



Health & Human Services Committee

**Wednesday, April 18, 2013
9:00 AM – 10:00 AM
Morris Hall**

**Will Weatherford
Speaker**

**Richard Corcoran
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health & Human Services Committee

Start Date and Time: Thursday, April 18, 2013 09:00 am
End Date and Time: Thursday, April 18, 2013 10:00 am
Location: Morris Hall (17 HOB)
Duration: 1.00 hrs

Consideration of the following bill(s):

CS/CS/HB 1021 Background Screening by Judiciary Committee, Health Innovation Subcommittee, Reed
CS/HB 1159 Skilled Nursing Facilities by Health Innovation Subcommittee, O'Toole

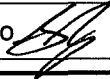

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Wednesday, April 17, 2013.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, April 17, 2013.

NOTICE FINALIZED on 04/16/2013 16:18 by Iseminger.Bobbye

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1021 Background Screening
SPONSOR(S): Judiciary Committee; Health Innovation Subcommittee; Reed
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1112

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	13 Y, 0 N, As CS	Guzzo	Shaw
2) Judiciary Committee	17 Y, 0 N, As CS	Thomas	Havlicak
3) Health & Human Services Committee		Guzzo 	Calamas 

SUMMARY ANALYSIS

In 2012, the Legislature created the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single program of screening individuals for criminal background checks prior to employment in certain health related service positions. The Clearinghouse is being implemented by six state agencies and final implementation is required to be completed by October 1, 2013. Designated agencies include the Agency for Health Care Administration (AHCA), the Department of Health, the Department of Children and Families, the Department of Elder Affairs, the Agency for Persons with Disabilities, and Vocational Rehabilitation within the Department of Education.

In anticipation of implementation of the Clearinghouse, the bill:

- Clarifies that employers must perform the registration and initiation of all criminal history background checks made through the Clearinghouse;
- Requires vendors who submit fingerprints on behalf of employers to include specific identifying information of the person screened;
- Makes the requirement to submit a photo at the time of screening only to the Clearinghouse;
- Allows the Department of Highway Safety and Motor Vehicles to share driver's license photographs with AHCA's Background Screening Unit through an interagency agreement; and
- Specifies demographic information that must be submitted with a request for a criminal background check to verify proper identity as required for a federal check.

Additionally, the bill:

- Eliminates the three-year waiting period to apply for an exemption from disqualification for a criminal offense for individuals who have completed all monetary sanctions for a felony disqualifying offense, as long as all sanctions are paid or completed before eligibility for an exemption; and
- Updates the disqualifying offenses in chapter 435, F.S., to include criminal offenses involving theft that are similar to existing disqualifying offenses.

The bill does not appear to have a significant fiscal impact on state or local government.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida has one of the largest vulnerable populations in the country with over 25% of the state's population over the age of 65, and many more children and disabled adults. These vulnerable populations require special care because they are at an increased risk of abuse.

In 1995, the Legislature created standard procedures for criminal history background screening of prospective employees, owners, operators, contractors, and volunteers. Chapter 435, F.S., outlines the screening requirements. In 2010, the Legislature substantially rewrote the requirements and procedures for background screening.¹ Major changes made by the 2010 legislation include:

- No person who is required to be screened may begin work until the screening has been completed.
- All Level 1² screenings were increased to Level 2³ screenings.
- By July 1, 2012, all fingerprints submitted to the Florida Department of Law Enforcement (FDLE) must be submitted electronically.
- Certain personnel that were not being screened were required to begin Level 2 screening.
- The addition of serious crimes that disqualify an individual from employment working with vulnerable populations.
- Authorization for agencies to request the retention of fingerprints by FDLE.
- That an exemption for a disqualifying felony may not be granted until at least three years after the completion of all sentencing sanctions for that felony.
- That all exemptions from disqualification may be granted only by the agency head.

In 2012, the Legislature passed CS/CS/CS/HB 943, which created the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single "program" of screening individuals and allow for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies. Designated agencies include the Agency for Health Care Administration (AHCA), the Department of Health, the Department of Children and Families, the Department of Elder Affairs, the Agency for Persons with Disabilities, and Vocational Rehabilitation within the Department of Education. Once a person's screening record is in the Clearinghouse, that person will avoid the need for any future state screens and related fees. The Clearinghouse is in the process of being implemented by the designated state agencies and final implementation is required to be completed by October 1, 2013.

Current Background Screening Law

Florida licensure laws require providers licensed by AHCA to conduct Level 2 criminal background screening for:⁴

¹ Chapter 2010-114, L.O.F.

² Section 435.03, F.S. Level 1 screenings are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. A person undergoing a Level 1 screening must not have been found guilty of any of the listed offenses.

³ Section 435.04, F.S. A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigation databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of any of the listed offenses.

⁴ Section 408.809, F.S.

- The licensee;
- Administrators and financial officers;
- Staff of health care providers who offer residential and home care services that provide personal care services or have access to client property, funds or living areas; and
- Any person who is a controlling interest if there is reason to suspect they have committed a disqualifying criminal offense.

Current background screening standards in ch. 435, F.S., and s. 408.809, F.S., include various disqualifying offenses pertaining, but not limited to, domestic violence, patient brokering, criminal use of personal identification information, fraudulent use of credit cards, forgery, and possession/sale of illegal drugs.

There are some criminal offenses, not presently listed as disqualifying offenses, that are substantially similar to current disqualifying offenses. For example, s. 408.809(4)(k), F.S., states that fraudulent use of credit cards, if the offense was a felony, as described in s. 817.61, F.S., is a disqualifying offense. Under current background screening standards, obtaining goods by use of a false or expired credit, if the offense was a felony, as described in s. 817.841, F.S., is not considered a disqualifying offense.

The Department of Highway Safety and Motor Vehicles (DHSMV) has the authority to maintain a record of driver license photographs together with other data required for identification and retrieval.⁵ The DHSMV also has the authority to share those photographs, through interagency agreements, with specific state agencies.⁶

Collecting photographs at the time of screening is an important part of implementing the Clearinghouse. The requirement to submit a photograph was added to law during the 2012 Legislative Session. However, instead of being in the Clearinghouse statute of s. 435.12, F.S., the requirement currently exists in the general Level 2 screening standards of s. 435.04(1)(e), F.S.

Designated agencies have the authority to grant exemptions from disqualification.⁷ The exemptions enable people who have been convicted of a disqualifying criminal offense to present information as to why they should not be excluded from working with vulnerable individuals. The information includes specifics of the offense, how long ago the offense occurred, work history, and rehabilitation. Current law states that an applicant who applies for an exemption for a felony offense must have had three years elapse since completion of any sentence or have been lawfully released from confinement, supervision, or sanction for the disqualifying felony.⁸ The three-year waiting period would include even the smallest sanction, such as an unpaid balance of a fine. The requirement is similar for disqualifying misdemeanors, except that there is no specific time frame mandated post completion of being lawfully released from confinement, supervision, or sanction.

The term “sanction” does not currently have a formal definition in chapter 435, F.S. Numerous state agencies are bound by chapter 435, F.S., and the interpretation of the term “sanction” varies widely among the agencies.⁹

Employers of individuals subject to screening by a specified agency are required to register with the Clearinghouse and maintain the employment status of all employees with the Clearinghouse for screenings conducted after the date the state agency begins participation in the Clearinghouse. Initial

⁵ Section 322.142(4), F.S.

⁶ Section 322.142(4), F.S., provides that DHSMV may provide reproductions of the file or digital record to the Department of Business and Professional Regulation, the Department of State, the Department of Revenue, the Department of Children and Families, the Department of Financial Services, or to district medical examiners.

⁷ Section 435.07, F.S.

⁸ *Id.*

⁹ HB 1021 Bill Analysis and Economic Impact Statement, Agency for Health Care Administration, at page 4, March 13, 2013 (on file with the Health Innovation Subcommittee).

employment status and any change in status must be reported by the employer within 10 business days.¹⁰ Currently, it is not a requirement that screenings be initiated through the Clearinghouse.

Effect of Proposed Changes

The bill amends s. 322.142, F.S., to authorize DHSMV to make available to AHCA a record of driver license photographs for the purpose of verifying photographs in the Clearinghouse.

The bill amends ss. 408.809 and 435.04, F.S., to provide additional disqualifying offenses. The criminal offenses added include obtaining goods by use of false or expired credit cards, if the offense was a felony (s. 817.481, F.S.), fraudulently obtaining goods or services from a health care provider (s. 817.50, F.S.), racketeering (s. 895.03, F.S.), violating the Florida Money Laundering Act (s. 896.101, F.S.), and criminal offenses that involve attempts, solicitation, and conspiracy to commit an offense (s. 777.04, F.S.) that is one of the listed disqualifying offenses.

The bill relocates language from s. 435.04(1)(e)2, F.S., to s. 435.12(2)(d), F.S. As a result, the submission of a photograph will be a requirement of the Clearinghouse, and not a requirement for all screenings conducted pursuant to chapter 435, F.S. This change will allow the agency to enter into an agreement with the DHSMV, to verify photographs of individuals that have been background screened through the Clearinghouse by comparing the submitted photograph to the driver's license photograph.

The bill amends s. 435.04(1)(e), F.S., to require vendors who submit fingerprints on behalf of employers to submit specific identifying information for the person screened, including the applicant's:

- First, middle, and last name;
- Social security number;
- Date of birth;
- Mailing address;
- Sex; and
- Race.

The bill modifies requirements relating to exemptions from disqualification. Some applicants who are otherwise qualified for an exemption are unaware of outstanding monetary sanctions related to their disqualifying offense until being notified by the agency. In some cases, the applicant's criminal case may have been closed for over a decade but the applicant may still have an outstanding monetary sanction related to the disqualifying offense. Once the outstanding monetary sanction has been paid, the applicant would not be eligible to be granted an exemption from disqualification for period of three years post completion of the sanction.

The bill amends s. 435.07, F.S., to delete the term "sanction", and replace it with "nonmonetary condition imposed by the court" to eliminate differing interpretations of the term sanction. Court ordered nonmonetary sanctions could include various types of community service and rehabilitation courses, such as anger management, theft prevention courses, and drug rehabilitation. Monetary sanctions that are court ordered could include any fee, fine, fund, lien, civil judgment, application, and costs of prosecution, trust or restitution. The bill would eliminate the three-year waiting period for individuals that have completed all monetary sanctions for a felony disqualifying offense. The three-year waiting period would still apply for any felony disqualifying offense where, confinement, supervision, or nonmonetary condition is involved. As a result, well qualified and rehabilitated employees will have an opportunity to gain lawful employment in the healthcare facilities licensed by AHCA.¹¹

¹⁰ Section 435.12(2), F.S.

¹¹ See *supra* at FN 9.

Finally, the bill requires screenings to be initiated and registered by the employer through the Clearinghouse prior to referring an employee or potential employee for electronic fingerprint submission. AHCA will be able to obtain information on the initiating facility and allow screening tracking updates to be sent to the initiating facility as the information becomes available.¹² Providers will be able to obtain screening results much faster than screenings not initiated through the Clearinghouse.¹³

B. SECTION DIRECTORY:

Section 1: Amends s. 322.142, F.S., relating to color photographic or digital imaged licenses.

Section 2: Amends s. 408.809, F.S., relating to background screening; prohibited offenses.

Section 3: Amends s. 435.04, F.S., relating to Level 2 screening standards.

Section 4: Amends s. 435.07, F.S., relating to exemptions from disqualification.

Section 5: Amends s. 435.12, F.S., relating to the Care Provider Background Screening Clearinghouse.

Section 6: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Insignificant.

DHSMV reports that the bill will require minimal programming revisions of which the cost will be absorbed within existing resources.

AHCA reports the bill will not have a fiscal impact on the agency.

The Florida Department of Law Enforcement reports the bill will not have a fiscal impact on the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

¹² *Id.*

¹³ *Id.*

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2013, the Health Innovation Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Requires vendors who submit fingerprints on behalf of employers to include specific identifying information of the person screened; and
- Provides additional disqualifying offenses for criminal offenses relating to:
 - Racketeering and illegal debts; and
 - The Florida Money Laundering Act.

On April 9, 2013, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment provides that the new disqualifying offense of attempting, conspiring, or soliciting to commit a crime is limited to attempting, conspiring, or soliciting to commit a listed disqualifying offense.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

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A bill to be entitled

An act relating to background screening; amending s. 322.142, F.S.; allowing the Department of Highway Safety and Motor Vehicles to share driver license photographs with the Agency for Health Care Administration pursuant to an interagency agreement; amending s. 408.809, F.S.; adding additional disqualifying offenses to background screening provisions; amending s. 435.04, F.S.; revising information to be submitted for a background screening; adding additional disqualifying offenses; amending s. 435.07, F.S.; revising terminology; requiring that individuals seeking an exemption from disqualification must have completed all nonmonetary conditions imposed by the court for the disqualifying felony; requiring that all persons seeking an exemption from disqualification have paid any court-ordered monetary penalty in full before being eligible to apply; amending s. 435.12, F.S.; requiring that a photograph of the person taken at the time the fingerprints are processed be submitted to the Care Provider Background Screening Clearinghouse before submission of the electronic fingerprints; requiring specified information to be included with the initiation of the screening registration within the clearinghouse; providing an effective date.

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

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Section 1. Subsection (4) of section 322.142, Florida Statutes, is amended to read:

322.142 Color photographic or digital imaged licenses.—

(4) The department may maintain a film negative or print file. The department shall maintain a record of the digital image and signature of the licensees, together with other data required by the department for identification and retrieval. Reproductions from the file or digital record are exempt from the provisions of s. 119.07(1) and shall be made and issued only for departmental administrative purposes; for the issuance of duplicate licenses; in response to law enforcement agency requests; to the Department of Business and Professional Regulation pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses issued by the Department of Business and Professional Regulation; to the Department of State pursuant to an interagency agreement to facilitate determinations of eligibility of voter registration applicants and registered voters in accordance with ss. 98.045 and 98.075; to the Department of Revenue pursuant to an interagency agreement for use in establishing paternity and establishing, modifying, or enforcing support obligations in Title IV-D cases; to the Department of Children and Family Services pursuant to an interagency agreement to conduct protective investigations under part III of chapter 39 and chapter 415; to the Department of Children and Family Services pursuant to an interagency agreement specifying the number of employees in each of that department's regions to be granted

57 | access to the records for use as verification of identity to
 58 | expedite the determination of eligibility for public assistance
 59 | and for use in public assistance fraud investigations; to the
 60 | Agency for Health Care Administration pursuant to an interagency
 61 | agreement for the purpose of verifying photographs in the Care
 62 | Provider Background Screening Clearinghouse authorized in s.
 63 | 435.12; to the Department of Financial Services pursuant to an
 64 | interagency agreement to facilitate the location of owners of
 65 | unclaimed property, the validation of unclaimed property claims,
 66 | and the identification of fraudulent or false claims; or to
 67 | district medical examiners pursuant to an interagency agreement
 68 | for the purpose of identifying a deceased individual,
 69 | determining cause of death, and notifying next of kin of any
 70 | investigations, including autopsies and other laboratory
 71 | examinations, authorized in s. 406.011.

72 | Section 2. Paragraphs (f), (g), and (h) through (q) of
 73 | subsection (4) of section 408.809, Florida Statutes, are
 74 | redesignated as paragraphs (g), (h), and (k) through (t),
 75 | respectively, and new paragraphs (f), (i), (j), (u), and (v) are
 76 | added to that subsection to read:

77 | 408.809 Background screening; prohibited offenses.—
 78 | (4) In addition to the offenses listed in s. 435.04, all
 79 | persons required to undergo background screening pursuant to
 80 | this part or authorizing statutes must not have an arrest
 81 | awaiting final disposition for, must not have been found guilty
 82 | of, regardless of adjudication, or entered a plea of nolo
 83 | contendere or guilty to, and must not have been adjudicated
 84 | delinquent and the record not have been sealed or expunged for

85 any of the following offenses or any similar offense of another
86 jurisdiction:

87 (f) Section 777.04, relating to attempts, solicitation,
88 and conspiracy to commit an offense listed in this subsection.

89 (i) Section 817.481, relating to obtaining goods by using
90 false, expired, etc., credit cards, if the offense was a felony.

91 (j) Section 817.50, relating to fraudulently obtaining
92 goods, services, etc., from a health care provider.

93 (u) Section 895.03, relating to racketeering and illegal
94 debts.

95 (v) Section 896.101, relating to the Florida Money
96 Laundering Act.

97 Section 3. Paragraphs (d) through (yy) of subsection (2)
98 of section 435.04, Florida Statutes, are redesignated as
99 paragraphs (e) through (zz), respectively, paragraph (e) of
100 subsection (1) of that section is amended, and a new paragraph
101 (d) is added to subsection (2) of that section, to read:

102 435.04 Level 2 screening standards.—

103 (1)

104 (e) Vendors who submit fingerprints on behalf of employers
105 must:

106 1. Meet the requirements of s. 943.053; and

107 2. Have the ability to communicate electronically with the
108 state agency accepting screening results from the Department of
109 Law Enforcement and provide the first, middle, and last name;
110 social security number; date of birth; mailing address; sex; and
111 race of the applicant ~~a photograph of the applicant taken at the~~
112 ~~time the fingerprints are submitted.~~

113 (2) The security background investigations under this
 114 section must ensure that no persons subject to the provisions of
 115 this section have been arrested for and are awaiting final
 116 disposition of, have been found guilty of, regardless of
 117 adjudication, or entered a plea of nolo contendere or guilty to,
 118 or have been adjudicated delinquent and the record has not been
 119 sealed or expunged for, any offense prohibited under any of the
 120 following provisions of state law or similar law of another
 121 jurisdiction:

122 (d) Section 777.04, relating to attempts, solicitation,
 123 and conspiracy to commit an offense listed in this subsection.

124 Section 4. Subsections (1) and (2) of section 435.07,
 125 Florida Statutes, are amended to read:

126 435.07 Exemptions from disqualification.—Unless otherwise
 127 provided by law, the provisions of this section apply to
 128 exemptions from disqualification for disqualifying offenses
 129 revealed pursuant to background screenings required under this
 130 chapter, regardless of whether those disqualifying offenses are
 131 listed in this chapter or other laws.

132 (1) (a) The head of the appropriate agency may grant to any
 133 employee otherwise disqualified from employment an exemption
 134 from disqualification for:

135 1. (a) Felonies for which at least 3 years have elapsed
 136 since the applicant for the exemption has completed or been
 137 lawfully released from confinement, supervision, or nonmonetary
 138 condition imposed by the court ~~sanction~~ for the disqualifying
 139 felony;

140 2. (b) Misdemeanors prohibited under any of the statutes

141 cited in this chapter or under similar statutes of other
 142 jurisdictions for which the applicant for the exemption has
 143 completed or been lawfully released from confinement,
 144 supervision, or nonmonetary condition imposed by the court
 145 ~~sanction~~;

146 3.~~(e)~~ Offenses that were felonies when committed but that
 147 are now misdemeanors and for which the applicant for the
 148 exemption has completed or been lawfully released from
 149 confinement, supervision, or nonmonetary condition imposed by
 150 the court ~~sanction~~; or

151 4.~~(d)~~ Findings of delinquency. For offenses that would be
 152 felonies if committed by an adult and the record has not been
 153 sealed or expunged, the exemption may not be granted until at
 154 least 3 years have elapsed since the applicant for the exemption
 155 has completed or been lawfully released from confinement,
 156 supervision, or nonmonetary condition imposed by the court
 157 ~~sanction~~ for the disqualifying offense.

158 (b) A person who wishes to apply for an exemption who was
 159 ordered to pay any amount for any fee, fine, fund, lien, civil
 160 judgment, application, costs of prosecution, trust, or
 161 restitution as part of the judgment and sentence for any
 162 disqualifying felony or misdemeanor must have paid the court-
 163 ordered amount in full before being eligible for an exemption;

164
 165 For the purposes of this subsection, the term "felonies" means
 166 both felonies prohibited under any of the statutes cited in this
 167 chapter or under similar statutes of other jurisdictions.

168 (2) Persons employed, or applicants for employment, by

169 treatment providers who treat adolescents 13 years of age and
 170 older who are disqualified from employment solely because of
 171 crimes under s. 817.563, s. 893.13, or s. 893.147 may be
 172 exempted from disqualification from employment pursuant to this
 173 chapter without application of the waiting period in
 174 subparagraph (1)(a)1. ~~paragraph (1)(a).~~

175 Section 5. Subsection (2) of section 435.12, Florida
 176 Statutes, is amended to read:

177 435.12 Care Provider Background Screening Clearinghouse.—

178 (2)(a) To ensure that the information in the clearinghouse
 179 is current, the fingerprints of an employee required to be
 180 screened by a specified agency and included in the clearinghouse
 181 must be:

182 1. Retained by the Department of Law Enforcement pursuant
 183 to s. 943.05(2)(g) and (h) and (3), and the Department of Law
 184 Enforcement must report the results of searching those
 185 fingerprints against state incoming arrest fingerprint
 186 submissions to the Agency for Health Care Administration for
 187 inclusion in the clearinghouse.

188 2. Resubmitted for a Federal Bureau of Investigation
 189 national criminal history check every 5 years until such time as
 190 the fingerprints are retained by the Federal Bureau of
 191 Investigation.

192 3. Subject to retention on a 5-year renewal basis with
 193 fees collected at the time of initial submission or resubmission
 194 of fingerprints.

195 4. Submitted with a photograph of the person taken at the
 196 time the fingerprints are submitted.

197 (b) Until such time as the fingerprints are retained at
 198 the Federal Bureau of Investigation, an employee with a break in
 199 service of more than 90 days from a position that requires
 200 screening by a specified agency must submit to a national
 201 screening if the person returns to a position that requires
 202 screening by a specified agency.

203 (c) An employer of persons subject to screening by a
 204 specified agency must register with the clearinghouse and
 205 maintain the employment status of all employees within the
 206 clearinghouse. Initial employment status and any changes in
 207 status must be reported within 10 business days.

208 (d) An employer must register and initiate all criminal
 209 history checks through the clearinghouse before referring an
 210 employee or potential employee for electronic fingerprint
 211 submission to the Department of Law Enforcement. The
 212 registration must include the employee's full name (first,
 213 middle, last), social security number, date of birth, mailing
 214 address, sex, and race.

215 Section 6. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1159 Skilled Nursing Facilities
SPONSOR(S): Health Innovation Subcommittee; O'Toole
TIED BILLS: IDEN./SIM. BILLS: SB 1482

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	7 Y, 5 N, As CS	Guzzo	Shaw
2) Health & Human Services Committee		Guzzo <i>16</i>	Calamas <i>EC</i>

SUMMARY ANALYSIS

The bill provides an exemption from certificate of need (CON) requirements for the construction of a skilled nursing facility and the addition of skilled nursing home beds within a retirement community that meets certain qualifying specifications.

In 2001, the legislature enacted a moratorium on the issuance of new CONs for skilled nursing beds. The moratorium was originally set for five years, but in 2006 the legislature extended it another five years. In 2011, the legislature again extended the moratorium, but provided that the moratorium will expire on June 30, 2016, or upon the statewide implementation of Medicaid managed care, whichever is earlier.

Specifically, the bill provides a CON exemption for the construction of a skilled nursing facility within a retirement community that:

- Is located in a county that has 25 percent or more of its population consisting of persons aged 65 and older;
- Is located in a county that has a rate of no more than 16.1 community skilled nursing home beds per thousand persons aged 65 and older;
- Is zoned for a mix of residential and nonresidential uses;
- Is deed restricted for older persons; and
- Has a population of at least 8,000 residents.

As written, it appears that only one community, *The Villages*, currently meets the qualifying specifications of the CON exemption.

The bill has does not appear to have a fiscal impact on state or local government.

The bill provides an effective date upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A certificate of need (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, health service, or hospice.¹ Under this regulatory program, the Agency must provide approval through the CON review and approval process prior to a provider establishing a new nursing home or adding nursing home beds.

Florida's CON program has been in operation 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, which established minimum requirements regarding the type of services subject to CON review, review procedures, and review criteria. Each state was required to have a CON program in compliance with those standards as a condition for obtaining federal funds for health programs. The federal health planning legislation was repealed in 1986.

In 2001, the Legislature enacted the first moratorium on the issuance of CONs for additional community nursing home beds until July 1, 2006.² In 2006, the Legislature extended the moratorium until July 1, 2011.³ In 2011, the legislature again extended the moratorium, but provided that the moratorium will expire on June 30, 2016, or upon the statewide implementation of Medicaid managed care, whichever is earlier.⁴ In addition, the Legislature provided for additional exceptions to the moratorium to address occupancy needs that might arise.

The Florida CON program has three levels of review: full, expedited, and the granting of an exemption.⁵

Projects Subject to Full Comparative Review

The following projects are required to undergo a full comparative review under the statute:

- Adding beds in community nursing homes; and
- Constructing or establishing new health care facilities, which include skilled nursing facilities (SNFs).⁶

Expedited Reviews

Certain exceptions to the moratorium allow existing nursing home beds to be moved from one facility to another within small geographic regions. Section 408.036(2), F.S., provides expedited review of applications for nursing home replacement and relocation of beds from one nursing home to another, as follows:

¹ S. 408.032(3), F.S.

² S. 52, Ch. 2001-45, L.O.F.

³ Chapter 2006-161, L.O.F.

⁴ S. 4, Ch. 2011-135, L.O.F.

⁵ S. 408.036, F.S.

⁶ S. 408.032(16), F.S., defines an SNF as an institution, or a distinct part of an institution, which is primarily engaged in providing, to inpatients, skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

- Replacing a nursing home within the same district, if the proposed project site is located within a geographic area that contains at least 65 percent of the facility's current residents and is within a 30-mile radius of the replaced nursing home.
- Relocating a portion of a nursing home's licensed beds to a facility within the same district.

Exemptions

Section 408.036(3), F.S., provides several exemptions to CON review for skilled nursing facility projects, including:

- Combining licensed beds from two or more licensed nursing homes within a district into a single nursing home within that district if 50 percent of the beds are transferred from the only nursing home in a county and that nursing home had less than a 75 percent occupancy rate;⁷
- State veteran's nursing homes operated by or on behalf of the Florida Department of Veterans' Affairs;
- Combining into one nursing home, the beds or services authorized by two or more CONs issued in the same planning subdistrict;
- Separating into two or more nursing homes in the subdistrict, the beds or services that are authorized by one CON;
- Adding the greater of no more than 10 total beds or 10 percent of the number of licensed nursing home beds if:⁸
 - The facility has not had any class I or class II deficiencies within the 30 months preceding the request for addition;
 - The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 96 percent;
 - The prior 12-month occupancy rate for the nursing home beds in the subdistrict is 94 percent or greater; and
 - Any beds authorized for the facility under this exception in a prior request have been licensed and operational for at least 12 months.⁹
- Replacing a licensed nursing home on the same site, or within 3 miles, if the number of licensed beds does not increase.
- Adding the greater of no more than 10 total beds or 10 percent of the licensed nursing home beds of a nursing home located in a county having up to 50,000 residents, if:¹⁰
 - The nursing home has not had any class I or class II deficiencies¹¹ within the 30 months preceding the request for addition;
 - The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility has not had any class I or class II deficiencies since its initial licensure; and
 - The prior 6-month average occupancy rate for the nursing home beds, at a facility that has been licensed for less than 24 months, meets or exceeds 94 percent and the facility has not had any class I or class II deficiencies since its initial licensure.

⁷ This exemption is repealed upon the expiration of the moratorium by operation of s. 408.036(3)(f), F.S.

⁸ S. 408.036(3)(k), F.S.

⁹ The request to add beds under the exception to the moratorium is subject to the procedures related to an exemption to the CON requirements.

¹⁰ S. 408.0435(5), F.S.

¹¹ Deficiencies in nursing homes are classified according to the nature and scope of the deficiency. A class I deficiency is a deficiency that the Agency determines presents a situation in which immediate corrective action is necessary because the facility's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility. A class II deficiency is a deficiency that the Agency determines has compromised a resident's ability to maintain or reach his or her highest practicable physical, mental, and psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. See s. 400.23(8), F.S.

Determination of Need

A CON is predicated on a determination of need. The future need for community nursing home beds is determined twice a year and published by the agency as a fixed bed need pool for the applicable planning horizon. The planning horizon for CON applications is 3 years. Need determinations are calculated for subdistricts within AHCA's 11 service districts¹² based on estimates of current and projected population as published by the Executive Office of the Governor.

The need formula¹³ links the projected subdistrict need to a projected increase in the district need for nursing home beds. The district increase is based on the expected increase in the district population age 65 to 74 and age 75 and over, with the age group 75 and over given 6 times more weight in projecting the population increase. The projected district bed need total is then allocated to its subdistricts. The result for a given subdistrict is adjusted to reflect the current subdistrict occupancy of beds, and a desired standard of 94 percent occupancy. The subdistrict net need is the excess of the allocated beds over the licensed or approved beds in the subdistrict. If current occupancy of licensed beds is less than 85 percent, the net need in the subdistrict is zero regardless of whether the formula otherwise shows a net need.

AHCA is required to issue a CON to the holder of a provisional certificate of authority to construct nursing home beds for the exclusive use of the prospective residents of the proposed continuing care facility under a different bed-need assessment scheme.¹⁴ AHCA is required to approve at least one sheltered nursing home bed¹⁵ for every four proposed residential units. Additional sheltered nursing home beds must be approved based on actual utilization and demand by current residents. Sheltered nursing home beds are not included in the need formula for community nursing home beds.

Application Process

Nursing home bed projects subject to competitive review are included in the batching cycle for "other beds and programs." The review process takes approximately 120 days.¹⁶ The fixed bed need determination is published in the Florida Administrative Weekly. A letter of intent describing the applicant, the project type including the number of beds, and its location must be submitted to AHCA at least 30 days prior to the applicable batching cycle application due date.¹⁷ A grace period after the initial letter of intent deadline provides an opportunity for other applicants to compete with an initial letter of intent. The grace period extends this initial phase by an additional 16 days for the submission of a competitor's letter of intent.

The CON application must be submitted to AHCA by the date published for that batching cycle. AHCA must perform a completeness review of the application within 15 calendar days of the application submission deadline.¹⁸ The applicant has 21 calendar days after receiving a request from AHCA for additional information, to provide the information, otherwise the application is withdrawn from further consideration. AHCA must determine whether the application is complete or withdrawn within 7 calendar days after receipt of the requested information.

¹² The nursing home subdistricts are set forth in Rule 59C-2.200, F.A.C.

¹³ Rule 59C-1.036, F.A.C.

¹⁴ S. 651.118, F.S.

¹⁵ A sheltered nursing home bed is a nursing home bed located within a continuing care facility for which a CON is issued pursuant to s. 651.118(2), F.S. Generally these beds must be used for residents of the continuing care facility. However, the beds may be used for persons who are not residents of the continuing care facility for a period of up to 5 years after the date of issuance of the initial nursing home license. A continuing care community may request an extension of this timeframe for up to 30 percent of the sheltered nursing home beds based on demonstrated financial need.

¹⁶ Presentation by AHCA on Florida CONs to the House Health Quality Subcommittee on October 4, 2011, (on file with the Health Innovation Subcommittee).

¹⁷ Rule 59C-1.008, F.A.C.

¹⁸ Rule 59C-1.010, F.A.C.

AHCA will conduct public hearings on the applications, if requested, to determine that a proposed project involves issues of great local public interest.¹⁹

AHCA reviews CON applications for additional nursing home beds in context with the need for the health care facilities and health services being proposed.²⁰ An application for nursing facility beds will not be approved in the absence or insufficiency of a numeric need unless the absence or insufficiency of numeric need is outweighed by other information presented in a CON application showing special circumstances consistent with the following additional criteria:²¹

- The availability, quality of care, accessibility, and extent of utilization of existing health care facilities and health services in the service district of the applicant;
- The ability of the applicant to provide quality of care and the applicant's record of providing quality of care;
- The availability of resources, including health personnel, management personnel, and funds for capital and operating expenditures, for project accomplishment and operation;
- The extent to which the proposed services will enhance access to health care for residents of the service district;
- The immediate and long-term financial feasibility of the proposal;
- The extent to which the proposal will foster competition that promotes quality and cost-effectiveness;
- The costs and methods of the proposed construction, including the costs and methods of energy provision and the availability of alternative, less costly, or more effective methods of construction;
- The applicant's past and proposed provision of health care services to Medicaid patients and the medically indigent; and
- The applicant's designation as a Gold Seal Program nursing facility pursuant to s. 400.235, F.S., when the applicant is requesting additional nursing home beds at that facility.

AHCA issues a State Agency Action Report which states the intent to grant or deny a CON for projects in their entirety or for identifiable portions thereof and states the conditions required, if any, of the CON holder. If there is no challenge to all or any part of the decision embodied in the State Agency Action Report within 21 days after publication in the Florida Administrative Weekly, the decision becomes final and the CON is issued.²²

Applicants in the same batching cycle and existing health care facilities in the same district that will be substantially affected by the issuance of any CON may challenge the issuance or denial of a CON. The Division of Administrative Hearings conducts the hearing, which must commence within 60 days after the administrative law judge has been assigned except upon unanimous consent of the parties or pursuant to a motion of continuance granted by the administrative law judge.²³ A party to an administrative hearing for an application for a CON may seek judicial review of the final order issued by the administrative law judge to the District Court of Appeal.

Effect of Proposed Changes

The bill creates s. 408.0362, F.S., to provide an exemption from CON review for the addition of a skilled nursing home in one or more of the state's retirement communities that is deed-restricted for older

¹⁹ S. 408.039, F.S.

²⁰ S. 408.035, F.S.

²¹ Rule 59C-1.036, F.A.C.

²² *Supra* fn. 12.

²³ *Supra* fn. 13.

persons.²⁴ In addition, the retirement community must meet the following criteria to be eligible for the exemption:

- The retirement community must be located in a county that has 25 percent or more of its population consisting of persons aged 65 and older;
- The retirement community is located in a county that has no more than 16.1 community skilled nursing home beds per thousand persons aged 65 and older;
- The retirement community must be zoned for a mix of residential and nonresidential uses; and
- The retirement community has a population of at least 8,000 residents.

The bill caps the number of community skilled nursing beds that may be approved pursuant to the exemption at 240. To determine the exact number of beds to be approved, AHCA must ensure that the rate of beds to thousand persons aged 65 and older does not exceed 16.1. In determining the number of beds to approve, the bill requires AHCA to use a prospective county population estimate three years into the future to demonstrate that the population of persons aged 65 and older will be at least 25 percent and that the rate of beds to thousand persons aged 65 and older will be no more than 16.1.

The bill requires a retirement community that qualifies for the exemption and intends to use the exemption to provide a written request for the exemption to AHCA. Also, the retirement community must include with the written request evidence that it meets the population and mixed use criteria to establish eligibility for the exemption. Lastly, the retirement community must include with the written request the results of the calculation showing the gross and net number of community skilled nursing home beds in the county.

Lastly, the bill requires any skilled nursing facility built pursuant to the exemption, and any community skilled nursing home beds contained therein, to be certified under both the Medicaid and Medicare programs.

It appears that only one retirement community, *The Villages*, meets the qualifying specifications of the bill.

B. SECTION DIRECTORY:

Section 1: Creates s. 408.0362, F.S., relating to skilled nursing facility in retirement community; exempt from review.

Section 2: Provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

²⁴ S. 760.29(3)(b), F.S., "housing for older persons" means housing: Intended for, and solely occupied by, persons 62 years of age or older; or Intended and operated for occupancy by persons 55 years of age or older where at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fiscal impact to the private sector is “indeterminate” due to the uncertainty of the affect the bill will have on competition within the marketplace.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

A general law operates universally throughout the state, or uniformly upon subjects as they may exist throughout the state, or uniformly within permissible classifications by population of counties or otherwise, or is a law relating to a state function or instrumentality.²⁵ Conversely, special and local laws operate within a very narrow classification of persons or on a limited geographic region of the state. The Florida Supreme Court defines special and local laws as:

[A] special law is one relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal; a local law is one relating to, or designed to operate only in, a specifically indicated part of the state, or one that purports to operate within classified territory when classification is not permissible or the classification adopted is illegal.²⁶

General laws are enacted through the ordinary legislative process. A “special or local” law however is required to meet additional notification requirements before it can be validly enacted. Specifically, Article III, s. 10 of the Florida Constitution states:

No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law.²⁷ Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

The bill provides that a skilled nursing facility for the addition of skilled nursing homes beds may be constructed if it is located in a retirement community which meets all of the following criteria:

²⁵ See *St. Vincent’s Medical Center, Inc. v. Memorial HealthCare Group, Inc.*, 967 So.2d 794 (Fla. 2007).

²⁶ *Id.*; Additionally, Article X, s. 10 of the Florida Constitution defines “special law” as “a special or local law.”

²⁷ S. 11.02, F.S., establishes the notice requirements for special laws.

1. Is located in a county that has 25 percent or more of its population consisting of persons aged 65 and older;
2. Is located in a county that has a rate of no more than 16.1 community skilled nursing home beds per thousand persons aged 65 and older;
3. Is zoned for a mix of residential and nonresidential uses;
4. Is deed restricted for older persons; and
5. Has a population of at least 8,000 residents.

Given the specific nature of these criteria it is unclear as to how many retirement communities currently qualify, or who may have a reasonable possibility to qualify in the future²⁸, for the exemption. As such, it is unclear whether the bill creates a general or special law.

B. RULE-MAKING AUTHORITY:

AHCA has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2013, the Health Innovation Subcommittee adopted a strike-all amendment to House Bill 1159. The strike-all amendment made the following changes to the bill:

- Created the exemption to the project review requirements of s. 408.036, F.S., in a new section of law.
- Revised the eligibility criteria that must be met by a retirement community to apply for the exemption.
- Established a rate of 16.1 community skilled nursing home beds per thousand persons aged 65 and older as the standard for determining the number of beds that can be added under the exemption.
- Required AHCA to use a prospective county population estimate three years in the future to demonstrate that the county is expected to meet certain criteria to support the approval of community skilled nursing home beds under the exemption.
- Required a retirement community seeking to use the exemption to provide a written request to AHCA and provide certain evidence to support the request.
- Capped the total number of beds that may be approved under the exemption at 240.
- Required any skilled nursing facility constructed pursuant to the exemption and the community skilled nursing home beds they contain to be certified by both the Medicaid and Medicare programs.

The bill was reported favorably as a committee substitute. The analysis is drafted to the community substitute.

²⁸ See supra, FN 24 (any determination of possible future applications of a statute must be done with a realistic and reasonable assessment).

1 A bill to be entitled
 2 An act relating to skilled nursing facilities;
 3 creating s. 408.0362, F.S.; providing an exemption
 4 from certificate-of-need requirements for construction
 5 of a licensed skilled nursing facility in a retirement
 6 community; providing conditions for the exemption;
 7 providing procedures to obtain an exemption; limiting
 8 the number of community skilled nursing home beds that
 9 are added under the exemption; requiring qualified
 10 retirement communities to submit a request for
 11 exemption; requiring facilities and beds to have
 12 certain certifications; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 408.0362, Florida Statutes, is created
 17 to read:

18 408.0362 Skilled nursing facility in retirement community;
 19 exemption from review.—

20 (1) Upon request by a deed-restricted retirement
 21 community, the construction of a skilled nursing facility
 22 licensed under part II of chapter 400 for the addition of
 23 community skilled nursing home beds located within the
 24 retirement community is exempt from s. 408.036 if:

25 (a) The retirement community is located in a county that
 26 has 25 percent or more of its population consisting of persons
 27 age 65 and older;

28 (b) The retirement community is located in a county that
 29 has a rate of no more than 16.1 beds per thousand persons age 65
 30 years or older. The rate shall be determined by using the
 31 current number of licensed and approved community skilled
 32 nursing home beds in the agency's most recent published
 33 inventory;

34 (c) The retirement community is zoned for a mix of
 35 residential and nonresidential uses;

36 (d) The residential use area of the retirement community
 37 is deed-restricted as housing for older persons as defined in s.
 38 760.29; and

39 (e) The retirement community has a population of at least
 40 8,000 residents, based on a population data source accepted by
 41 the agency.

42 (2) The number of community skilled nursing home beds
 43 allowed in a retirement community under the exemption shall be
 44 calculated at a rate of 16.1 beds per thousand persons age 65
 45 years and older in the county in which the retirement community
 46 is located. To determine whether or not the county in which the
 47 retirement community is located is at or above the rate of 16.1
 48 beds per thousand persons age 65 years and older, the agency
 49 must use a prospective county population estimate 3 years in the
 50 future to demonstrate:

51 (a) That the number of persons age 65 years and older will
 52 comprise at least 25 percent of the county's population at the
 53 end of the 3 years. From this result, the current number of
 54 licensed community skilled nursing home beds in the agency's
 55 published inventory shall be subtracted to determine the net

56 number of additional community skilled nursing home beds that
 57 the agency shall grant for development under the exemption; and

58 (b) That the rate of community skilled nursing home beds
 59 in the county will either remain at 16.1 beds per thousand
 60 persons age 65 years or older or will be fewer after 3 years,
 61 before additional community skilled nursing home beds are
 62 approved under the exemption.

63 (3) A retirement community that qualifies for the
 64 exemption provided in this section shall submit a written
 65 request for an exemption in accordance with the applicable
 66 rules. In the request, the retirement community shall provide
 67 evidence of population, mixed-use status, and the results of the
 68 calculation provided under subsection (2) showing the gross and
 69 net numbers of community skilled nursing home beds in the
 70 county.

71 (4) The number of community skilled nursing home beds that
 72 are added pursuant to the exemption shall at no time exceed 240
 73 in any qualifying retirement community.

74 (5) Any skilled nursing home facility built pursuant to
 75 this exemption shall be certified under both the Medicare and
 76 Medicaid programs. All beds in the skilled nursing home facility
 77 shall be certified under both the Medicare and Medicaid
 78 programs.

79 Section 2. This act shall take effect upon becoming a law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Health & Human Services
Committee

Representative O'Toole offered the following:

Amendment

Remove lines 25-78 and insert:

(a) The residential use area of the retirement community is deed-restricted as housing for older persons as defined in s. 760.29(4)(b).

(b) The retirement community is located in a county that has 25 percent or more of its population age 65 and older.

(c) The retirement community is located in a county that has a rate of no more than 16.1 beds per thousand persons age 65 years or older. The rate shall be determined by using the current number of licensed and approved community nursing home beds in the county per the agency's most recent published inventory.

(d) The retirement community has a population of at least 8,000 residents within the county, based on a population data source accepted by the agency.



Amendment No. 1

21 (e) The number of proposed community nursing home beds
22 sought in a request for application of this exemption shall not
23 exceed the projected bed need after applying the rate of 16.1
24 per 1,000 persons aged 65 years and older projected for the
25 county three years into the future using the estimates adopted
26 by the agency, after subtracting the inventory of licensed and
27 approved community nursing home beds in the county per the
28 agency's most recent published inventory.

29 (f) No more than 120 community nursing home beds shall be
30 approved for a qualified retirement community under each request
31 for application of this exemption. Subsequent requests shall not
32 occur under this process until all previously approved
33 applicants have commenced construction.

34 (g) The total number of community nursing home beds
35 eligible for this exemption in any single deed-restricted
36 community pursuant to this paragraph shall not exceed 240.

37 (h) All nursing home facilities approved under this
38 paragraph shall be dually certified for participation in the
39 Medicare and Medicaid Programs.

40 (i) All nursing home facilities approved under this
41 paragraph shall be no closer than one mile from any existing
42 approved and licensed community nursing home, measured over
43 publicly owned roadways.

44 (2) A retirement community that qualifies for the
45 exemption provided in this section shall submit a written
46 request for an exemption in accordance with the applicable
47 rules. In the request, the retirement community shall provide



Amendment No. 1

48 evidence that all criteria set forth in subsection (1) are
49 satisfied.

50



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Gonzalez offered the following:

4
5 **Amendment (with title amendment)**

6 Between lines 15 and 16, insert:

7 Section 1. Subsection (6) of section 395.003, Florida
8 Statutes, is amended to read:

9 395.003 Licensure; denial, suspension, and revocation.—

10 (6) A specialty hospital may not provide any service or
11 regularly serve any population group beyond those services or
12 groups specified in its license.

13 (a) A specialty-licensed children's hospital that is
14 authorized to provide pediatric cardiac catheterization and
15 pediatric open-heart surgery services may provide cardiovascular
16 service to adults who, as children, were previously served by
17 the hospital for congenital heart disease, or to those patients
18 who are referred for a specialized procedure only for congenital
19 heart disease by an adult hospital, without obtaining additional
20 licensure as a provider of adult cardiovascular services. The



Amendment No. 2

21 agency may request documentation as needed to support patient
22 selection and treatment. This subsection does not apply to a
23 specialty-licensed children's hospital that is already licensed
24 to provide adult cardiovascular services.

25 (b) A specialty-licensed children's hospital that has
26 licensed neonatal intensive care unit beds and is located in a
27 county with a population of 1,750,000 or more may provide
28 obstetrical services, in compliance with the agency's rules
29 pertaining to the obstetrical department in a hospital and offer
30 healthy mothers all necessary critical care equipment, services,
31 and capabilities, up to 10 beds for labor and delivery care,
32 which services are restricted to the diagnosis, care, and
33 treatment of pregnant women of any age who have documentation by
34 an examining physician that includes information regarding:

35 1. At least one fetal characteristic or condition
36 diagnosed intra-utero that would characterize the pregnancy or
37 delivery as high risk including structural abnormalities of the
38 digestive, central nervous and cardiovascular systems and
39 disorders of genetic malformations and skeletal dysplasia, acute
40 metabolic emergencies and babies of mothers with rheumatologic
41 disorders; or

42 2. Medical advice or a diagnosis indicating that the fetus
43 may require at least one perinatal intervention.

44
45 This paragraph shall not preclude a specialty-licensed
46 children's hospital from complying with s. 395.1041, F.S. or the
47 Emergency Medical Treatment and Active Labor Act, 42
48 U.S.C.1395dd.



Amendment No. 2

49 Section 2. If any provision of this act or its application
50 to any person or circumstance is held invalid, the invalidity
51 shall not affect other provisions or applications of this act
52 which can be given effect without the invalid provision or
53 application, and to this end the provisions of this act are
54 severable.

55

56

57

58

59

T I T L E A M E N D M E N T

60

Remove line 2 and insert:

61

An act relating to health care facilities; amending s. 395.003,
62 F.S.; authorizing certain specialty-licensed children's
63 hospitals to provide obstetrical services under certain
64 circumstances; providing for severability;

65



Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee
3 Representative Fasano offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

7 Section 1. The Agency for Health Care Administration shall
8 conduct a study of the statewide need for additional skilled
9 nursing facilities. The agency shall submit a report of the
10 results of the study to the Governor, the President of the
11 Senate, and the Speaker of the House of Representatives by
12 December 1, 2013.

Section 2. This act shall take effect July 1, 2013.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:

A bill to be entitled



Amendment No. 3

19 An act relating to skilled nursing facilities;
20 directing the Agency for Health Care Administration to
21 conduct a study of the statewide need for additional
22 skilled nursing facilities; requiring a report to the
23 Governor and Legislature; providing an effective date.