

**Constitution Revision Commission
General Provisions Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 54

Relating to: MISCELLANEOUS, creates new section

Introducer(s): Commissioner Kruppenbacher

Article/Section affected: Article X, creates a new section

Date: February 26, 2018

| | REFERENCE | ACTION |
|----|-----------|------------------|
| 1. | GP | Favorable |

I. SUMMARY:

Currently, the Agency for Health Care Administration (AHCA) administers the certificate of need (CON) program. The CON program requires certain health care facilities to obtain authorization from the state before offering certain new or expanded services. Health care facilities subject to CON review include hospitals, nursing homes, hospices, and intermediate care facilities for the developmentally disabled.

The proposal eliminates the limitations on the number of facilities that may be opened through the granting of certificates of need. The proposal also provides that all laws that relate to the certificate of need approval for the number of hospitals, nursing homes, hospices, or intermediate care facilities for the developmentally disabled are void, however laws that restrict or limit the ownership or licensure are not void.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida- Certificate of Need

Florida law requires that before a health care facility may construct or expand, offer a new service or purchase equipment exceeding a certain cost, the facility must gain approval by the state through the Certificate of Need (CON) program.¹ A CON is a

¹ For a detailed history and state-by-state comparison of Certificate of Need laws see National Conference of State Legislatures (NCSL) CON-Certificate of Need State Laws (2016) <http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx> (last visited 2/26/18). For a detailed history of Florida's CON Laws see *Florida House of Representatives Staff Analysis of HB 27 (2018)*.

written statement issued by AHCA evidencing community need for a new, converted expanded, or otherwise significantly modified health care facility or health service.² The Florida CON program has three levels of review: full, expedited, and exempt.³ Unless a hospital project is exempt from the CON program, it must undergo a full comparative review. Expedited review is primarily targeted towards nursing home projects.⁴

A CON is predicated on a determination of need. The future need for services and projects is known as the “fixed need pool”⁵, which AHCA publishes for each batching cycle. A batching cycle is a means of grouping of, for comparative review, CON applications submitted for beds, services or programs having a like CON need methodology, or licensing category in the same planning horizon and the same applicable district or sub district.⁶ Chapter 59C-1, F.A.C., provides need formulas⁷ to calculate the fixed need pool for certain services, including NICU services⁸, adult and child psychiatric services⁹, adult substance abuse services¹⁰, and comprehensive rehabilitation services.¹¹

The CON review process consists of four batching cycles each year, including two batching cycles each year for each of two project categories: hospital beds and facilities, and other beds and programs.¹² The “hospital beds and facilities” batching cycle includes applicants for new or expanded:

- Hospitals
- Replacement Hospital Facilities
- Neonatal Intensive Care Units Level II and III
- Rehabilitation Beds
- Long Term Care Hospitals
- Inpatient Psychiatric Hospitals
- Inpatient Substance Abuse Hospitals

The “other beds and programs” batching cycle includes:

- Pediatric Open Heart Surgery

<http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0027b.HHS.DOCX&DocumentType=Analysis&BillNumber=0027&Session=2018> (last visited 2/26/18).

² Florida is one 34 states that maintain some form of CON Program. 14 states have discontinued their CON program. For an interactive map that provides links to other states’ CON programs see <http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx#4> (last visited 2/26/18).

³ F.S. § 408.036.

⁴ *Id.*

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

⁶ Rule 59C-1.002(5), F.A.C.

⁷ Rule 59C-1.039(5), F.A.C.

⁸ Rule 59C-1.042(3), F.A.C.

⁹ Rule 59C-1.040(4), F.A.C.

¹⁰ Rule 59C-1.041(4), F.A.C.

¹¹ Rule 59C-1.039(5), F.A.C.

¹² Rule 59C-1.008(1)(g), F.A.C.

- Pediatric Cardiac Catheterization
- Organ Transplantation

B. EFFECT OF PROPOSED CHANGES:

The proposal voids all laws that restrict the number of hospitals, nursing homes, hospices, or intermediate care facilities for individuals with intellectual disabilities and prohibits the state from limiting the number of those facilities through a certificate of need.

The proposal also provides that laws that restrict or limit ownership or licensure of hospitals, nursing homes, hospices, or intermediate care facilities for individuals with intellectual disabilities are not void.

The proposal does not address requirements for the approval of additional nursing home beds.

C. FISCAL IMPACT:

AHCA will experience a reduction in revenue resulting from the loss of CON application and exemption fees following repeal of the CON program for hospitals and hospital-based services.¹³ AHCA expects an increase in initial and biennial licensure fees for hospitals and hospital-based services that are no longer subject to the CON program.¹⁴

AHCA may experience increased workload resulting from an increase in licensure applications for hospitals and hospital-based services.¹⁵ The expenditure associated with any increase in workload is indeterminate yet likely insignificant.¹⁶ AHCA will likely see a significant amount of savings in litigation expenses from defending its decision to award or deny a CON for a hospital or hospital-based services.¹⁷ Legal costs associated with CON will also be eliminated.¹⁸

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

On December 14, 2017, The General Provisions Committee amended the proposal to include that laws that restrict or limit ownership or licensure of hospitals, nursing homes, hospices, or intermediate care facilities for individuals with intellectual disabilities are not void.

¹³ Florida House of Representatives staff analysis of CS/CS/HB 7 (2017), pg. 16.

<https://www.flsenate.gov/Session/Bill/2017/7/Analyses/h0007e.HHS.PDF> (last visited 12/10/17).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.