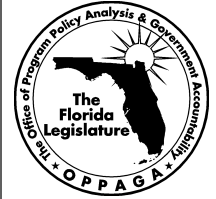




Office of Program Policy Analysis And Government Accountability



John W. Turcotte, Director

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Follow-Up Report on the Performance Review of the Certificate of Need Program for Nursing Homes

Abstract

- In 1997, the Legislature appropriated \$22 million to fund the three-year Long-term Care Community Diversion Pilot Project and passed legislation to establish pilot projects to test the effectiveness of managed care and outcome-based reimbursement for long-term care. (See p. 2.)
- However, the pilot project will not be implemented until late in Fiscal Year 1997-98, and the anticipated cost savings from the pilot project are not likely to be realized this year. (See p. 3.)
- Statewide implementation of the Long-term Care Community Diversion Project and changes in federal regulations that allow states more flexibility in setting Medicaid reimbursement rates for nursing homes may eliminate the future need for the Certificate of Need Program for nursing homes. (See p. 3.)

Purpose

In accordance with s. 11.45(7)(f), F.S., this follow-up report informs the Legislature of actions taken by the Agency for Health Care Administration and the

Department of Elder Affairs in response to our Report No. 95-51, which we issued April 30, 1996. This report presents our assessment of the extent to which the Department has addressed the findings and recommendations included in our report.

Background

Under the Certificate of Need (CON) Program, individuals wishing to construct or expand a nursing home 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 certificate of need review if no new beds are added.

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 who:

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

The Office of Certificate of Need and Budget Review develops a uniform statewide methodology for determining the need for nursing home beds. The office uses this methodology to project twice a year the need for nursing home services three years into the future. The office uses a three-year time frame because it generally takes three years from the issuance of a certificate of need to the licensure of a new facility. Certificates of need contain conditions that mandate nursing homes to provide a certain level of care to Medicaid residents.

Prior Findings

Our previous report contained three findings.

- If current trends continue, Florida's growing population of elders along with inflation will increase the state's Medicaid expenditures for nursing home care from \$1.11 billion in Fiscal Year 1994-1995 to \$2.74 billion in Fiscal Year 2004-2005.
- The CON Program seeks to match the supply of nursing home beds to meet projected demand for nursing home services. This helps to ensure that the supply of beds does not greatly exceed demand, thus keeping the nursing home occupancy rates higher than they might have been. A provision of the federal Medicaid regulations, the Boren amendment, required states to reimburse nursing home providers using rates that cover their costs. Higher occupancy rates allow nursing homes to spread their fixed costs over more residents, thus decreasing Medicaid reimbursement rates. In addition, with higher occupancy rates, fewer new nursing homes need to be constructed. Since new nursing homes tend to be more expensive than older homes, they receive higher per diem Medicaid reimbursement rates.

- 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 community-based alternatives.

The CON Program could be used to facilitate the state's ability to shift resources from nursing homes to alternatives if certificate of need decisions were tied to a detailed plan for expanding Medicaid-funded, community-based services. We recommended that the Legislature direct the Department of Elder Affairs, the Department of Health and Rehabilitative Services (now the Department of Children and Families), and the Agency for Health Care Administration to develop a detailed plan for expanding alternatives to nursing home care by October 31, 1998, and to annually update the plan. We recommended that the Legislature sunset the CON Program for nursing homes effective July 1, 2002. However, the Legislature should first conduct a sunset review to determine if the program is still needed.

Current Status

Actions Taken

The 1997 Legislature passed the "Long-term Care Community Diversion Pilot Project Act" (ss. 430.701-710, F.S.) to establish pilot projects to test the effectiveness of managed care and outcome-based reimbursement principles when applied to long-term care. The 1997 Legislature also appropriated \$22 million to fund the three-year Long-term Care Community Diversion Pilot Project. The pilot project will emphasize diverting individuals from nursing facility care to community-based alternatives when appropriate. When fully operational, the pilot project will serve an average monthly caseload of between 2,200 and 2,300 individuals.

The Agency for Health Care Administration and the Department of Elder Affairs have taken the initial steps to implement the pilot project. In March 1997, the Federal Health Care Financing Administration granted the Agency for Health Care Administration a Medicaid waiver to provide home and community-based services for the managed long-term care project. Under the waiver, the agency and the Department of Elder Affairs will contract with qualified licensed health maintenance organizations on a prepaid basis. The contracts will place these organizations at full financial risk for the

delivery of comprehensive medical and long-term care services, including community-based waiver services and nursing home care, to a group of severely impaired long-term care recipients aged 65 years and older who are both Medicaid and Medicare eligible. Recipient enrollment is voluntary, and participants can choose to disenroll at any time.

The Department of Elder Affairs chose to implement the pilot project in 2 of the department's 11 planning and service areas: Area 7 (Brevard, Orange, Osceola, and Seminole counties) and Area 9 (Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie counties). The department chose these sites based on the following factors:

- the nursing home occupancy level;
- the number of certificates of need awarded for nursing home beds for which renovation, expansion, or construction has not begun;
- the annual number of additional nursing home beds;
- the annual number of nursing home admissions; and
- the adequacy of community-based long-term care service providers.

Since the pilot project is a Medicaid funded alternative to nursing home care, the Legislature reduced the 1997-98 Medicaid nursing home budget by \$23.5 million based on the anticipated savings of the pilot project. However, the pilot project is not likely to be implemented until late in the 1997-98 fiscal year. As a result, the total anticipated savings from the pilot project are not likely to be realized this year. If a deficit occurs in the nursing home care program, it will be covered by transferring funds to the nursing home program from surpluses in

other Medicaid programs. Thus far, planning and development for the pilot project have been funded by the Robert Wood Johnson Foundation and by federal Medicaid funds.

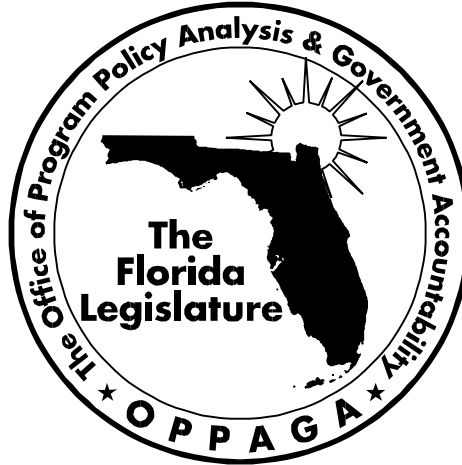
Based upon information from the pilot project, the agency and the department may propose revisions to the bed need formula. The CON Program has sufficient flexibility under current statutes to consider the pending projects without changing the CON bed formula. In addition, while applicants proposing a high level of Medicaid services generally receive preference, the agency no longer considers this policy in awarding CONs in areas with diversion projects.

The Legislature did not sunset the CON Program, but potential statewide implementation of the nursing home diversion project coupled with changes in federal regulations may eliminate the need for the program. In 1997, the Balanced Budget Act repealed the Boren Amendment. The Boren Amendment required Medicaid reimbursement to cover nursing home costs.¹ The CON Program limits both the number of new facilities and unused nursing home beds. This controls the increase in Medicaid nursing home costs because of the Boren Amendment's requirement to pay for nursing home costs, including the cost of constructing unused beds. With the repeal of the Boren Amendment, in the future Florida may have more flexibility in setting Medicaid reimbursement rates for nursing homes. However, before repealing the CON Program, OPPAGA continues to recommend that the Legislature conduct a sunset review to ensure that the program is no longer needed.

¹ However, states must establish reimbursement rates that are reasonable and adequate to cover the costs that must be incurred by efficiently and economically operated facilities.

The Florida Legislature

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Project supervised by: Curtis Baynes (850/487-9240)

Project conducted by: Sharon Anderson (850/487-9228)