The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	CS/SB 644
INTRODUCER:	Appropriations Committee on Health and Human Services and Senator Simon
SUBJECT:	Rural Hospitals
DATE:	February 20, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	**Favorable**
2.	Barr	McKnight	AHS	**Fav/CS**
3.	Looke	Yeatman	FP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 644 creates a new hospital designation type "rural emergency hospital" (REH) and defines requirements for a rural or critical access hospital to apply to the Agency for Health Care Administration (AHCA) for that designation.

The bill clarifies that an REH is subject to the requirements to provide emergency services and care for any emergency medical condition in accordance with current law.

Additionally, the bill extends the licensure expiration date for rural hospitals licensed in fiscal years 2010-2011 or 2011-2012 from June 30, 2025, to June 30, 2031.

The bill has an indeterminate fiscal impact on the AHCA which can be absorbed with existing resources. See Section V., Fiscal Impact Statement.

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

II. Present Situation:

Rural Hospitals

A rural hospital is an acute care hospital that has 100 or fewer beds, an emergency room, and is one of the following:

- The sole provider within a county with a population density of up to 100 persons per square mile;
- 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;
- A hospital supported by a tax district or sub-district whose boundaries encompass a population of up to 100 persons per square mile;
- A hospital classified as a sole community hospital under 42 C.F.R. s. 412.92, regardless of the number of licensed beds;
- A hospital with a service area[1] that has a population of up to 100 persons per square mile; or
- A hospital designated as a critical access hospital, as defined in s. 408.07, F.S.[2]

As of January 17, 2024, there are 22 licensed rural hospitals in Florida.[3]

Closure of Rural Hospitals

Around the country between 2010 and 2021 a total of 136 rural hospitals have closed. In 2020 alone, a record 19 rural hospitals shuttered.[4] Rural hospitals naturally face challenges due to low patient volumes, which can make it challenging to maintain fixed-operating costs and meet performance measures, and the fact that many of the patients treated in rural hospitals are older, sicker, and poorer when compared with the national average.[5] In addition to the patient-side issues, rural hospitals also suffer from above average staffing shortages with only 10 percent of physicians in the U.S. practicing in rural areas despite 20 percent of the population residing in those areas.[6] These issues were compounded and exacerbated by the COVID-19 pandemic which increased the severity of staffing shortages, increased costs, and worsened health outcomes.

In Florida, between 2010 and present, three rural hospitals closed: Healthmark Regional Medical Center in Defuniak Springs, Regional General Hospital in Williston, and Shands Lake Shore Regional Medical Center in Lake City.[7]

Rural Emergency Hospitals

To respond to the number of rural hospital closures, the federal Consolidated Appropriations Act of 2021 created a new Medicare provider type designated as a rural emergency hospital (REH).[8] Federal rule defines a this newly-created type of hospital as an entity that operates for the

[1] 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 inpatient discharge database in the Florida Center for Health Information and Transparency at the agency.
[2] Section 395.602(2)(b), F.S.
[3] Florida Health Finder search, Class 1 Hospital Rural. Search tool available at https://quality.healthfinder.fl.gov/, (last visited Jan. 17, 2024).
[4] 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-access-report.pdf, (last visited Jan. 17, 2024).
[5] *Id.*
[6] *Id.*
[7] Supra n. 3
[8] 42 USC s. 1395x(kkk).

purpose of providing emergency department services, observational care, and other outpatient medical and health services specified by the Secretary in which the annual per-patient average length of stay does not exceed 24 hours.[9] Only rural hospitals with 50 or fewer beds and critical access hospitals that were enrolled and certified to participate in Medicare on or before December 7, 2020, qualify for certification as a REH.[10]

REHs are required to be licensed by the state in which they are located, maintain a Medicare provider agreement with the federal Centers for Medicare & Medicaid Services (CMS), and meet the other conditions of participation established in 42 CFR s. 485.5 through 42 CFR s. 485.546. These conditions of participation establish requirements related to governance, services offered, staffing, physical environment, and emergency preparedness, among others.[11] Some of the requirements provide that the REH must:

- 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 the use telemedicine services provided by a distant-site hospital as long as the distant-site hospital meets specified requirements.[12]
- Have an organized nursing service that is available to provide 24-hour care to patients of the REH.[13]
- Provide emergency, laboratory, radiological, pharmaceutical, and outpatient medical and health services as detailed in the rule.[14]
- Have an infection control program and a quality assessment and performance improvement program.

An REH is eligible for payment through the Medicare program for services at an amount that is equal to the amount that would be paid to a hospital for providing the equivalent outpatient service increased by five percent.[15] Additionally, an REH will receive a monthly facility payment of $272,866 from the Medicare program until October 1, 2024, after which the amount will be $267,408.68. In future years, the payment will increase by the hospital market basket percentage.[16]

Currently, 15 states authorize REHs including Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Montana, Nebraska, Nevada, New Mexico, New York, Oklahoma, South Dakota, Texas, and West Virginia.[17]

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[9] 42 CFR s. 485.502
[10] Rural Emergency Hospitals, Centers for Medicare and Medicaid Services, available at https://www.cms.gov/medicare/health-safety-standards/guidance-for-laws-regulations/hospitals/rural-emergency-hospitals, (last visited Jan. 18, 2024).
[11] *Id.*
[12] 42 CFR s. 485.512
[13] 42 CFR s. 485.530
[14] 42 CFR ss. 485.516-485.524
[15] 42 CFR s. 419.92
[16] MLN Fact Sheet, rural Emergency Hospitals, available at https://www.cms.gov/files/document/mln2259384-rural-emergency-hospitals.pdf, (last visited Jan. 18, 2024).
[17] National Conference of State Legislatures, Rural Emergency Hospitals, available at https://www.ncsl.org/health/rural-emergency-hospitals, (last visited Jan. 18, 2024).

Mandated Health Insurance Coverages

Section 624.215, F.S., requires every person or organization seeking consideration of a legislative proposal which would mandate a health coverage or the offering of a health coverage by an insurance carrier, to submit to the Agency for Health Care Administration and the legislative committees having jurisdiction, a report that assesses the social and financial impacts of the proposed coverage. As of February 1, 2024, Senate Committee on Health Policy staff has not received this report.

Under the federal Patient Protection and Affordable Care Act (ACA), individuals and small businesses can shop for health insurance coverage on the federal marketplace. All non-grandfathered plans[18] must include minimum essential coverage (MEC),[19] including an array of services that includes the 10 essential health benefits (EHBs). These 10 EHBs are further clarified or modified each year through the federal rulemaking process and are open for public comment before taking effect. The 10 general categories for the EHBs are:

- Ambulatory services (outpatient care);
- Emergency services;
- Hospitalization (inpatient care);
- Maternity and newborn care.
- Mental health and substance abuse disorder services;
- Prescription drugs.
- Rehabilitative services and rehabilitative services and devices;
- Laboratory services;
- Preventive care and chronic disease management; and
- Pediatric services, including oral and vision care.[20]

States are free to modify the EHBs offered in their states by adding coverage; however, because of concerns that federal funds would be used on costly mandated coverages that were not part of the required EHBs, the ACA contains a provision requiring that, starting in 2016, the states would have to pay for the cost of the coverage. As a result, the State of Florida may be required to defray the costs of any additional benefits beyond the required EHBs put in place after 2011.[21]

Examples of health insurance benefits mandated under Florida law include:

- Coverage for certain diagnostic and surgical procedures involving bones or joints of the jaw and facial region (s. 627.419(7), F.S.);
- Coverage for bone marrow transplants (s. 627.4236, F.S.);
- Coverage for certain cancer drugs (s. 627.4239, F.S.);

[18] A "grandfathered health plan" are those health plans, both individual and employer plans, that maintain coverage that were in place prior to the passage of the PPACA or in which the enrollee was enrolled on March 23, 2010 while complying with the consumer protection components of the PPACA. If a group health plan enters a new policy, certificate, or contract of insurance, the group must provide the new issuer the documentation from the prior plan so it can be determined whether there has been a change sufficient to lose grandfather status. *See* 26 U.S.C. 7805 and 26 C.F.R. s. 2590.715-1251(a).

[19] To meet the individual responsibility provision of the PPACA statute, a benefit plan or coverage plan must be recognized as providing minimum essential coverage (MEC). Employer based coverage, Medicaid, Medicare, CHIP (i.e.: Florida KidCare), and TriCare would meet this requirement.

[20] 42 U.S.C. s. 18022(b)(1)(A)-(J).

[21] *See* 42 U.S.C. s. 18031(d)(3)(B)(ii).

- Coverage for any service performed in an ambulatory surgical center (s. 627.6616, F.S.);
- Diabetes treatment services (s. 627.6408, F.S.);
- Osteoporosis (s. 627.6409, F.S.);
- Certain coverage for newborn children (s. 627.641, F.S.);
- Child health supervision services (s. 627.6416, F.S.);
- Certain coverages related to mastectomies (s. 627.6417, F.S.);
- Mammograms (s. 627.6418, F.S.); and
- Treatment of cleft lip and cleft palate in children (s. 627.64193, F.S.).

III. Effect of Proposed Changes:

The bill creates s. 395.067, F.S., to establish a rural emergency hospital (REH) designation for rural or critical access hospitals that meet the following criteria:

- Meets federal requirements for an REH under the Consolidated Appropriations Act of 2021 (Pub. L. No. 116-260);
- Has no more than 50 beds;
- Can adequately provide rural emergency services 24 hours a day seven days a week; and
- Is sufficiently staffed and equipped to provide the types of services included in the application.

The bill also provides a definition for "rural emergency services" to include:

- Emergency services and other care that does not require treatment for more than 24 hours, provided in a rural emergency hospital;
- Observation care; and
- Outpatient services specified in regulations adopted by the United States Secretary of Health and Human Services.

The bill amends s. 395.1041, F.S., to require rural emergency hospitals to provide emergency services and care for any emergency medical condition in accordance with current law.

Additionally, the bill repeals one obsolete provision related to licensing of a rural hospital and changes the license expiration date for rural hospitals that were licensed during fiscal years 2010-2011 and 2011-2012 from June 30, 2025, to June 30, 2031.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate positive fiscal impact on rural hospitals that convert to rural emergency hospitals.

C. Government Sector Impact:

The bill may have an indeterminate negative fiscal impact on the Agency for Health Care Administration (AHCA) due to requiring the agency to regulate a new facility type. However, the AHCA states existing resources can be used to address this workload.[22]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 395.1041 and 395.602.

The bill creates the following section of the Florida Statutes: 395.607.

[22] Agency for Health Care Administration, 2024 Agency Legislative Bill Analysis, *House Bill 309* (Nov. 11, 2023) (on file with the Senate Appropriations Committee on Health and Human Services).

IX. Additional Information:

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

CS by Appropriations Committee on Health and Human Services on February 8, 2024:
The committee substitute eliminates provisions of the bill related to coverage of rural emergency hospital services by commercial insurance and adds a requirement for rural emergency hospitals to provide emergency services for any emergency medical condition in accordance with current law.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.