

FLORIDA LEGISLATURE



OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY

**PERFORMANCE REVIEW
OF THE
CERTIFICATE OF NEED PROGRAM FOR NURSING HOMES
ADMINISTERED BY THE
AGENCY FOR HEALTH CARE ADMINISTRATION**

April 30, 1996

The Office of Program Policy Analysis and Government Accountability was established by the 1994 Legislature to play a major role in reviewing the performance of state agencies under performance-based budgeting and to increase the visibility and usefulness of performance audits. The Office was staffed by transferring the Program Audit Division staff of the Auditor General's Office to the Office of Program Policy Analysis and Government Accountability. The Office is a unit of the Office of the Auditor General but operates independently and reports to the Legislature.

This Office conducts studies and issues a variety of reports, such as policy analyses, justification reviews, program evaluations, and performance audits. These reports provide in-depth analyses of individual state programs and functions. Reports may focus on a wide variety of issues, such as:

- Whether a program is effectively serving its intended purpose;
- Whether a program is operating within current revenue resources;
- Goals, objectives, and performance measures used to monitor and report program accomplishments;
- Structure and design of a program to accomplish its goals and objectives; and
- Alternative methods of providing program services or products.

The objective of these reports is to provide accurate, reliable information that the Legislature and state agencies can use to improve public programs.

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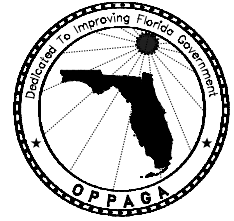
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John W. Turcotte
Director

The Florida Legislature

OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY



April 30, 1996

The President of the Senate,
the Speaker of the House of Representatives,
and the Legislative Auditing Committee

I have directed that a performance review be made of the Certificate of Need Program for nursing homes administered by the Agency for Health Care Administration. The results of the review are presented to you in this report. This review was conducted at the request of the Joint Legislative Auditing Committee. This review was conducted by Ms. Josephine Kershaw and Ms. Sharon Anderson under the supervision of Ms. Martha Wellman.

Respectfully yours,

John W. Turcotte
Director

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Performance Review of the Certificate of Need Program for Nursing Homes

Report Conclusions

- If current trends continue, Florida's growing population of elders and inflation will increase the state's Medicaid expenditures for nursing home care from \$1.11 billion in fiscal year 1994-95 to \$2.74 billion in fiscal year 2004-05.
- The Certificate of Need Program expands the supply of nursing home beds to meet demand and thus does not limit the number of people who go into nursing homes. Instead, the program helps to ensure that the supply of beds does not greatly exceed demand, which decreases Medicaid reimbursement rates for nursing homes. However, proposed changes in federal regulations governing the methods by which states set nursing home reimbursement rates could eliminate the need for Certificate of Need for nursing homes in the future.
- The timing of Certificate of Need decisions affects the Legislature's ability to reduce future costs by shifting funds from nursing homes to less costly home- and community-based alternatives to nursing home care.

Performance Review of the Certificate of Need Program for Nursing Homes

CHAPTER I Introduction

Purpose and Scope

The Office of Program Policy Analysis and Government Accountability conducts performance reviews as part of its responsibility to provide information the Legislature can use to improve program accountability and allocate limited public resources. This review evaluates the Certificate of Need (CON) Program for nursing homes administered by the Agency for Health Care Administration. The review had three objectives:

- To assess current trends in the state's elderly population, nursing home use, and Medicaid expenditures for nursing home care;
- To assess the role of the Certificate of Need Program in controlling the supply of and demand for nursing home services; and
- To assess the effect the Certificate of Need Program has had on the state's ability to develop home- and community-based alternatives to nursing home care.

Methodology

This review was made in accordance with generally accepted auditing standards and applicable evaluation standards. The review focuses on how the CON formula determines the need for additional nursing home beds and does not specifically address other components of the CON process, such as construction reviews, financial audits, and litigation procedures. The review team conducted fieldwork from May 1995 through January 1996.

CHAPTER II Background

Program Design

In 1973, due to rapidly rising public expenditures for nursing home care, the state implemented the Certificate of Need (CON) Program to control growth in the supply of nursing home beds.¹ The prevailing concern was that the supply of nursing home beds would outstrip demand for nursing home services. This would result in excess capacity and further increase the costs of nursing home care because nursing homes would have to spread their fixed costs over fewer residents.

Under the CON Program, individuals wishing to construct or expand nursing homes must receive a certificate of need from the state. The state estimates the number of nursing home beds that will be needed to meet future demand and uses these estimates to limit the number of new beds that will be approved for construction. Replacement or renovation of existing nursing homes is exempt from CON review if no new beds are added. The CON Program is governed by ss. 408.031-408.0455 and s. 400.071(7), F.S., and by Rules 59C-1.001-1.050, F.A.C.

In addition to limiting the supply of nursing home beds, the CON Program is designed to ensure that nursing homes provide access to underserved populations and to select the most qualified certificate-of-need applicants. The CON review process includes a detailed review of applicants' construction plans and financial data. Preference is given to applicants that are willing to meet a number of conditions. These include applicants that:

- Will serve clients who have certain disabling conditions or receive Medicaid coverage;

¹ The CON Program regulates other health care providers, such as hospitals. Since this review is limited to CON regulation of nursing homes, this description of the program discusses CON only as it pertains to nursing homes.

-
- Will provide a continuum of services to community residents or innovative therapeutic services to their residents;
 - Will construct facilities that will maximize residents' comfort and quality of life;
 - Have histories of providing quality care or will exceed required staffing standards; or
 - Will have lower-than-average administrative costs or propose charges that do not exceed the highest Medicaid per diem rates charged in the area.

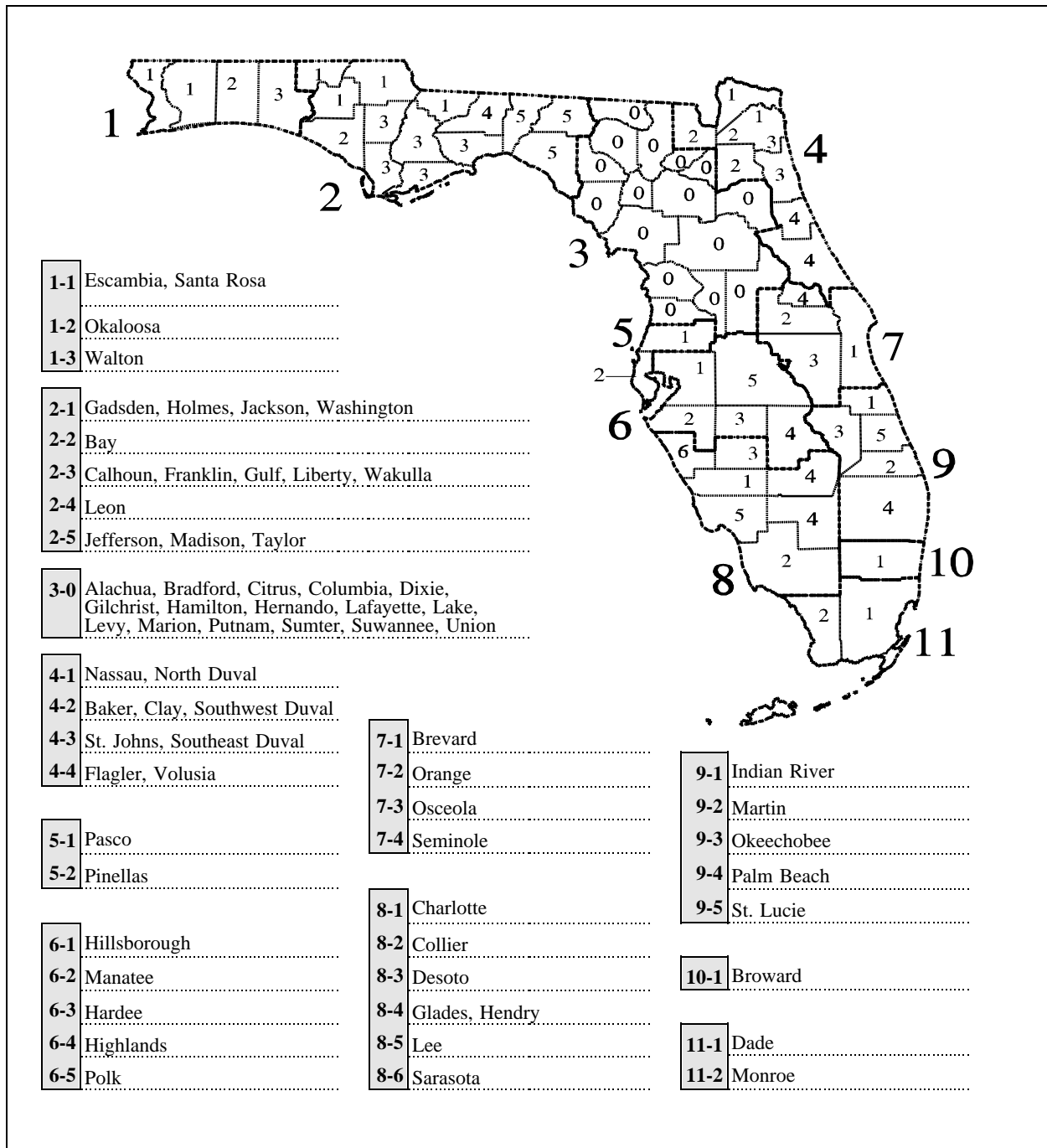
Program Organization

The Agency for Health Care Administration (AHCA) administers the CON Program. The Agency Executive Director is Douglas Cook, who was appointed by the Governor in 1992.

AHCA's Office of Certificate of Need and Budget Review within the Division of Health Policy and Cost Control administers the CON Program. Its specific responsibilities include developing the administrative rules that guide the CON Program, estimating the need for future nursing home beds, compiling financial and bed use data, reviewing CON applications, and providing technical assistance to applicants and certificate holders.

Much of the information used in the CON Program is gathered by local health councils that serve the Agency's 11 health planning districts. These councils are private or public nonprofit entities that operate under contract with the Agency. They provide the Agency with data for determining the need for new nursing home beds and reviewing CON applications. They also monitor the on-site construction of approved CON projects. In addition, local health councils identify the 38 geographical areas the Agency uses for determining the need for health care services. Exhibit 1 shows the locations and boundaries of these planning regions.

Exhibit 1
Location of the Agency for Health Care Administration's
Planning Districts and Subdistricts



Source: Agency for Health Care Administration.

Program Implementation

The Office of Certificate of Need and Budget Review is responsible for developing a uniform statewide methodology for determining the need for nursing home beds. In 1984, Florida adopted a need formula that allocates beds to each planning region in the same proportion as the region's current number of beds per 1,000 individuals aged 65 or more. The formula's underlying assumption is that current nursing home use adequately reflects current demand for beds and that this demand will increase mainly due to an increase in the elderly population.

However, to reflect changes in demand, the Office adjusts the number of beds allocated by the formula by two factors. First, the allocation is adjusted upwards or downwards based on the growth rate of the population of individuals aged 75 or more within the region. This adjustment assumes that individuals aged 75 or more are six times as likely to need nursing home care than persons aged 65 to 74.

Second, the Office adjusts the allocation by the occupancy rates of the nursing homes within each region. Occupancy rates are important indicators of the adequacy of the supply of nursing home beds and reflect changes in the historical demand for nursing home services. The CON formula allocates more beds to planning regions with nursing home occupancy rates that exceed 91%. But if a planning region's average occupancy rate is less than 85%, no new beds are allocated.

Although the Office relies on the CON formula to determine the need for most of the nursing home beds it approves, it can consider other factors that indicate a need for new beds. For example, if applicants can show that persons in need of nursing home services have been denied access to existing facilities, the Office may allow them to construct more beds than the formula would allow.

The Office of Certificate of Need and Budget Review uses the bed need formula to project the future need for nursing home services three years into the future. This time frame was chosen because it generally takes three years from the issuance of a certificate of need to the licensure of a new facility.

The Office calculates and publishes its bed need projections twice a year. In response to a published bed need projection, individuals who wish to construct new nursing home beds can submit applications for review. Most applications for the addition of new beds receive a comparative review in which the Office compares applications that are submitted in response to the same bed need projection and that propose similar services within the same region. However, certain applications, such as requests for reductions in the number of beds already approved by CON or for research, education, and training projects, may receive expedited reviews.

During the comparative review process, the Office considers the preference factors local health councils have established for selecting applicants. Applicants may include any of these preference factors in their applications as "statements of intent." The Office uses these statements of intent to select applicants that will best meet local needs. After the Office approves applications, these statements of intent become conditions of the CON. The Office monitors compliance with these conditions and may assess administrative fines against certificate holders who do not comply. Currently the Office monitors 269 nursing homes for compliance with conditions to serve Medicaid clients.

Program Resources

Funding for the Certificate of Need Program is provided by the Health Care Trust Fund.² In fiscal year 1994-95, the Division of Health Policy and Cost Control was allocated \$871,026 and 17 full-time equivalent positions for the CON Program. Since the CON Program regulates other health care providers, such as hospitals, not all of these resources are used for CON review of nursing homes. Of the 353 CON applications received in 1995, 195 were for nursing homes.

Furthermore, other Agency entities, such as local health councils, perform functions for the CON Program. For example, at least one attorney position in the Agency's General Counsel's Office works full-time on CON nursing home cases. The Agency does not specifically allocate CON Program resources to these entities.

² The Health Care Trust Fund is established by s. 455.2205(1), F.S., to fund various functions of the Agency for Health Care Administration. Sources of revenue for the Trust Fund include CON fees and assessments on selected health care facilities, such as hospitals and nursing homes.

CHAPTER III Findings

Introduction

This report contains three findings related to the potential growth of nursing home beds and associated Medicaid costs, the role of the Certificate of Need (CON) Program in controlling the supply of beds, and the effect CON has on the Legislature's ability to shift funds to community-based alternatives to nursing home care. Because these findings are interrelated, conclusions and recommendations are given at the end of the report.

Finding 1

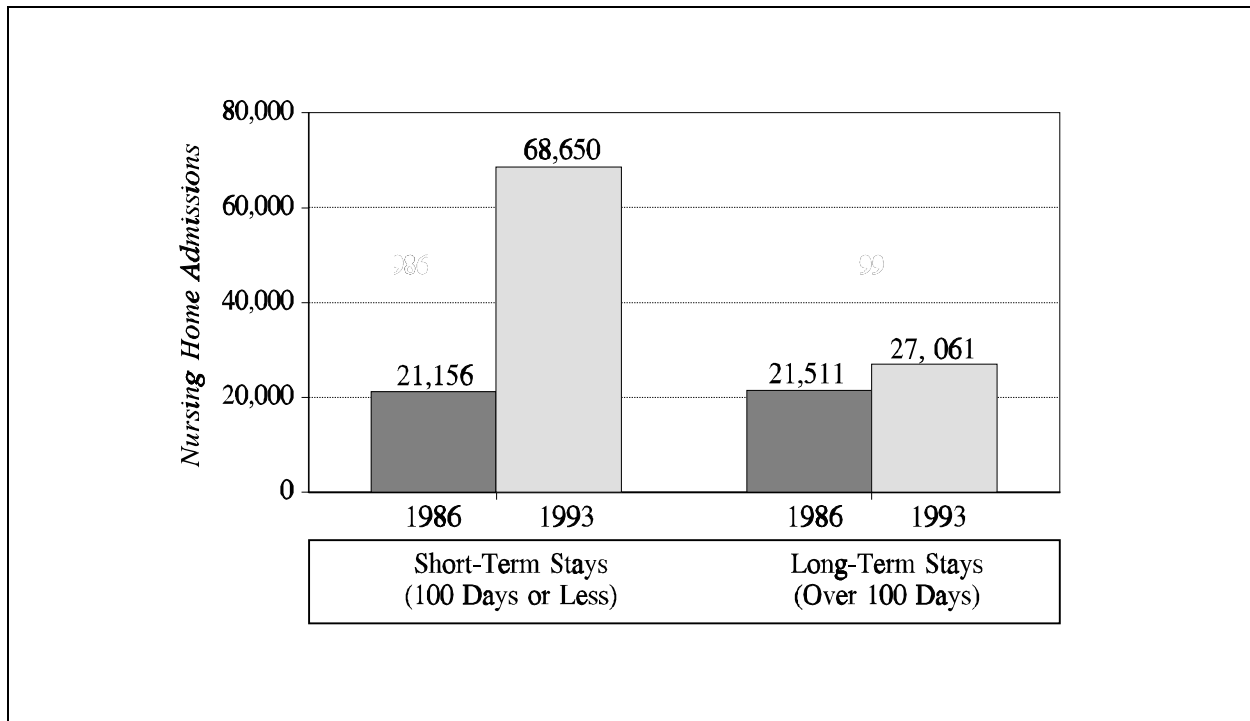
<p>If current trends continue, Florida's Medicaid expenditures for nursing home care will more than double by fiscal year 2004-05.</p>

Florida's population of elders is growing. By 2005, the number of individuals over 65 years old in Florida will increase by 19.5% and the number aged 85 or more will increase by 60%. Many of these individuals will need nursing home care. Although nursing home care is used by individuals of all ages, the risk of nursing home placement is greater for the elderly, and individuals aged 85 or more are most likely to go into nursing homes. Most of the cost of nursing home care is paid for by the state's Medicaid program. Hence, unless the pattern with which elders use nursing home services changes, the growth in Florida's elderly population and inflation will increase the state's future Medicaid expenditures for nursing home care.

The demand for nursing home services is bifurcated. Some nursing home patients have long-term, chronic conditions and remain in nursing homes for extended periods of time. Other patients have temporary conditions and stay in nursing homes for short periods of time while they are recuperating from an illness or undergoing rehabilitation.

As shown in Exhibit 2, the demand for short-term care in nursing homes has increased dramatically since 1986. In 1993, three out of every four persons admitted to nursing homes remained for short-term stays of less than 100 days.

Exhibit 2
Short-Term Nursing Home Stays
Have Expanded More Rapidly Than Long-Term Stays

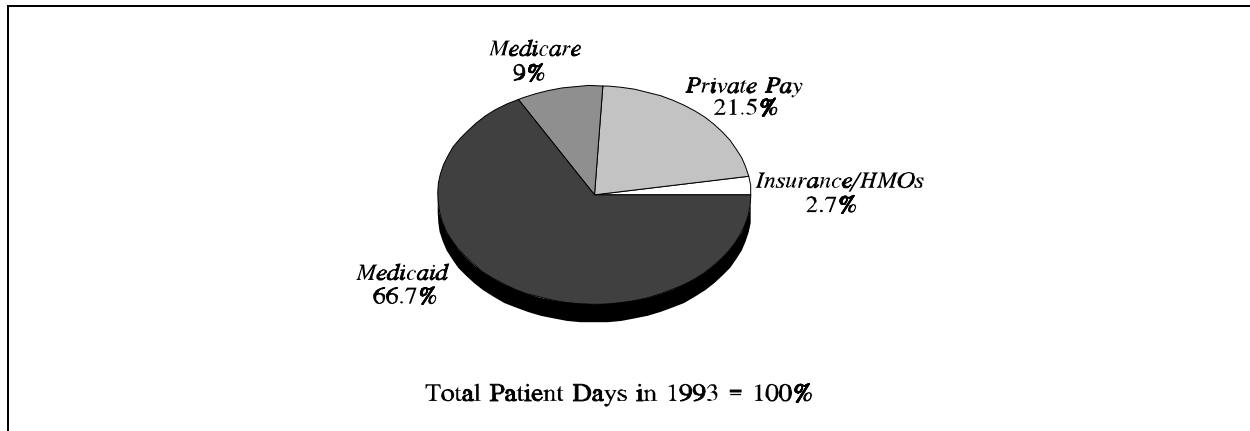


Source: Agency for Health Care Administration's Center for Health Care Statistics.

The demand for long term care in nursing homes has increased much more slowly than the demand for short-term care. Nevertheless, long-term care still accounts for the bulk of nursing home expenditures, most of which are paid for by Medicaid. In contrast to Medicare, which limits its coverage to 100 days of skilled nursing care, Medicaid has no limitation on the number of nursing home days it will cover. Individuals who remain in nursing homes for long-term stays take up most of the patient days and are more likely to convert from Medicare or private pay to Medicaid. As shown in Exhibit 3, Medicaid pays for about two-thirds of the days individuals spend in nursing homes.

Exhibit 3

Medicaid Pays for Two-Thirds of the Days Individuals Stay in Nursing Homes

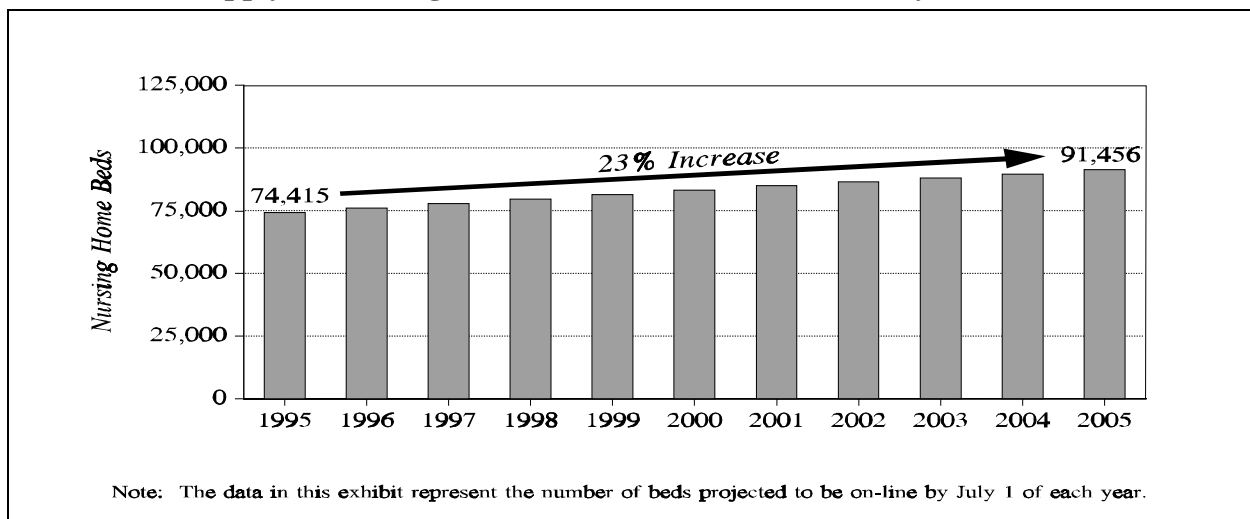


Source: Agency for Health Care Administration's Nursing Home Reporting System, 1994 Annual Report.

Moreover, if current trends in nursing home utilization rates continue, the growth in Florida's elderly population will continue to drive up the demand for long-term nursing home care, the number of nursing home beds, and Medicaid expenditures for nursing homes. Applying Florida's current CON formula, the growth of Florida's elder population will result in a 23% increase in the supply of nursing home beds by year 2005. (See Exhibit 4.)

Exhibit 4

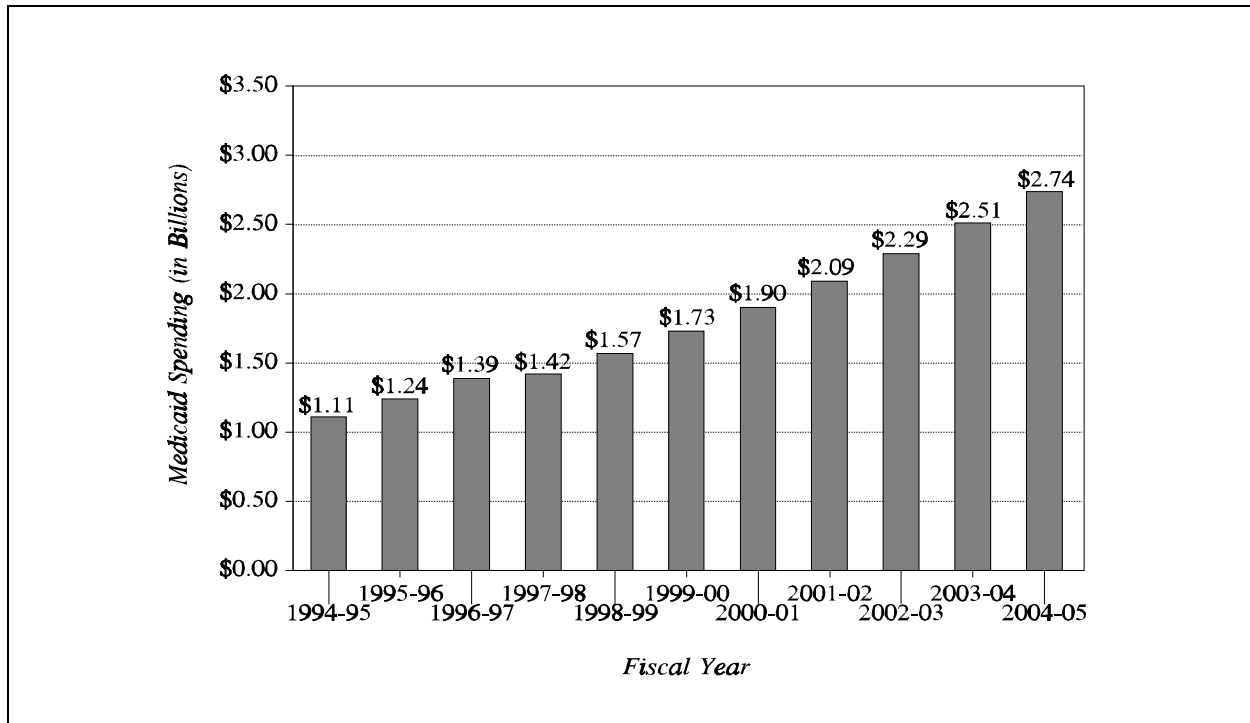
Under the Current Certificate of Need Formula, The Supply of Nursing Home Beds Will Increase 23% By the Year 2005



Source: Office of Program Policy Analysis and Government Accountability projections based on data provided by the Agency for Health Care Administration.

Furthermore, with expected price level increases in nursing home costs, Medicaid expenditures for nursing home care will increase from \$1.11 billion in fiscal year 1994-95 to approximately \$2.74 billion in fiscal year 2004-05. (See Exhibit 5.) Although much of growth in Medicaid expenditures will result from price-level increases due to general inflation, the state can do little to control general price level increases.³

Exhibit 5
If Past Trends Continue,
Medicaid Nursing Home Expenditures Will More Than Double in Ten Years



Source: Office of Program Policy Analysis and Government Accountability projections based on data provided by the Agency for Health Care Administration.

³ The price level increase estimates used in the projection came from the Division of Economic and Demographic Research within the Joint Legislative Management Committee. The Division projected a 7% annual increase in nursing home unit costs.

Finding 2

The Certificate of Need Program expands the supply of nursing home beds to meet demand but does not limit the number of people who go into nursing homes. However, the program helps to ensure that the supply of beds does not greatly exceed demand.

The Certificate of Need Program is frequently seen as a mechanism to control demand for nursing home care. However, the program is not designed to limit the number of people who can be admitted to nursing homes. Instead, the program helps to ensure that the supply of nursing home beds does not greatly exceed demand. This reduces costs associated with the construction of new nursing homes, and these reduced costs are reflected in lower Medicaid per diem rates for nursing homes. However, proposed changes in federal Medicaid regulations could abolish the current requirement that states reimburse nursing home providers using rates that cover their operating costs. This could eliminate the need for the CON Program for nursing homes in the future.

Although many people see CON as a mechanism for controlling the demand for nursing home care, it is not designed to limit the number of people who go into nursing homes. Rather, the CON formula expands the supply of nursing home beds in response to increases in the number of days individuals use available beds, as reflected by nursing home occupancy rates. When occupancy rates become high enough to indicate that individuals who need nursing home care may have difficulty finding a nursing home placement, the CON formula increases the estimate of needed beds, and AHCA allows more beds to be constructed.

Furthermore, little evidence exists that demand for nursing home services is constrained by the limits CON places on supply. If Florida's supply of nursing home beds were insufficient to meet the demand for services, the occupancy rates for Florida nursing homes would probably be higher than the national average. In addition, individuals in need of nursing home services would have difficulty gaining

admittance to nursing homes. Yet Florida's occupancy rate is at or near the national average of 91%. In addition, individuals in need of nursing home care are generally able to gain admittance to a nursing home within a reasonably short time period. According to representatives of the Department of Health and Rehabilitative Services and Department of Elder Affairs units that process applications for Medicaid coverage of nursing home care, individuals generally are not experiencing difficulty in obtaining access to Florida nursing homes. Any delays in admission to nursing homes result mainly from the lengthy Medicaid application process or from difficult-to-place individuals rather than from a shortage of nursing home beds. Although individuals whose nursing home care will be covered by Medicaid do not always find a placement in a nursing home they would prefer, they generally can find a placement.

Even though it does not limit the number of people who go into nursing homes, Florida's CON Program probably has been effective in ensuring that the supply of nursing home beds does not greatly exceed demand. In the past, providers seeking to build or expand nursing homes have applied for certificates of need for more beds than were needed to meet projected demand, and AHCA has denied most of these requests. Between 1990 and 1994, AHCA reviewed 634 applications for 36,264 beds. It approved applications for only 10,353 or 29% of these beds. At least some of the applicants that did not receive a CON probably would have constructed beds without the program. Thus, the program has likely had some impact on ensuring that individuals do not build more new nursing home beds than needed to reasonably meet projected demand.

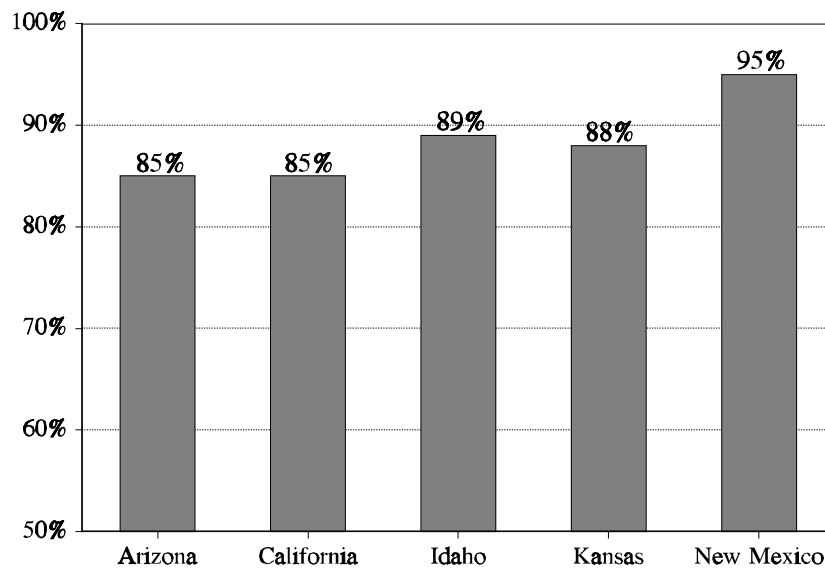
By limiting the supply of nursing home beds, CON has kept nursing home occupancy rates higher than they might have been and thereby reduced the state's costs for nursing home care. A provision of the federal Medicaid regulations, the Boren amendment, requires states to reimburse nursing home providers using rates that cover their costs. These include the fixed costs associated with nursing home construction. When occupancy rates are high, fewer new nursing home beds need to be constructed

to meet projected increases in demand. New nursing homes tend to be more expensive to construct than older homes, and thus receive higher per diem Medicaid reimbursement rates. An analysis by the Florida Health Care Association indicates that if occupancy rates rose by 1% and individuals receiving Medicaid coverage of nursing home care in newer facilities had gone instead to older facilities, the state would reduce its annual expenditures for nursing home care by an estimated \$6 million.

However, proposed changes in federal Medicaid regulations could enable states to set nursing home reimbursement rates that are not so closely tied to nursing home operating costs. In response to concerns over the federal budget, national leaders have made a number of budget proposals that would slow the rate of increase in Medicaid spending and give states more flexibility in operating Medicaid programs. Although these proposals vary, nearly all of them would repeal the Boren amendment. This would give states more flexibility in setting Medicaid reimbursement rates for nursing homes. It also may eliminate the need for Florida to limit the growth in nursing home beds through the Certificate of Need Program. Although nursing home occupancy rates would probably decrease without the CON Program, lower occupancy rates would not automatically result in increased Medicaid reimbursement rates.

In addition, the potential decrease in occupancy rates is likely to be small. As shown in Exhibit 6, nursing home occupancy rates in the five states that do not have CON or other programs to control the supply of nursing home beds are 85% or higher. According to health planning staff in some of these states, without state regulation, market forces control the supply of nursing homes. Although nursing home occupancy rates can drop as low as 70% when CON regulations are first repealed, occupancy rates tend to rise again and level off between 85% and 90%. This occurs because nursing home profits drop when occupancy rates drop. Thus, individuals generally are reluctant to construct beds when occupancy rates are low. In addition, one of the health planning staff said that some nursing home operators will close beds if occupancy rates become low enough.

Exhibit 6
States That Do Not Control the Supply of Nursing Home Beds
Have Nursing Home Occupancy Rates of 85% or More



Source: Office of Program Policy Analysis and Government Accountability, January 1996 telephone survey of the five states without certificate of need or other programs to control the supply of nursing home beds.

Finding 3

Due to a number of factors, the time period between the issuance of a certificate of need and the opening of authorized beds affects the Legislature's ability to reduce future costs for long-term care by shifting funds from nursing homes to lower-cost community-based alternatives.

CON uses demand for nursing home services to estimate future need for nursing home beds. To allow sufficient time for new nursing home beds to be constructed, certificates of need are issued three years before the authorized beds open. Demand for nursing home care is heavily influenced by the Medicaid Program, which entitles individuals to receive care in nursing homes but not in

other settings. Some individuals receiving Medicaid coverage for nursing home care could and would prefer to be served in less costly community-based settings. However, due to the entitlement nature of the Medicaid Program, the Legislature may not be able to reduce costs by shifting resources to home- and community-based alternatives once new nursing home beds have been authorized. Furthermore, if the Legislature funded alternative placements without effecting a decrease in the use of nursing homes for long-term care, the alternative placements would be likely to attract individuals who need long-term care but would not go into nursing homes.

The Certificate of Need Program uses past demand for nursing home care to estimate the need for and authorize the construction of future nursing home beds. The CON formula allocates beds by multiplying historical bed use rates by the projected growth in Florida's elderly population. Although the formula uses increases or decreases in nursing home occupancy rates to reflect current changes in demand, it does not recognize factors that could change future bed use rates.

After a certificate of need has been issued, the CON Program allows three years for the nursing home beds it authorizes to be opened. This allows sufficient time for the new beds to be constructed and come into operation. However, this time lag affects the state's ability to change demand patterns for nursing home beds by shifting resources to less costly community-based long-term care services.

The demand for long-term nursing home care has been largely driven by the Medicaid Institutional Care Program (ICP). This program covers the cost of long-term care for individuals who could not otherwise pay for that care. Individuals who meet Medicaid ICP financial and medical criteria are entitled to receive nursing home care, but they are not entitled to receive care in other settings.⁴ This

⁴ Some individuals and nursing home services covered by the ICP Program are provided at the option of the state. However, once a state offers this optional coverage, it cannot deny access to nursing home care to individuals who meet eligibility requirements without receiving a federal waiver.

"institutional bias" in Medicaid has produced much of the demand for long-term nursing home care.

Some individuals who receive Medicaid coverage for nursing home care could be served by less costly community-based alternatives. These alternatives include services, such as day care, respite, or meals-on-wheels which allow individuals to stay in their own homes or in the homes of care givers, and assisted living facilities, which provide meals and support services in home-like settings.

In an effort to lower its costs for long-term care, the state has obtained Medicaid waivers and used other funding sources to serve individuals in home- and community-based alternatives to nursing home care. The state has appropriated general revenue funds for the Optional State Supplementation Program (OSS) and the Community Care for the Elderly (CCE) Program. The OSS Program enables low-income elders to receive long-term care in assisted living facilities and family care homes, while the CCE Program provides in-home services to elders who need assistance. In addition, the state has received Medicaid waivers that allow the use of Medicaid funds to pay for in-home and assisted living facility services for a specified number of individuals.

These community-based services tend to be less expensive than nursing home care. As shown in Exhibit 7, the average cost of state-financed in-home services is approximately one-tenth of the average cost for Medicaid-covered nursing home services, and the average cost of Medicaid-covered assisted living facility services is approximately one-third of that for nursing home care.

However, the Legislature cannot continue to fund alternatives to nursing homes without increasing the state's total long-term care expenditures unless it can reduce projected expenditures for nursing home care. Due to the time lag between the issuance of a certificate of need and the opening of the beds it authorizes, the beds authorized three years previously are open by the time the Legislature makes decisions on how to allocate state resources. Once nursing home beds are open, the Legislature may have little

alternative to funding them because individuals who meet Medicaid ICP financial and medical criteria are entitled to receive nursing home care. This affects the Legislature's ability to shift Medicaid funds from nursing homes to less expensive, community-based alternatives.

Exhibit 7
Nursing Home Care Costs More Than Home- and Community-Based Care

Care Settings	Funding Source	Average Annual Cost Per Person		
		Federal	State	Total
Nursing Homes	Medicaid ¹	\$15,960	\$13,056	\$29,016
Assisted Living Facilities:				
Extended Congregate Care	Medicaid Waiver ¹	5,712	4,488	10,200
Standard Care	Optional State Supplementation		1,992	1,992
Adult Family Care Homes	Optional State Supplementation		2,064	2,064
Home and Community-Based Services	Community Care for the Elderly		1,248	1,248
	Medicaid Waiver ¹	1,380	1,128	2,508

¹ In Florida, the federal government funds about 55% of expenditures in Medicaid; the state funds the remaining 45%. These figures include only the cost of long-term care services. They do not include the cost of other types of medical care, such as hospitalization, that are also covered by Medicaid.

Source: Office of Program Policy Analysis and Government Accountability analysis of data from the Departments of Elder Affairs and Health and Rehabilitative Services.

Furthermore, if the state increased funding for community-based alternatives to nursing home care without reducing its expenditures for nursing home care, the community-based alternatives are likely to be used by individuals who would not otherwise go into nursing homes. Most elders do not want to go into nursing homes, and many will not seek Medicaid coverage for nursing home care even though they meet financial and medical criteria for such coverage. However, as indicated by the waiting lists for state-funded alternatives to nursing home care, these individuals are likely to use community-based long-term care services if the state provides those services.

As noted in our report on the Comprehensive Assessment and Review for Long Term Care Services (CARES) program, the screening criteria for Medicaid coverage of long-term care may not be effective in targeting only those individuals who are at risk for nursing home placement if community-based alternatives do not exist.⁵ Consequently, unless increases in the availability of state-funded community-based services are tied to decreases in the use of Medicaid for long-term nursing home care, community-based services are likely to be used by some individuals who may not have otherwise gone into nursing homes. Although the state might experience some reduction in its expenditures for nursing home care, this reduction might not be enough to offset the increase in its expenditures for serving more individuals in home- and community-based settings.

⁵ Office of Program Policy Analysis and Government Accountability, Report No. 94-33, Performance Audit of the Comprehensive Assessment and Review for Long Term Care Services (CARES) Program Administered by the Department of Health and Rehabilitative Services, February 27, 1995.

CHAPTER IV

Conclusions and Recommendations

With the increase in Florida's elderly population, the demand for nursing home services is growing. Most individuals go into nursing homes for short-term, recuperative or rehabilitative stays; however, individuals receiving long-term nursing home care comprise the bulk of nursing home costs. Since most long-term nursing home residents eventually become eligible for Medicaid coverage, Medicaid is the primary payer of nursing home care. If current trends continue, Medicaid expenditures for nursing home care will more than double by fiscal year 2004-05.

The Certificate of Need Program probably is effective in ensuring that the supply of nursing home beds does not greatly exceed demand for nursing home services. In doing so, the program has kept occupancy rates higher than they might otherwise be and thereby decreased the state's Medicaid reimbursement rates for nursing home services. However, the program is designed to expand the supply of beds in response to increased demand and therefore does not limit the number of people who go into nursing homes.

Some individuals who go into nursing homes could receive long-term care in lower-cost, community-based settings and would prefer to remain in these settings. However, timing of certificate of need decisions affects the Legislature's ability to transfer funds from nursing homes to community-based, long-term care alternatives. Since certificates of need are issued three years before the authorized beds open, the beds are already available by the time the Legislature makes funding decisions.

However, if the Legislature wishes to decrease future long-term care costs by making greater use of community-based alternatives to nursing home care, the certificate of need process could be used to facilitate the state's ability to shift resources from nursing homes to alternative long-term care

services if CON decisions were tied to a detailed plan for expanding Medicaid-funded alternatives to nursing home care. In our report on the CARES program, we recommended that the Legislature direct the Department of Elder Affairs, the Department of Health and Rehabilitative Services, and the Agency for Health Care Administration to develop such a plan. The plan should include estimates of the number and type of home- and community-based long-term placement slots that will be needed each year to divert individuals from nursing homes over a five-year period. These estimates should be based on information gathered during the process used to assess individuals' medical eligibility for Medicaid coverage of nursing home care.

We continue to recommend that such a plan be developed. The initial plan should be completed by October 31, 1998, and the plan should be updated annually. In addition, we recommend that the plan be included as part of the Social Services Estimating Conference and approved by the Legislature. Once the plan is approved, we recommend that the Agency for Health Care Administration amend its Medicaid waiver agreements with the federal government to increase the number of home- and community-based placement slots to correspond with the need estimates in the plan. In addition, we recommend that the Legislature require the Agency to revise the certificate of need formula to deduct planned increases in home- and community-based placement slots from its estimate of the need for new nursing home beds. The Legislature should also give the Agency greater flexibility in determining preference factors for nursing homes that serve Medicaid clients. The Legislature will then be able to appropriate the funds that would have been spent on new nursing home beds to expand the home- and community-based long-term care services as specified in the plan.

Since most elderly individuals prefer receiving home- and community-based services to going into nursing homes, the creation of additional home- and community-based placement slots should lower demand for long-term nursing home services and reduce the need for future nursing home beds. If this occurs without an immediate change in the CON formula, there could be a surplus of nursing home

beds after the plan is implemented. Therefore, if the Legislature adopts and implements the plan, we recommend that it also consider one of two alternatives for temporarily reducing the number of nursing home beds approved through the Certificate of Need process.

The first alternative would be to place a temporary moratorium on the issuance of certificates of need to allow time for the plan to be developed. Several states have enacted short-term moratoriums on the construction of nursing home beds to allow them to plan for alternative placements.

Such a moratorium should not adversely affect access to care in the short run for three reasons. First, approximately 7,800 nursing home beds have already been approved through the certificate of need process but have not yet been built. These beds can meet the increased need for nursing home services over the next three years. Second, by the time the rate of growth in the supply of nursing home beds begins to slow, more community-based alternatives to nursing home care will be available. These alternatives will divert some people from going to nursing homes and thereby free up beds for those who truly need nursing home care. Finally, there is a surplus of approximately 25,000 hospital beds in Florida, and if necessary at least some of these beds can be converted to nursing home use in a reasonably short period of time. This provides a safety net if the demand for nursing home beds exceeds expectations. Use of this safety net could require changes in the state's Medicaid reimbursement policies.

The second alternative would be to raise the occupancy rates in nursing homes. Under this alternative, certificates of need for new nursing home beds would not be granted unless occupancy rates rose above a certain level. The Florida Health Care Association has suggested that target nursing home occupancy rates be raised from their current level of 91% to 94%. This would slow the rate of growth in the supply of nursing home beds.

Finally, proposed changes in federal regulations could eliminate the need for the Certificate of Need Program for nursing homes in the future. The program does not limit or constrain the demand for nursing home beds, it only keeps occupancy rates higher than they otherwise might be. This reduces Medicaid reimbursement rates for nursing home care because the federal Boren amendment requires these rates to cover the nursing home operating costs. However, it is likely that the Boren amendment will be repealed. If this occurs, Florida will not have to control nursing home occupancy rates in order to control reimbursement rates.

We recommend that the Legislature sunset the certificate of need requirement for nursing homes effective July 1, 2002. This will allow time for any changes in federal regulations to be implemented. In addition, it will give the state time to implement the plan to increase home- and community-based alternatives to nursing home care and reduce demand for long-term nursing home care. If CON is repealed before the plan is implemented, nursing home construction is likely to occur based on past levels of demand, which will result in a surplus of beds. If CON is repealed after demand stabilizes, nursing home construction will probably be based on the new level of demand. Market forces can then be allowed to control future bed supply. Although occupancy rates will probably drop somewhat, they still should remain relatively high since investors will be reluctant to build new beds when existing beds are not being used.

Prior to repealing the CON Program, the Legislature should conduct a sunset review to ensure that the program is no longer needed. If the Boren amendment is not repealed, CON should be retained in order to keep nursing home occupancy rates high and thereby help control Medicaid per diem reimbursement rates.

Implementing these recommendations will take a number of years and the cooperative efforts of the Legislature and three state agencies. Exhibit 8 shows the entities that would be responsible for implementing the recommendations and the approximate timeframes for the implementation process.

Exhibit 8 Implementing the Recommendations of This Review

Responsible Entity	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02
<i>Legislature</i>	<ul style="list-style-type: none"> ■ Direct AHCA, DHRS, and DOE to create a plan for increasing Medicaid-funded, community-based alternatives to nursing home care ■ Require AHCA to deduct planned increases in community-based slots from its estimate of needed nursing home beds ■ Require plan to be included in social services estimating conference ■ Either place a temporary moratorium on the construction of nursing home beds or temporarily raise target occupancy rates ■ Sunset CON effective July 1, 2002 		<ul style="list-style-type: none"> ■ Include plan in social services estimating conference ■ Approve plan 	<ul style="list-style-type: none"> ■ Include updated plan in social service estimating conference ■ Approve updated plan ■ Use plan to guide appropriations 	<ul style="list-style-type: none"> ■ Include updated plan in social service estimating conference ■ Approve updated plan ■ Use plan to guide appropriations ■ Conduct sunset review of CON for nursing homes 	
<i>Agency for Health Care Administration (AHCA) Department of Health and Rehabilitative Services (DHRS) Department of Elder Affairs (DOEA)</i>		<ul style="list-style-type: none"> ■ Begin to develop plan 	<ul style="list-style-type: none"> ■ Submit plan to Legislature by October 31, 1998 ■ Update plan 	<ul style="list-style-type: none"> ■ Submit updated plan to Legislature by October 31, 1999 ■ Update plan 	<ul style="list-style-type: none"> ■ Submit updated plan to Legislature by October 31, 2000 ■ Update plan 	<ul style="list-style-type: none"> ■ Submit updated plan to Legislature by October 31, 2001 ■ Update plan
<i>Agency for Health Care Administration (AHCA)</i>			<ul style="list-style-type: none"> ■ Apply for Medicaid waiver for planned community-based slots ■ Deduct planned increases in community-based slots from estimated need for new nursing home beds 	<ul style="list-style-type: none"> ■ If necessary, apply for Medicaid waiver for planned community-based slots ■ Deduct planned increases in community-based slots from estimated need for new nursing home beds 	<ul style="list-style-type: none"> ■ If necessary, apply for Medicaid waiver for planned community-based slots ■ Deduct planned increases in community-based slots from estimated need for new nursing home beds 	<ul style="list-style-type: none"> ■ If necessary, apply for Medicaid waiver for planned community-based slots ■ Deduct planned increases in community-based slots from estimated need for new nursing home beds

Source: Office of Program Policy Analysis and Government Accountability.

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Appendix A

Response From the Agency for Health Care Administration

In accordance with the provisions of s. 11.45(7)(d), F.S., a list of preliminary and tentative audit findings was submitted to the Director of the Agency for Health Care Administration for his review and response.

We received a written response from the Director of the Agency for Health Care Administration. This response (see page 26) has been retyped so that comments by the Director of OPPAGA could be inserted where necessary and appropriate in the body of the response.

April 5, 1996

Mr. John W. Turcotte
Director
Office of Program Policy Analysis
and Government Accountability
Post Office Box 1735
Tallahassee, FL 32302

Dear Mr. Turcotte:

Thank you for the opportunity to respond to the preliminary and tentative report regarding your review of the "Certificate of Need Program for Nursing Homes Administered by the Agency for Health Care Administration." Our response to the findings and recommendations follows.

Finding 1: If current trends continue, Florida's Medicaid expenditures for nursing care will more than double by fiscal year 2004-05.

Agency Response:

The projected Medicaid expenditures are consistent with projected population growth. Also, we believe that it is important to note that Florida has one of the lowest nursing home bed-to-population ratios based on the 65+ and 75+ population. According to the 1994 Guide to Nursing Homes, Florida has the second lowest bed-to-population ratio per 1,000 age 75+ in the nation. We further believe that Florida's Certificate of Need (CON) program had a major role in constraining the supply by ensuring an orderly growth of beds in areas with identified need.

OPPAGA Director's Comment

Many people believe that the Certificate of Need program is primarily responsible for Florida's low bed-to-population ratio. However, bed-to-population rates vary widely among the states, and some states with Certificate of Need programs have high bed-to-population ratios. This occurs because bed-to-population ratios are affected by a number of other factors that influence demand for nursing home services. These factors include ethnicity, elder income and assets, climate, availability of alternative forms of care, and migration patterns. For example, evidence suggests that, to stay in close proximity to their families, some Florida retirees move back to their home states or where their children reside when they need nursing home care. Although Florida has the highest percentage of citizens over age 65, it ranks sixth in the percentage of its citizens over age 85.

Finding 2: The Certificate of Need Program expands the supply of nursing home beds to meet the demand but does not limit the number of people who go into nursing homes. However, the program helps to ensure that the supply of beds does not greatly exceed demand.

Agency Response:

The number of beds available limits the number of bed days available which places an upper cap on the number of persons entering a nursing home.

Florida receives more CON applications than any other state. In 1995, providers proposed 10,417 new nursing home beds of which only 2,333 were approved. While not all of these beds would have been constructed in the absence of certificate of need, a significantly higher number would have been built in the absence of a statewide planning program. Since demand is also a function of availability, it is reasonable to expect that a higher number of persons would have entered nursing homes.

OPPAGA Director's Comment

Many people believe the theory "if you build them, they will come." However, most elders do not wish to go into nursing homes and would not demand nursing home services if other alternatives were available. Their aversion to nursing homes is similar to the aversion many people feel about going to hospitals. If demand were significantly affected by availability, Florida's hospitals would have higher occupancy rates than the current rate of 49%.

Further, the report states that, "If Florida's supply of nursing home beds were insufficient to meet the demand for services, the occupancy rates for Florida nursing homes would probably be higher than the national average." The current nursing home formula sets 91 percent as the average target occupancy rate for each of the 38 planning areas. Occupancy rates are also controlled by the industry. As indicated in the report, Florida has experienced a significant increase in the number of short-stay patients who are primarily Medicare funded. Facilities with a large percentage of short-stay patients have high turnover rates and lower occupancy rates. These facilities are reluctant to fill a Medicare certified bed with a long-term Medicaid patient.

OPPAGA Director's Comment

The Agency suggests that Florida's nursing home occupancy rate is more heavily influenced by the use of nursing homes for short-term care than the occupancy rates of other states. However, the growth in the use of nursing home beds for short-term care is occurring nationwide due to changes in the Medicare program. While this trend will result in lower nursing home occupancy rates, we have no reason to believe that it would affect Florida's rates more than it would affect the rates of other states.

Additionally, we have a concern with Exhibit 6 titled, "States that do not control the supply of nursing home beds have nursing home occupancy rates of 85% or more". The implication here seems to be that there is little excess capacity in these states. The states listed in Exhibit 6 have considerably higher bed-to-population ratios than Florida. The beds per 1,000 population 75+ for those states are as follows:

Florida:	64.5
Arizona:.....	81.3
California:.....	83.3
Idaho:.....	95.3
Kansas:.....	174.6
New Mexico:.....	90.7

Source: The Guide to the Nursing Home Industry, Arthur Anderson, 1994

OPPAGA Director's Comment

The Agency suggests that excess capacity led to high bed-to-population ratios in these states without certificate-of-need programs. However, other states with CON programs have equally high bed-to-population ratios.

Finding 3: Due to a number of factors, the time period between the issuance of a certificate of need and the opening of authorized beds affects the Legislature's ability to reduce future costs for long-term care by shifting funds from the nursing homes to lower-cost community-based alternatives.

Agency Response:

The Legislature appropriates Medicaid funds based on nursing home caseload projections adopted by the Social Services Estimating Conference. The CON program does not prevent the allocation of nursing home funds to the development of alternative settings. The Department of Elder Affairs is responsible through the CARES program to divert Medicaid eligible persons from nursing homes to alternative settings.

There is legitimate concern that if nursing home beds are available, some patients may choose nursing home care over alternative placements, however, the majority of persons prefer to stay in the community if adequate services are provided. The state does offer optional services through home and community based alternatives, under a waiver. Expenditures under the Medicaid waiver for the Aged/Disabled have grown from \$1.753 million in 1985 to \$25.786 million in 1995. The CON program can play an integral part in controlling the overall supply of nursing homes, preventing overutilization and low, less cost efficient occupancy rates.

OPPAGA Director's Comment

The state has significantly increased expenditures for the Medicaid waiver program over the last few years. However, expenditures for the waiver represent only 2% of the expenditures for nursing home care, which also have increased rapidly. In fiscal year 1984-85, Florida expended approximately \$305 million for nursing home care. By fiscal year 1994-95, its nursing home expenditures rose to approximately \$1.11 billion.

Recommendations:

In your report on the CARES program, you recommended that the Legislature direct the Department of Elder Affairs, the Department of Health and Rehabilitative Services, and the Agency for Health Care Administration to develop a detailed plan for expending Medicaid-funded alternatives to nursing home care.

“...the certificate of need process could be used to facilitate the state’s ability to shift resources from nursing homes to alternative long-term care services if CON decisions were tied to a detailed plan for expanding Medicaid funded alternatives to nursing home care.

In addition, the Agency should revise the certificate of need formula to deduct planned increases in home and community-based placement slots to correspond with the need estimates in the plan...”

Agency Response:

The Governor’s recommended Budget for FY 1996-97 includes an issue for 73 positions and \$4 million for the CARES program to screen all long-term care applicants, meeting 100 percent of the need. In addition, the Governor’s recommended budget includes \$25 million to create a Long-Term Care Reform Initiative designed to decrease the Medicaid nursing home caseload by 2,300 individuals by providing an intensive community-based services package for these individuals. This initiative will reduce nursing home expenditures by 37 million dollars resulting in a net savings of about 12 million dollars phased in during the first year.

Concurrent with implementation of this model long-term care program, the Department of Elder Affairs and the Agency for Health Care Administration will propose modifications to the CON system and nursing home regulations to ensure that the projected decrease in nursing home utilization occurs. We will continue to work closely with the Department of Elder Affairs staff in the development of appropriate legislative language and efforts to consider the expansion of long-term care alternatives.

Thank you for the opportunity to respond to this report. We will pursue actions to further improve the CON review process in accordance with the overall objectives of the Agency, the Department of Elder Affairs, and the Long Term Care Commission to provide services to persons in the least restrictive setting.

Sincerely,

/S/Douglas M. Cook

Douglas M. Cook
Director