 625.52; or
- 54 2. Obtaining and maintaining pursuant to chapter 675 an
 55 unexpired, irrevocable, nontransferable and nonassignable letter
 56 of credit issued by any bank or savings association organized

57 | and existing under the laws of this state or any bank or savings
 58 | association organized under the laws of the United States that
 59 | has its principal place of business in this state or has a
 60 | branch office which is authorized to receive deposits in this
 61 | state. The letter of credit shall be used to satisfy the
 62 | obligation of the facility to the claimant upon presentment of a
 63 | final judgment indicating liability and awarding damages to be
 64 | paid by the facility or upon presentment of a settlement
 65 | agreement signed by all parties to the agreement when such final
 66 | judgment or settlement is a result of a liability claim against
 67 | the facility.

68 | Section 2. Paragraph (s) of subsection (1) of section
 69 | 400.141, Florida Statutes, is amended to read:

70 | 400.141 Administration and management of nursing home
 71 | facilities.-

72 | (1) Every licensed facility shall comply with all
 73 | applicable standards and rules of the agency and shall:

74 | (s) Maintain general and professional liability insurance
 75 | coverage that is in force at all times. In lieu of general and
 76 | professional liability insurance coverage, a state-designated
 77 | teaching nursing home and its affiliated assisted living
 78 | facilities created under s. 430.80 may demonstrate proof of
 79 | financial responsibility as provided in s. 430.80(3) (g) ~~(h)~~.

80 | Section 3. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1349

Community-Based Services for Individuals with Developmental

Disabilities

SPONSOR(S): Skidmore

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health & Family Services Policy Council		Schoolfield	Gormley
2) Rules & Calendar Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

HM 1349 is a House memorial to urge Congress to support the opportunity to provide increased access to community-based services for individuals with developmental disabilities. The memorial specifically urges Congress to support the Achieving a Better Life Experience (ABLE) Act of 2009, as reflected in H.R. 1205 and S. 493. Congress is also urged to support ABLE accounts for individuals with developmental disabilities to assist them in paying certain expenses including education, housing, transportation, employment support, medical care, and certain life necessities.

The memorial is to be dispatched to the President of the United States, Speaker of the House, President of the US Senate and the Florida delegation to Congress.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Home and Community Services to Persons with Developmental Disabilities

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities.¹ A developmental disability is defined in chapter 393, F.S., as "a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely."² Children who are at high risk of having a developmental disability and are between the ages of 3 and 5 are also eligible for services.³

APD provides an array of home and community based services through contract providers under a four tier Medicaid waiver program. The program includes 28 home and community based services including but not limited to therapies, adult day training, behavioral services, residential habilitation services, respite, nursing services, employment and supported living services. As of January 2010, APD was serving 29,903⁴ people in the Medicaid waiver program and has a waitlist of over 18,800⁵ people for the program. APD administers a budget in excess of \$1 billion dollars to serve persons with developmental disabilities of which \$900 million is for home and community services.⁶

Achieving a Better Life Experience Act of 2009 (ABLE Act of 2009)

The ABLE Act of 2009 was introduced into both Houses of Congress on February 26, 2009. In the House of Representatives, the Act is H.R. 1205 and is sponsored by Rep. Ander Crenshaw (R-Fla) with 32 cosponsors. In the Senate, the Act is S. 493 and is sponsored by Sen. Robert P. Casey Jr. (D-Pa) with 5 cosponsors. The bill will have to pass both houses of Congress and be signed by the President to become law.

The ABLE Act of 2009 amends the Internal Revenue Code to establish tax-exempt ABLE accounts for individuals with a disability to pay certain expenses of such individuals, including expenses for education, housing, transportation, employment support, medical care, and certain life necessities.

¹ s. 20.197(3), F.S.

² s. 393.063(9), F.S.

³ "High-risk child" is defined in s. 393.063(19) F.S.

⁴ Tier Waiver Enrollment Summary by Year and Month, December 2009.

⁵ APD Quarterly Report to the Legislature on Agency Services, February 2010

⁶ Ch.2009-81, Laws of Florida.

The Act includes several key elements which:

- define "individual with a disability" as an individual who is eligible to receive certain supplemental security income benefits under the Social Security Act;
- allow individual taxpayers a tax deduction, up to \$2,000 per year, for contributions to an ABLE account.
- require ABLE accounts to be disregarded in determining eligibility for Medicaid benefits and for purposes of determining eligibility for other means-tested federal programs.
- provide that funds remaining in the accounts at the time of an individual's death would be used to pay back the state Medicaid program up to the value of services provided;
- require the Secretary of the Treasury to study and report to Congress on the use of ABLE accounts and the effect of the tax deduction for contributions to such accounts.⁷

The ABLE Act is anticipated to give individuals with disabilities and or their families access to savings accounts to use in purchasing qualified expenses. Withdrawals from the account will not be subject to tax as long as they are used for qualified expenditures.

Effect of the Memorial:

This House memorial urges Congress to support the opportunity to provide increased access to community-based services for individuals with developmental disabilities. The memorial specifically urges Congress to support the Achieving a Better Life Experience (ABLE) Act of 2009, as reflected in H.R. 1205 and S. 493. Congress is also urged to support ABLE accounts for individuals with developmental disabilities to assist them with certain expenses including education, housing, transportation, employment support, medical care, and certain life necessities.

The memorial is to be dispatched to the President of the United States, Speaker of the House, President of the US Senate and the Florida delegation to Congress.

In support of the memorial the following whereas clauses were included:

- Whereas, federal and state financial assistance is provided for services under the Medicaid program for individuals with developmental disabilities, and
- Whereas, community-based services are a valuable cost-effective alternative to institutional care because such services benefit both the individual receiving the services and the federal and state programs that fund the services, and
- Whereas, a study by the National Conference of State Legislatures and other studies document that individuals with developmental disabilities who receive services in their homes or other community settings experience improved outcomes, quality of care, and quality of life in contrast to individuals with developmental disabilities who receive care in institutional settings, and
- Whereas, publicly funded programs that cover community-based services for individuals with developmental disabilities are limited, and
- Whereas, federal and state programs provide limited support for community-based services that serve as an alternative to institutional care for individuals with developmental disabilities, and
- Whereas, the years after a student with a developmental disability leaves the educational system are critical for learning and transition, and
- Whereas, the need to allow the opportunity to provide increased access to community-based services at the discretion of the developmentally disabled individual's family is recognized, and
- Whereas, access to community-based services, regardless of a family's income, insurance coverage, or Medicaid eligibility, is recognized as essential in improving the quality of life for individuals with developmental disabilities.

B. SECTION DIRECTORY:

Not applicable.

⁷ H.R. 1205--111th Congress: ABLE Act of 2009. (2009). In *GovTrack.us (database of federal legislation)*. Retrieved March 18, 2010, from <http://www.govtrack.us/congress/bill.xpd?bill=h111-1205&tab=summary>

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

HM 1349

2010

House Memorial

1
2 A memorial to the Congress of the United States, urging
3 Congress to support the opportunity to provide increased
4 access to community-based services for individuals with
5 developmental disabilities.
6

7 WHEREAS, federal and state financial assistance is provided
8 for services under the Medicaid program for individuals with
9 developmental disabilities, and

10 WHEREAS, community-based services are a valuable cost-
11 effective alternative to institutional care because such
12 services benefit both the individual receiving the services and
13 the federal and state programs that fund the services, and

14 WHEREAS, a study by the National Conference of State
15 Legislatures and other studies document that individuals with
16 developmental disabilities who receive services in their homes
17 or other community settings experience improved outcomes,
18 quality of care, and quality of life in contrast to individuals
19 with developmental disabilities who receive care in
20 institutional settings, and

21 WHEREAS, publicly funded programs that cover community-
22 based services for individuals with developmental disabilities
23 are limited, and

24 WHEREAS, federal and state programs provide limited support
25 for community-based services that serve as an alternative to
26 institutional care for individuals with developmental
27 disabilities, and

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28 WHEREAS, the years after a student with a developmental
 29 disability leaves the educational system are critical for
 30 learning and transition, and

31 WHEREAS, the need to allow the opportunity to provide
 32 increased access to community-based services at the discretion
 33 of the developmentally disabled individual's family is
 34 recognized, and

35 WHEREAS, access to community-based services, regardless of
 36 a family's income, insurance coverage, or Medicaid eligibility,
 37 is recognized as essential in improving the quality of life for
 38 individuals with developmental disabilities, NOW, THEREFORE,

39

40 Be It Resolved by the Legislature of the State of Florida:

41

42 That the Congress of the United States is urged to:

43 (1) Support the "Achieving a Better Life Experience Act of
 44 2009" or the "ABLE Act of 2009," as reflected in H.R. 1205 and
 45 S. 493; and

46 (2) Support ABLE accounts for individuals with
 47 developmental disabilities to assist them in paying certain
 48 expenses, including expenses for education, housing,
 49 transportation, employment support, medical care, and certain
 50 life necessities.

51 BE IT FURTHER RESOLVED that copies of this memorial be
 52 dispatched to the President of the United States, to the
 53 President of the United States Senate, to the Speaker of the
 54 United States House of Representatives, and to each member of
 55 the Florida delegation to the United States Congress.

HR 1561

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HR 1561 Federal Health Care Legislation

SPONSOR(S): Eisnaugle and others

TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health & Family Services Policy Council		Quinn <i>[Signature]</i>	Gormley <i>[Signature]</i>
2)	Rules & Calendar Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

House Resolution 1561 urges the Florida Attorney General to file suit challenging the constitutionality of any individual health care mandate passed into law by the federal government. The Resolution provides that a copy be presented to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida Congressional delegation.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Federal Health Care Reform

Currently, the U.S. Congress is considering an extensive overhaul of the national health care system with particular focus on access to affordable coverage in the private market and a reorganization of public programs. The U.S. House of Representatives passed H.R. 3962 on November 7, 2009, while the U.S. Senate passed H.R. 3590 on December 24, 2009. President Barack Obama released a proposal for federal health care reform on February 22, 2010, which includes many of the policy considerations in each of the House and Senate bills.

The bills differ with respect to policy decisions on health care reform, but both bills contain provisions relating to the following areas: mandated individual coverage; mandated employer offers of coverage; expansion of Medicaid; individual cost-sharing subsidies and tax penalties for non-compliance; employer tax penalties for non-compliance; health insurance exchanges; public option coverage; expanded regulation of the private insurance market; and revision of the Medicare and Medicaid programs.

Both bills require individuals to have health insurance coverage and provide penalties for non-compliance. Certain employers are required to offer health insurance to their employees or pay a penalty for non-compliance. The bills make substantive changes to Medicaid by increasing the eligibility threshold. The bills require tax increases as a means to finance health care reform provisions.

Key differences between the two bills include:¹

Issue	Senate Bill: H.R. 3590 Patient Protections & Affordable Care Act	House Bill: H.R. 3962 Affordable Health Care for America Act
Mandated individual coverage	"minimum essential coverage" as defined in the bill	"acceptable coverage" as defined in the bill
Individual penalty	\$95-\$750 per person tax	2.5% of gross adj. income fine
Mandated employer offering	Required for companies with more than 50 employees	Required for companies with an annual payroll of greater than \$750,000
Employer penalty for failure to offer	\$750 per employee tax, if one full-time employee uses the federal subsidy	8% payroll tax fine
Other employer penalties	For employers who offer health insurance, if at least one full-time employee uses the federal subsidy, then \$750 per employee tax	Sliding scale payroll tax for companies with an annual payroll less than \$750,000
Health insurance exchanges	State-based American Health Benefits Exchanges	National Health Insurance Exchange
Individual subsidy: Exchange participation	Insurance premium credits	Insurance premium credits
Public option	N/A	Public insurance option offered through the National Exchange
Private insurance market regulation	Guarantee issue and renewability	Guarantee issue and renewability
Mandated state Medicaid expansion	Up to 133% of the Federal Poverty Level (\$29,326 for a family of four)	Up to 150% of the Federal Poverty Level (\$33,075 for a family of four)
CHIP	CHIP block grants funded through 2015	Repeal CHIP; enrollees required to participate in National Exchange

There is no existing requirement in federal law that individuals have health insurance coverage, nor does federal law require employers to provide health insurance to employees.

Congressional Authority and Constitutionality

Constitutional scholars and health care policy experts are debating the constitutionality of many of the federal health care reform provisions. The debate centers on four constitutional issues.

Commerce Clause (U.S. Const. Art. I, Sec. 8, Clause 3)

Congress has the power to regulate interstate commerce, including local matters and things that "substantially affect" interstate commerce. Proponents of reform assert that although health care delivery is local, the sale and purchase of medical supplies and health insurance occurs across state lines, thus regulation of health care is within Commerce Clause authority. Arguing in support of an individual mandate, proponents point to insurance market de-stabilization caused by the large uninsured population as reason enough to authorize Congressional action under the Commerce Clause.² Opponents suggest that the decision not to purchase health care coverage is not a commercial activity and cite to *United States v. Lopez* which held that Congress is prohibited from "...unfettered use of the Commerce Clause authority to police individual behavior that does not constitute interstate commerce."³

Tax and Spend for the General Welfare (U.S. Const. Art. I, Sec. 8, Clause 1)

The Tax and Spend Clause of the U.S. Constitution provides Congress with taxation authority and also authorizes Congress to spend funds with the limitation that spending must be in pursuit of the general welfare of the population. To be held constitutional, Congressional action pursuant to this Clause must

¹ For detailed side-by-side bill comparisons, see Kaiser Family Foundation, Focus on Health Reform, at <http://www.kff.org/healthreform/sidebyside.cfm> and *House-Senate Comparison of Key Provisions*, at www.politico.com/static/PPM136_100104_health_reform_conference.html (last visited March 17, 2010).

² Jack Balkin, *The Constitutionality of the Individual Mandate for Health Insurance*, N. Eng. J. Med. 362:6, at 482 (February 11, 2010).

³ Peter Urbanowicz and Dennis G. Smith, *Constitutional Implications of an 'Individual Mandate' in Health Care Reform*, The Federalist Society for Law and Public Policy, at 4 (July 10, 2009).

be reasonable.⁴ With respect to the penalty or fine on individuals who do not have health insurance, proponents suggest that Congress' power to tax and spend for the general welfare authorizes the crafting of tax policy which in effect encourages and discourages behavior.⁵ Opponents cite U.S. Supreme Court case law that prohibits "a tax to regulate conduct that is otherwise indisputably beyond [Congress'] regulatory power."⁶

The Tenth Amendment and the Anti-Commandeering Doctrine (U.S. Const. Amend. 10)

The Tenth Amendment reserves to the states all power that is not expressly reserved for the federal government in the U.S. Constitution. Opponents of federal reform assert that the individual mandate violates federalism principles because the U.S. Constitution does not authorize the federal government to regulate health care. They argue, "...state governments – unlike the federal government – have greater, plenary authority and police powers under their state constitutions to mandate the purchase of health insurance."⁷ Further, opponents argue that the state health insurance exchange mandate may violate the anti-commandeering doctrine which prohibits the federal government from requiring state officials to carry out onerous federal regulations.⁸ Proponents for reform suggest that Tenth Amendment jurisprudence only places wide and weak boundaries around Congressional regulatory authority to act under the Commerce Clause.⁹

Supremacy Clause (U.S. Const. Art. 6, Clause 2)

Supremacy Clause jurisprudence firmly establishes that the U.S. Constitution and federal law possess ultimate authority when in conflict with state law. The Supreme Court held "...the Supremacy Clause gives the Federal Government 'a decided advantage in the delicate balance' the Constitution strikes between state and federal power."¹⁰ Proponents cite to the Supremacy Clause as a self-evident justification for passage of federal health reform. Opponents assert that the Supremacy Clause only protects congressional actions that are based on express authority in the Constitution and "where [the action] does not impermissibly tread upon state sovereignty."¹¹

Attorney General Actions

Attorney General Bill McCollum has asserted the constitutionality argument to Congress. On January 19, 2010, Attorney General McCollum sent a letter to U.S. House and Senate leadership in which he said that he would pursue legal action if the individual mandate becomes law. Attorney General McCollum then sent a letter to the president of the National Association of Attorneys General on March 16, 2010, asking other attorney generals to participate in litigation challenging the individual mandate. The basis for Attorney General McCollum's proposed challenge is that Congress lacks Commerce Clause authority to compel individuals to purchase health insurance.

On March 17, 2010, Idaho's Governor signed into law HB 391, the Idaho Health Freedom Act.¹² Among other things, the Act requires the Idaho Attorney General to, "seek injunctive relief and other appropriate relief as expeditiously as possible" in the event an individual health care mandate is passed

⁴ *Helvering v. Davis*, 301 U.S. 619 (1937).

⁵ Mark A. Hall, *The Constitutionality of Mandates to Purchase Health Insurance*, Legal Solutions in Health Reform project, O'Neill Institute, at 7.

⁶ David B. Rivkin and Lee A. Casey, "Illegal Health Reform" Washington Post, August 22, 2009, at A15. Rivkin and Lee cite to *Bailey v. Drexel Furniture*, 259 U.S. 20 (1922), a Commerce Clause case which held that Congress has the authority to tax as a means of controlling conduct.

⁷ Rivkin at 3.

⁸ Matthew D. Adler, *State Sovereignty and the Anti-Commandeering Cases*, The Annals of the American Academy of Policy and Social Science, 574, at 158 (March 2001).

⁹ Hall at 8-9.

¹⁰ *New York v. United States*, 505 U.S. 144, 160 (1992).

¹¹ Clint Bolick, *The Health Care Freedom Act: Questions and Answers*, Goldwater Institute, at 3 (February 2, 2010).

¹² Like Idaho, the Legislatures in Virginia and Utah have passed statutes related to reform. The Arizona Legislature has passed a proposed constitutional amendment.

by any government, subdivision or agency thereof. Legislative proposals have been filed in more than 30 other states related to federal health care reform.¹³

House Resolution 1561

House Resolution 1561 urges the Florida Attorney General to file suit challenging the constitutionality of any individual health care mandate passed into law by the federal government. The Resolution provides that a copy be presented to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida Congressional delegation.

In Support of the resolution, HR 1561 provides the following "whereas clauses"

- Whereas, the United States Constitution establishes a limited federal government, as expressed in the Bill of Rights, that protects the freedom of individuals and the rights of states
- Whereas, the United States Congress is currently debating the issue of health care reform and legislation such as the Patient Protection and Affordable Care Act (Senate H.R. 3590) and the Affordable Health Care for America Act (House H.R. 3962)
- Whereas, the United States Congress is urged to enact legislation that respects and recognizes the rights of individuals, families, groups, and communities to make decisions about their health care insurance and treatment options
- Whereas, the "individual mandate" provision included in Senate H.R. 3590, House H.R. 3962, and President Barack Obama's health care plan requires all individuals to purchase health insurance products and services
- Whereas, such individual mandates are contrary to the rights of a free and prosperous people and deny individuals the right to make one of the most basic health care decisions for themselves and their loved ones
- Whereas, the United States Supreme Court has recognized each individual's freedom to refuse health care treatment
- Whereas, on January 19, 2010, Attorney General Bill McCollum sent to Congressional leaders an analysis in which he outlined the unconstitutionality of the individual healthcare mandates
- Whereas, according to his analysis, the United States Congress does not possess the constitutional authority to compel individuals under threat of government fines or taxes to purchase an unwanted product or service simply as a condition of living in this country
- Whereas, if the individual mandate provision becomes law, the Attorney General has stated that he will be compelled to challenge the constitutionality of that provision, and other states may also join in the challenge

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

¹³ *State Legislation Opposing Certain Health Reforms*, National Conference of State Legislatures; located at <http://www.ncsl.org/IssuesResearch/Health/StateLegislationOpposingCertainHealthReforms/tabid/18906/Default.aspx?tabid=18906> (last viewed on March 18, 2010).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this resolution does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 House Resolution

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 3 Florida to file suit challenging the constitutionality of
 4 any individual health care mandate passed into law by the
 5 Federal Government.

6
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 8 limited federal government, as expressed in the Bill of Rights,
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 10 states, and

11 WHEREAS, the United States Congress is currently debating
 12 the issue of health care reform and legislation such as the
 13 Patient Protection and Affordable Care Act (Senate H.R. 3590)
 14 and the Affordable Health Care for America Act (House H.R.
 15 3962), and

16 WHEREAS, the United States Congress is urged to enact
 17 legislation that respects and recognizes the rights of
 18 individuals, families, groups, and communities to make decisions
 19 about their health care insurance and treatment options, and

20 WHEREAS, the "individual mandate" provision included in
 21 Senate H.R. 3590, House H.R. 3962, and President Barack Obama's
 22 health care plan requires all individuals to purchase health
 23 insurance products and services, and

24 WHEREAS, such individual mandates are contrary to the
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 26 right to make one of the most basic health care decisions for
 27 themselves and their loved ones, and

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 29 each individual's freedom to refuse health care treatment, and

30 WHEREAS, on January 19, 2010, Attorney General Bill
 31 McCollum sent to Congressional leaders an analysis in which he
 32 outlined the unconstitutionality of the individual healthcare
 33 mandates, and

34 WHEREAS, according to his analysis, the United States
 35 Congress does not possess the constitutional authority to compel
 36 individuals under threat of government fines or taxes to
 37 purchase an unwanted product or service simply as a condition of
 38 living in this country, and

39 WHEREAS, if the individual mandate provision becomes law,
 40 the Attorney General has stated that he will be compelled to
 41 challenge the constitutionality of that provision, and other
 42 states may also join in the challenge, NOW, THEREFORE,

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 44 Be It Resolved by the House of Representatives of the State of
 45 Florida:

46
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 48 to file suit challenging the constitutionality of any individual
 49 health care mandate passed into law by the Federal Government.

50 BE IT FURTHER RESOLVED that a copy of this resolution be
 51 presented to the President of the United States, the President
 52 of the United States Senate, the Speaker of the United States
 53 House of Representatives, and each member of the Florida
 54 Delegation to the United States Congress.