HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 309 Rural Emergency Hospitals
SPONSOR(S): Select Committee on Health Innovation, Shoaf
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Committee on Health Innovation	11 Y, 0 N, As CS	Lloyd	Calamas
2) Health & Human Services Committee	18 Y, 0 N	Lloyd	Calamas

SUMMARY ANALYSIS

Rural hospital closures result in patients having to travel farther for medical care, which delays or reduces their health care access. Since 2020, five rural hospitals in Florida have closed. In response to rural hospital closures, in 2020, Congress created a special Rural Emergency Hospital (REH) licensure provision in Medicare. Once designated as an REH, the facility qualifies for a supplemental monthly payment which is re-calibrated every year based on hospital market basket pricing, as well as a five percent increase over Medicaid rates for outpatient services compared to rates for a general, acute care hospital.

Hospitals, including rural hospitals, are licensed by the Agency for Health Care Administration (AHCA)under Ch. 395, F.S. Current law does not recognize rural emergency hospitals as a licensure category. In addition, under Ch. 395, licensed hospitals must provide inpatient and other non-emergency services; not just emergency services.

CS/HB 309 changes Florida licensure requirements to allow rural hospitals complying with federal REH requirements to be designated as REH hospitals by AHCA. The bill exempts licensed REHs from those requirements applicable to all licensed hospitals but contrary to federal REH standards.
The bill has indeterminate, insignificant negative impact on the state Medicaid program and no fiscal impact on local government.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Rural Hospitals

More than 60 million Americans live in what is defined as "rural America".[1] As a population, rural residents tend to be sicker and older, therefore needing more health care services. However, access to these services in a rural area can be difficult and often require travel of greater than 20 miles. Since 2020, at least 120 rural hospitals have closed, with the worst year occurring in 2019, when there were 19 rural hospital closures nationwide.[2] Many other hospitals nationally, and some in Florida, are considered "vulnerable" to closure. In Florida, one report identified 10 vulnerable hospitals; and of those, five were considered the "most vulnerable"[3] and the other five were designated as "at risk". [4]

Hospital Licensure

Chapter 395, F.S. and Part II of Chapter 408, F.S., govern licensure of hospitals in Florida, including tasking the Agency for Health Care Administration (AHCA) to provide administrative oversight. Under s. 395.002, F.S., a "hospital" is any establishment that:

> (a) Offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and
>
> (b) Regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent, except that a critical access hospital, as defined in s. 408.07, shall not be required to make available treatment facilities for surgery, obstetrical care, or similar services as long as it maintains its critical access hospital designation and shall be required to make such facilities available only if it ceases to be designated as a critical access hospital.[5]

An applicant for a hospital license may apply online or through a hardcopy application, whether seeking initial licensure or renewal or re-activation of a license. However, before AHCA will accept an

---

[1] United States Government Accountability Office, *Why Health Care is Harder to Access in Rural America,* available at: Why Health Care Is Harder to Access in Rural America | U.S. GAO (May 16, 2023 Blog) (last visited January 30, 2024). The definition of "rural" varies based on its purpose and which federal or state agency is using the word as a measurement. For hospitals, rural is defined by the Health Resources and Services Administration and means a non-metropolitan county; or a census tract that is a Rural Urban Community Code (RUCA) of 4 or greater; or a census tract in a metropolitan county that is (a) at least 400 square miles, (b) has a population density of 35 or fewer persons per square mile, and (c) has a RUCA code of 2 or 3; or an outlying county in a metropolitan area that does not have an urbanized area. This last criterion was added in 2022, causing several dozen hospitals to be reclassified as rural instead of urban.

[2] The Chartis Center for Rural Health, *The Rural Health Safety Net Under Pressure,* available at https://www.chartis.com/insights/rural-health-safety-net-under-pressure-rural-hospital-vulnerability last visited January 30, 2024).

[3] Id. The report defined the "most vulnerable" group as those hospitals whose median percentage change in total revenue was -1.4 percent, the median occupancy rate was 20,7, the median capital efficiency was -6.3, the percentage of outpatient revenue was 75.9 percent, and the median operating margin was -8.6 percent.

[4] Id. The report defined the "at risk" group as those hospitals have a lower likelihood of closure compared to the most vulnerable group. This group had a median change in total revenue of 1.7 percent, median occupancy 26.9 percent, the median capital efficiency was -1.1 percent, the median percentage of outpatient revenue is 77.6, and the median operating margin was -2.6 percent.

[5] Exceptions include any institution conducted by or for the adherents of any well-recognized church or religious denomination that depends exclusively upon prayer or spiritual means to heal, care for, or treat any person. Additionally, for purposes of local zoning matters, the term "hospital" includes a medical office building located on the same premises as a hospital facility, provided the land on which the medical office building is constructed is zoned for use as a hospital; provided the premises were zoned for hospital purposes on January 1, 1992.

application for initial licensure, an applicant must either have a current project order under review by AHCA's Office of Plans and Construction (OPC) for a new facility.[6]

The OPC reviews the plans to ensure compliance with ch. 395, F.S., including standards for the delivery of the minimum-level of required services and a physical review for the capacity, security and sufficiency of the building itself.[7] In addition to providing this evidence, the applicant organization must also submit financial information. The financial component includes detailed information about management of cash flow, staffing levels and salary costs, anticipated billing hours and billing charges for professional health care services, and expected budgets by department.[8]

.

An applicant must identify the hospital's classification from one of four categories:

- Class I is a general hospital category which includes general acute care, long term care, rural hospitals, and a subcategory of rural hospitals, critical access hospitals.
- Class II Hospitals are the Specialty Hospitals for Children and the Specialty Hospitals for Women.
- Class III Specialty Hospitals include the specialty medical, rehabilitation, psychiatric, and substance abuse hospitals.
- Class IV Specialty Hospitals are intensive residential treatment facilities for children and adolescents.[9]

All Class I hospitals are considered general acute care hospitals, and as licensed hospital facilities, are required to have at least:

- Inpatient beds.
- A governing authority legally responsible for the conduct of the hospital.
- A chief executive officer or other similarly titled official to whom the governing authority delegates full-time authority for the operation of the hospital in accordance with the policy of the governing authority.
- An organized medical staff which maintains proper standards of care.
- Maintenance of a complete and accurate medical record for each admitted patient.
- A policy requirement that patients be admitted under the authority and care of a member of the organized medical staff;
- Facilities and staff with ability to provide patients with food that meets patients' nutritional needs.
- Procedures for provisions of emergency care.
- Methods for infection control.
- An ongoing organized program to enhance quality of patient care.[10]

Class I hospitals are also required to have certain professional staff and services either in the facility or by contract to meet patient needs, including access to clinical laboratory, diagnostic, operating room, anesthesia, and pharmaceutical services.[11] Hospitals can also seek exemptions from providing designated services or requirements if they meet certain conditions, such as when a required medical professional is not available in a region and cannot be contracted for coverage in the emergency room or hospital staff, or if a hospital seeks an exemption from the requirement for an emergency department.[12]

Rural Hospital Licensure

One type of Class I is a rural hospital. A rural hospital is an acute care hospital that has 100 or fewer beds and an emergency room, and also meets at least one of the following criteria:

---

[6] 59A-3.066, F.A.C., Licensure Procedures.
[7] Agency for Health Care Administration, *Hospital and Outpatient Care Unit, available at Hospitals (myflorida.com) (last visited January 29, 2024).*
[8] Agency for Health Care Administration, *Health Care Policy and Oversight – Licensure and Forms,* Health Care Policy and Oversight Application for Licensure Forms (myflorida.com) (last visited January 29, 2024).)
[9] 59A-3.252, F.A.C., Classification of Hospitals.
[10] Id.
[11] Id.
[12] S. 395.1041, F.S.

- Is the sole provider within a county with a population density of up to 100 persons per square mile;
- Is an acute care hospital, in a county with a population density of up to 100 persons per square mile, which is at least 30 minutes of travel time, on normally traveled roads under normal traffic conditions, from any other acute care hospital within the same county;
- Is a hospital supported by a tax district or sub-district whose boundaries encompass a population of up to 100 persons per square mile;
- Is a hospital classified as a sole community hospital under 42 C.F.R. s. 412.92, regardless of the number of licensed beds;
- Is a hospital with a service area[13] that has a population of up to 100 persons per square mile or
- Is a hospital designated as a critical access hospital, as defined in s. 408.07, F.S.[14]

However, the current definitions and provisions do not allow a rural hospital to seek an exclusion from any of the mandatory elements of being a hospital, such as providing inpatient services.[15]

According to AHCA, there are currently 22 licensed rural hospitals in Florida accounting for 948 licensed beds.[16] Of these,10 are critical access hospitals, and an additional 7 have 50 beds or fewer.[17]

Closure of Rural Hospitals

Rural hospitals face operational challenges due to low patient volumes, which can make it harder to meet fixed operating costs and performance standards, and because many of the patients treated in rural hospitals are older, sicker, and poorer when compared with the national average.[18]

Between 2017 and 2021, nationally, the total number of rural hospitals declined by 75.[19] In 2020 alone, a record number of 19 U.S. rural hospitals shuttered.[20] More than 100 rural hospitals have closed in the past 10 years, and another 400-600 rural hospitals are deemed "at risk" or vulnerable to closure by different health care analysts.[21] The chart below indicates rural hospital closures in Florida since 2000.

[13] The term "service area" means the fewest number of zip codes that account for 75 percent of the hospital's discharges for the most recent 5-year period, based on information available from the hospital discharge database in the Florida Center for Health Information and Transparency at the agency.
[14] A "critical access hospital" means a hospital that meets the definition of "critical access hospital" in s. 1861(mm)(1) of the Social Security Act and that is certified by the Secretary of Health and Human Services as a critical access hospital.
[15] Agency for Health Care Administration, *2024 Legislative Bill Analysis – HB 309* (November 7, 2023)(on file with Select Committee on Health Innovation).
[16] Id.
[17] Id.
[18] Rural Hospital Closures Threaten Access – Solutions to Preserve Care in Local Communities, The American hospital, September 2022, available at https://www.aha.org/system/files/media/file/2022/09/rural-hospital-closures-threaten-accessreport.pdf (last visited January 30, 2024).
[19] American Hospital Association, *Fast Facts: U.S. Rural Hospitals Infographic, available at* *Fast Facts: U.S. Rural Hospitals Infographic | AHA* (last visited January 30, 2024).
[20] Id.
[21] Center for Healthcare Quality and Reform, *Saving Rural Hospitals,* available at https://ruralhospitals.chqpr.org/ (last visited January 30, 2024). *See also Supra,* n. 3.

Rural Hospital Closures in Florida since 2000[22]		
Hospital	**City**	**Year Closed**
Gadsden Community Hospital	Quincy	2005
Gulf Pines Hospital	Port St Joe	2000
Trinity Community Hospital	Jasper	2008
Campbellton Graceville Hospital	Graceville	2017
Regional General - Williston	Williston	2019
Shands Lake Shore Regional	Starke	2019
Lake City Medical Center Suwanee	Lake City	2020
North Florida Regional Medical Ctr	Starke	2020

In addition to the patient-side issues, rural hospitals also suffer from increased staffing shortages. For instance, only 10 percent of physicians practice in rural areas, despite 20 percent of the population residing in those areas.[23] The COVID-19 pandemic increased the severity of staffing shortages, increased costs, and worsened health outcomes.[24]

Medicare Rural Emergency Hospitals

To respond to a number of rural hospital closures, Congress created a new Medicare provider type, the Rural Emergency Hospital (REH),[25] through the federal Consolidated Appropriations Act of 2021 (Act).[26] Effective January 1, 2023, REH's were eligible for enhanced reimbursements through Medicare.

Recently finalized federal rules further define an REH. An REH is an entity that operates for the purpose of providing emergency department services, observational care, and other outpatient medical and health services specified by the Secretary of the Department of Health and Human Services in which the annual per patient length of stay does not exceed 24 hours.[27] However, the Act and regulations specify that an REH must provide emergency care and observation services, but they may *not* provide inpatient services.[28] Only rural hospitals with 50 or fewer beds and critical access hospitals that were enrolled and certified to participate in Medicare on or before the date of the enactment of the Act (December 27, 2020), qualify for certification as a REH.[29]

To be recognized as an REH, the Act requires the following:

- Compliance with applicable Federal laws and regulations related to the health and safety of patients.
- Assurances that personnel are licensed or meet other applicable standards that are required by state or local laws to provide services within the applicable scope of practice.
- Maintenance of a Medicare provider agreement with the Centers for Medicare and Medicaid Services (CMS) as provided for in 42 CFR s. 485.5 through 42 CFR s. 485.546.
- Have an organized medical staff that operates under bylaws approved by the governing body of the REH and which is responsible for the quality of medical care provided to patients in the REH. The medical staff must be composed of medical or osteopathic doctors, and may include other categories of physicians. Additionally, an REH may supplement the care provided through

[22] Data run from *Saving Rural Hospitals, Data on Rural Hospitals, Size and Financial Status of Rural Hospitals,* (Center for Healthcare Quality and Reform), available at Saving Rural Hospitals - Data on Rural Hospitals (chqpr.org) (last visited January 30, 2024).
[23] *Supra,* note 18.
[24] Id.
[25] 42 U.S.C. s.1395x(kkk).
[26] Pub. Law 116-260 (December 27, 2020).
[27] 42 CFR s, 485.502.
[28] *Supra,* note 30, and Id.
[29] *Rural Emergency Hospitals MLN Fact Sheet (November 2023),* Centers for Medicare and Medicaid Services, available at https://www.cms.gov/files/document/mln2259384-rural-emergency-hospitals.pdf (last visited January 30, 2024).

the use of telemedicine services provided by a distant site hospital as long as the distant-site hospital meets specified requirements.[30]
- Have an organized nursing service that is available to provide 24 hour care to patients of the REH.[31]
- Provide emergency, laboratory, radiological, pharmaceutical, and outpatient medical and other health services as detailed in the rule.[32] The Act specifically excludes inpatient services as a required component.
- Maintain an infection control program and a quality assessment and performance improvement program.[33]

In addition, each REH must be licensed by the state as an REH in which it operates, or approved by the state licensing agency as meeting standards for licensing established by the state.

Any REHs and Critical Access Hospitals that closed or let licenses go inactive since December 27, 2020, would also be eligible to reactivate their CMS Medicare certification after completion of a special review by the Medicare Administrative Contractor and CMS.[34]

An REH is eligible for payment through the Medicare program for services at the amount that would be paid to a hospital providing the equivalent outpatient service, increased by five percent.[35] An REH also receives a supplemental monthly facility payment.[36] Starting October 1, 2023, for CY 2024 the monthly facility payment is $276,233.58.[37] Each year, the supplemental facility payment increases based on the hospital market basket percentage increase.[38] The hospitals are required to maintain detailed information on how these supplemental payments are used.[39]

Currently, Florida rural hospitals are ineligible to become Medicare Rural Emergency Hospitals because Florida law does not include a licensure category or other approval mechanism for REHs. In addition, current law requires licensed hospitals to regularly make available inpatient services, facilities for surgery or obstetrical care clinical laboratory services, and similar services,[40] whereas Medicare prohibits these types of services at REHs.

Effect of Proposed Changes

CS/HB 309 authorizes AHCA to designate eligible rural hospitals and critical access hospitals as REHs, if they meet the federal criteria. This allows these hospitals to qualify for increased reimbursement rates from Medicare and Medicaid for the emergency and outpatient services they provide.

Federal regulations also allow eligible closed rural hospitals to receive enhanced payments if they become re-licensed and meet other requirements. If a rural hospital license is re-activated, AHCA would have to conduct a physical site visit of the location and the building would have to pass a building inspection.

---

[30] 42 CFR s. 485.512.
[31] 42 CFR s. 485.530.
[32] 42 CFR s. 485.516 – 485.524.
[33] 42 CFR 485.508.
[34] *Supra,* n. 33.
[35] 42 CFR s. 419.92.
[36] Id.
[37] U.S. Department of Health & Human Services, Centers for Medicare & Medicaid Services, *CMS Manual System, Pub. 100-04, Medicare Claims Processing*; Subject: January 2024 Annual Rural Emergency Hospital (REH) Monthly Facility Payment Amount, https://www.cms.gov/files/document/r12373cp.pdf (last visited January 31, 2024).
[38] *Supra,* note 29. The term "hospital market basket" means all of the components in the overall costs of healthcare used to determine the consumer price index. Produced by the Office of the Chief Actuary at CMS, the calculation measures the change in price, over time, of the same mix of goods and services purchased in the base period. *See also FAQs Market Basket Based Definitions and General Information,* Centers for Medicare & Medicaid Services, Office of the Actuary, National Health Statistics Group (September 2023) available at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/Downloads/info.pdf (last visited January 30, 2024).
[39] Id.
[40] S. 395.002(12), F.S.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 395.1041, F.S.; relating to access to and ensurance of emergency services; transfers; patient rights; diversion programs; reports of controlled substance overdoses.
Section 2: Amends s. 395.602, F.S.; relating to rural hospitals.
Section 3: Creates s. 395.607, F.S.; relating to rural emergency hospitals.
Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an indeterminate, but likely insignificant, impact on Medicaid expenditures due to higher reimbursement rates associated with rural emergency hospitals.

   Medicaid payment for REH services may require FMMIS system programming with an indeterminate insignificant impact that can be absorbed within existing resources.[41]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   To the extent that a rural hospital is supported by local government funds, increased federal reimbursement for the hospital as a REH may offset a portion of those funds.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private hospitals that achieve a REH designation may experience a five percent increase in Medicare reimbursements for certain outpatient services and a monthly supplemental facility payment that is modified each year based on the hospital market basket rate.

A previously closed or inactive licensed entity may be able to reopen with an REH designation.

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.

[41] *Supra*, n. 15.

B. RULE-MAKING AUTHORITY:

AHCA has sufficient rulemaking authority in current law to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 2, 2024, the Select Committee on Health Innovation adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed the commercial health insurance mandate and the Medicaid plan contract mandate.
- Authorized AHCA to designate eligible licensed rural hospitals and critical access hospitals as rural emergency hospitals.
- Provided exemptions from current hospital licensure requirements to provide inpatient service, surgical services, and similar services that will not be available in a rural emergency hospital.
- Extended the licensure expiration date for rural hospitals licensed in 2010-2012 from 2025 to 2031.

The analysis is drafted to the committee substitute as passed by the Select Committee on Health Innovation.