

By the Committee on Health Care Services and
Representatives Albright, Lippman and Peadar

1 A bill to be entitled
2 An act relating to certificates of need;
3 amending s. 408.032, F.S.; deleting the
4 definition of the terms "health maintenance
5 organization" and "major medical equipment" for
6 purposes of the review for a certificate of
7 need by the Agency for Health Care
8 Administration; redefining the term "health
9 care facility" to include a hospice and
10 long-term care hospital; defining the terms
11 "home health agency," "long-term care
12 hospital," and "respite care"; amending s.
13 408.033, F.S.; deleting provisions relating to
14 the Statewide Health Council and duties
15 thereof; amending s. 408.035, F.S., relating to
16 review criteria; revising provisions; deleting
17 reference to hospice and health maintenance
18 organizations; adding replacement of facilities
19 as reviewable activity; deleting a requirement
20 to approve certain facility consolidations or
21 divisions; amending s. 408.036, F.S., relating
22 to health care projects that are subject to
23 certificate-of-need review; requiring the
24 review of certain replacement health care
25 facilities; requiring the review of
26 Medicare-certified home health agencies;
27 providing an exception; eliminating
28 certificate-of-need review for projects
29 exceeding a specified expenditure threshold and
30 for acquisition of major medical equipment;
31 requiring certificate-of-need review of cost

1 increases exceeding a specified threshold and
2 for increase in number of psychiatric or
3 rehabilitation beds; deleting a reference to
4 expedited review of transfer of a certificate
5 of need; modifying requirements relating to
6 expedited review of cost overruns; eliminating
7 the expedited review of donations, acquisition
8 of land for health care facilities or health
9 care provider offices, and termination of
10 health care services; eliminating the expedited
11 review of emergency projects and unforeseen
12 major public health hazards; requiring
13 expedited review of replacement of certain
14 health care facilities; eliminating the
15 exemption from review granted for certain
16 facilities not directly used for health care
17 services; eliminating expedited review of
18 expenditures to address safety hazards, repair
19 of facility or equipment resulting from certain
20 occurrences, and replacement of major medical
21 equipment; deleting an obsolete date relating
22 to expansion of obstetric services; requiring
23 expedited review of replacing or renovating
24 health care facilities; exempting from review
25 certain facilities establishing
26 Medicare-certified home health agencies;
27 exempting from review the establishment of
28 Medicare-certified home health agencies
29 contingent upon specified future actions;
30 exempting from review inmate health care
31 facilities, the termination of a health care

1 service, delicensure of beds, adult inpatient
2 diagnostic cardiac catheterization services
3 contingent upon specified future actions, and
4 certain expenditures for outpatient services;
5 amending s. 408.037, F.S.; revising
6 requirements for the detailed description and
7 financial projection; requiring that an
8 applicant for a certificate of need certify
9 that it will license and operate the health
10 care facility; requiring that certain
11 applicants for a certificate of need be the
12 licenseholder of the health care facility;
13 deleting requirements with respect to the
14 applicant's board of directors; amending s.
15 408.038, F.S.; providing for the refundability
16 of certain certificate-of-need application
17 fees; amending s. 408.039, F.S.; revising the
18 scope of review cycles and requirements for an
19 applicant with respect to letters of intent and
20 administrative hearings; eliminating review of
21 equipment from review cycles; eliminating a
22 requirement that letters of intent be filed
23 with local health councils; revising content
24 requirements of letters of intent; revising
25 publication requirements for letters of intent;
26 providing a timeframe for submitting a final
27 order; amending s. 408.040, F.S.; extending the
28 length of time that a certificate of need
29 remains effective; deleting authority to extend
30 the time that a certificate of need remains
31 valid; amending s. 408.042, F.S.; increasing

1 the validity period of a certificate of need;
2 amending s. 408.043, F.S.; deleting a provision
3 providing for the validity of a certificate of
4 need; providing that private accreditation is
5 not required for issuance or maintenance of a
6 certificate of need; amending s. 408.0455,
7 F.S.; providing for continuation of certain
8 rules and pending administrative or judicial
9 proceedings; amending ss. 240.5121 and 395.604,
10 F.S.; conforming references and cross
11 references relating to the Statewide Health
12 Council and state health plan; amending s.
13 408.702, F.S., relating to project monitoring
14 and community health purchasing alliances;
15 conforming cross references; amending ss.
16 400.602 and 641.60, F.S., relating to hospice
17 licensure for certain entities and the
18 Statewide Managed Care Ombudsman Committee;
19 conforming cross references; repealing ss.
20 186.003(9) and 186.503(9), relating to the
21 Statewide Health Council; repealing ss.
22 408.0365 and 408.0366, F.S., relating to
23 certain exemptions from certificate-of-need
24 regulation; providing applicability; providing
25 an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Section 408.032, Florida Statutes, is
30 amended to read:

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1 408.032 Definitions.--As used in ss. 408.031-408.045,
2 the term:

3 (1) "Agency" means the Agency for Health Care
4 Administration.

5 (2)~~(1)~~ "Capital expenditure" means an expenditure,
6 including an expenditure for a construction project undertaken
7 by a health care facility as its own contractor, which, under
8 generally accepted accounting principles, is not properly
9 chargeable as an expense of operation and maintenance, which
10 is made to change~~or an expenditure which exceeds the minimum~~
11 ~~as specified in s. 408.036(1)(c), changes~~ the bed capacity of
12 the facility, or substantially change ~~changes~~ the services or
13 service area of the health care facility, health service
14 provider, or hospice, and which includes the cost of the
15 studies, surveys, designs, plans, working drawings,
16 specifications, initial financing costs, and other activities
17 essential to acquisition, improvement, expansion, or
18 replacement of the plant and equipment. ~~The agency shall, by~~
19 ~~rule, adjust the capital expenditure threshold annually using~~
20 ~~an appropriate inflation index.~~

21 (3)~~(2)~~ "Certificate of need" means a written statement
22 issued by the agency evidencing community need for a new,
23 converted, expanded, or otherwise significantly modified
24 health care facility, health service, or hospice.

25 (4)~~(3)~~ "Commenced construction" means initiation of
26 and continuous activities beyond site preparation associated
27 with erecting or modifying a health care facility, including
28 procurement of a building permit applying the use of
29 agency-approved construction documents, proof of an executed
30 owner/contractor agreement or an irrevocable or binding forced
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1 account, and actual undertaking of foundation forming with
2 steel installation and concrete placing.

3 ~~(4) "Department" means the Agency for Health Care~~
4 ~~Administration.~~

5 (5) "District" means a health service planning
6 district composed of the following counties:

7 District 1.--Escambia, Santa Rosa, Okaloosa, and Walton
8 Counties.

9 District 2.--Holmes, Washington, Bay, Jackson,
10 Franklin, Gulf, Gadsden, Liberty, Calhoun, Leon, Wakulla,
11 Jefferson, Madison, and Taylor Counties.

12 District 3.--Hamilton, Suwannee, Lafayette, Dixie,
13 Columbia, Gilchrist, Levy, Union, Bradford, Putnam, Alachua,
14 Marion, Citrus, Hernando, Sumter, and Lake Counties.

15 District 4.--Baker, Nassau, Duval, Clay, St. Johns,
16 Flagler, and Volusia Counties.

17 District 5.--Pasco and Pinellas Counties.

18 District 6.--Hillsborough, Manatee, Polk, Hardee, and
19 Highlands Counties.

20 District 7.--Seminole, Orange, Osceola, and Brevard
21 Counties.

22 District 8.--Sarasota, DeSoto, Charlotte, Lee, Glades,
23 Hendry, and Collier Counties.

24 District 9.--Indian River, Okeechobee, St. Lucie,
25 Martin, and Palm Beach Counties.

26 District 10.--Broward County.

27 District 11.--Dade and Monroe Counties.

28 (6) "Expedited review" means the process by which
29 certain types of applications are not subject to the review
30 cycle requirements contained in s. 408.039(1), and the letter
31 of intent requirements contained in s. 408.039(2).

1 (7) "Health care facility" means a hospital, long-term
2 care hospital, skilled nursing facility, hospice, intermediate
3 care facility, or intermediate care facility for the
4 developmentally disabled. A facility relying solely on
5 spiritual means through prayer for healing is not included as
6 a health care facility.

7 ~~(8) "Health maintenance organization" means a health~~
8 ~~care provider organization defined and authorized in part I of~~
9 ~~chapter 641.~~

10 (8)(9) "Health services" means diagnostic, curative,
11 or rehabilitative services and includes alcohol treatment,
12 drug abuse treatment, and mental health services.

13 (9) "Home health agency" means an organization, as
14 defined in s. 400.462(4), that is certified or seeks
15 certification as a Medicare home health service provider.

16 (10) "Hospice" or "hospice program" means a hospice as
17 defined in part VI of chapter 400.

18 (11) "Hospital" means a health care facility licensed
19 under chapter 395.

20 (12) "Institutional health service" means a health
21 service which is provided by or through a health care facility
22 and which entails an annual operating cost of \$500,000 or
23 more. The agency shall, by rule, adjust the annual operating
24 cost threshold annually using an appropriate inflation index.

25 (13) "Intermediate care facility" means an institution
26 which provides, on a regular basis, health-related care and
27 services to individuals who do not require the degree of care
28 and treatment which a hospital or skilled nursing facility is
29 designed to provide, but who, because of their mental or
30 physical condition, require health-related care and services
31 above the level of room and board.

1 (14) "Intermediate care facility for the
2 developmentally disabled" means a residential facility
3 licensed under chapter 393 and certified by the Federal
4 Government pursuant to the Social Security Act as a provider
5 of Medicaid services to persons who are mentally retarded or
6 who have a related condition.

7 (15) "Long-term care hospital" means a hospital
8 licensed under chapter 395 which meets the requirements of 42
9 C.F.R. s. 412.23(e) and seeks exclusion from the Medicare
10 prospective payment system for inpatient hospital services.

11 ~~(15) "Major medical equipment" means equipment which~~
12 ~~is used to provide medical and other health services, which~~
13 ~~has been approved for general usage by the United States Food~~
14 ~~and Drug Administration for less than 3 years and which costs~~
15 ~~in excess of \$1 million. The agency shall, by rule, adjust~~
16 ~~the equipment threshold annually using an appropriate~~
17 ~~inflation index.~~

18 (16) "Multifacility project" means an integrated
19 residential and health care facility consisting of independent
20 living units, assisted living facility units, and nursing home
21 beds certificated on or after January 1, 1987, where:

22 (a) The aggregate total number of independent living
23 units and assisted living facility units exceeds the number of
24 nursing home beds.

25 (b) The developer of the project has expended the sum
26 of \$500,000 or more on the certificated and noncertificated
27 elements of the project combined, exclusive of land costs, by
28 the conclusion of the 18th month of the life of the
29 certificate of need.

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1 (c) The total aggregate cost of construction of the
2 certificated element of the project, when combined with other,
3 noncertificated elements, is \$10 million or more.

4 (d) All elements of the project are contiguous or
5 immediately adjacent to each other and construction of all
6 elements will be continuous.

7 (17) "Nursing home geographically underserved area"
8 means:

9 (a) A county in which there is no existing or approved
10 nursing home;

11 (b) An area with a radius of at least 20 miles in
12 which there is no existing or approved nursing home; or

13 (c) An area with a radius of at least 20 miles in
14 which all existing nursing homes have maintained at least a 95
15 percent occupancy rate for the most recent 6 months or a 90
16 percent occupancy rate for the most recent 12 months.

17 (18) "Respite care" means short-term care in a
18 licensed health care facility which is personal or custodial
19 and is provided for chronic illness, physical infirmity, or
20 advanced age for the purpose of temporarily relieving family
21 members of the burden of providing care and attendance.

22 (19)~~(18)~~ "Skilled nursing facility" means an
23 institution, or a distinct part of an institution, which is
24 primarily engaged in providing, to inpatients, skilled nursing
25 care and related services for patients who require medical or
26 nursing care, or rehabilitation services for the
27 rehabilitation of injured, disabled, or sick persons.

28 (20)~~(19)~~ "Tertiary health service" means a health
29 service which, due to its high level of intensity, complexity,
30 specialized or limited applicability, and cost, should be
31 limited to, and concentrated in, a limited number of hospitals

1 to ensure the quality, availability, and cost-effectiveness of
2 such service. Examples of such service include, but are not
3 limited to, organ transplantation, specialty burn units,
4 neonatal intensive care units, comprehensive rehabilitation,
5 and medical or surgical services which are experimental or
6 developmental in nature to the extent that the provision of
7 such services is not yet contemplated within the commonly
8 accepted course of diagnosis or treatment for the condition
9 addressed by a given service. The agency shall establish by
10 rule a list of all tertiary health services.

11 ~~(20) "Agency" means the department or agency which has~~
12 ~~responsibility for health planning and health regulation.~~

13 (21) "Regional area" means any of those regional
14 health planning areas established by the agency to which local
15 and district health planning funds are directed to local
16 health councils through the General Appropriations Act.

17 Section 2. Paragraphs (b) and (g) of subsection (1),
18 subsection (2), paragraphs (a), (b), and (f) of subsection
19 (3), and subsection (4) of section 408.033, Florida Statutes,
20 are amended to read:

21 408.033 Local and state health planning.--

22 (1) LOCAL HEALTH COUNCILS.--

23 (b) Each local health council may:

24 1. Develop a district or regional area health plan
25 ~~that is consistent with the objectives and strategies in the~~
26 ~~state health plan, but~~ that shall permit each local health
27 council to develop strategies and set priorities for
28 implementation based on its unique local health needs. The
29 district or regional area health plan must contain preferences
30 for the development of health services and facilities, which
31 may be considered by the agency in its review of

1 certificate-of-need applications. The district health plan
2 shall be submitted to the agency and updated periodically. The
3 district health plans shall use a uniform format and be
4 submitted to the agency according to a schedule developed by
5 the agency in conjunction with ~~the Statewide Health Council~~
6 ~~and~~ the local health councils. The schedule must provide for
7 coordination between the development of ~~the state health plan~~
8 ~~and~~ the district health plans and for the development of
9 district health plans by major sections over a multiyear
10 period. The elements of a district plan which are necessary
11 to the review of certificate-of-need applications for proposed
12 projects within the district may be adopted by the agency as a
13 part of its rules.

14 2. Advise the agency on health care issues and
15 resource allocations.

16 3. Promote public awareness of community health needs,
17 emphasizing health promotion and cost-effective health service
18 selection.

19 4. Collect data and conduct analyses and studies
20 related to health care needs of the district, including the
21 needs of medically indigent persons, and assist the agency and
22 other state agencies in carrying out data collection
23 activities that relate to the functions in this subsection.

24 5. Monitor the onsite construction progress, if any,
25 of certificate-of-need approved projects and report council
26 findings to the agency on forms provided by the agency.

27 6. Advise and assist any regional planning councils
28 within each district that have elected to address health
29 issues in their strategic regional policy plans with the
30 development of the health element of the plans to address the
31 health goals and policies in the State Comprehensive Plan.

- 1 7. Advise and assist local governments within each
2 district on the development of an optional health plan element
3 of the comprehensive plan provided in chapter 163, to assure
4 compatibility with the health goals and policies in the State
5 Comprehensive Plan and district health plan. To facilitate
6 the implementation of this section, the local health council
7 shall annually provide the local governments in its service
8 area, upon request, with:
- 9 a. A copy and appropriate updates of the district
10 health plan;
- 11 b. A report of hospital and nursing home utilization
12 statistics for facilities within the local government
13 jurisdiction; and
- 14 c. Applicable agency rules and calculated need
15 methodologies for health facilities and services regulated
16 under s. 408.034 for the district served by the local health
17 council.
- 18 8. Monitor and evaluate the adequacy, appropriateness,
19 and effectiveness, within the district, of local, state,
20 federal, and private funds distributed to meet the needs of
21 the medically indigent and other underserved population
22 groups.
- 23 9. In conjunction with the Department of Health ~~and~~
24 ~~Rehabilitative Services and Statewide Health Council~~, plan for
25 services at the local level for persons infected with the
26 human immunodeficiency virus.
- 27 10. Provide technical assistance to encourage and
28 support activities by providers, purchasers, consumers, and
29 local, regional, and state agencies in meeting the health care
30 goals, objectives, and policies adopted by the local health
31 council.

1 11. Provide the agency with data required by rule for
2 the review of certificate-of-need applications and the
3 projection of need for health services and facilities in the
4 district.

5 (g) Each local health council is authorized to accept
6 and receive, in furtherance of its health planning functions,
7 funds, grants, and services from governmental agencies and
8 from private or civic sources and to perform studies related
9 to local health planning in exchange for such funds, grants,
10 or services. Each local health council shall, no later than
11 January 30 of each year, render an accounting of the receipt
12 and disbursement of such funds received by it to the agency.
13 The agency shall consolidate all such reports and submit such
14 consolidated report to the Legislature no later than March 1
15 of each year. Funds received by a local health council
16 pursuant to this paragraph shall not be deemed to be a
17 substitute for, or an offset against, any funding provided
18 pursuant to subsection (2)~~(3)~~.

19 ~~(2) STATEWIDE HEALTH COUNCIL. The Statewide Health~~
20 ~~Council is hereby established as a state-level comprehensive~~
21 ~~health planning and policy advisory board. For administrative~~
22 ~~purposes, the council shall be located within the agency. The~~
23 ~~Statewide Health Council shall be composed of: the State~~
24 ~~Health Officer; the Deputy Director for Health Policy and Cost~~
25 ~~Control and the Deputy Director for Health Quality Assurance~~
26 ~~of the department; the director of the Health Care Board; the~~
27 ~~Insurance Commissioner or his designee; the Vice Chancellor~~
28 ~~for Health Affairs of the Board of Regents; three chairmen of~~
29 ~~regional planning councils, selected by the regional planning~~
30 ~~councils; five chairmen of local health councils, selected by~~
31 ~~the local health councils; four members appointed by the~~

1 ~~Governor, one of whom is a consumer over 60 years of age, one~~
2 ~~of whom is a representative of organized labor, one of whom is~~
3 ~~a physician, and one of whom represents the nursing home~~
4 ~~industry; five members appointed by the President of the~~
5 ~~Senate, one of whom is a representative of the insurance~~
6 ~~industry in this state, one of whom is the chief executive~~
7 ~~officer of a business with more than 300 employees in this~~
8 ~~state, one of whom represents the hospital industry, one of~~
9 ~~whom is a primary care physician, and one of whom is a nurse,~~
10 ~~and five members appointed by the Speaker of the House of~~
11 ~~Representatives, one of whom is a consumer who represents a~~
12 ~~minority group in this state, one of whom represents the home~~
13 ~~health care industry in this state, one of whom is an allied~~
14 ~~health care professional, one of whom is the chief executive~~
15 ~~officer of a business with fewer than 25 employees in this~~
16 ~~state, and one of whom represents a county social services~~
17 ~~program that provides health care services to the indigent.~~
18 ~~Appointed members of the council shall serve for 2-year terms~~
19 ~~commencing October 1 of each even-numbered year. The council~~
20 ~~shall elect a president from among the members who are not~~
21 ~~state employees. The Statewide Health Council shall:~~
22 ~~(a) Advise the Governor, the Legislature, and the~~
23 ~~department on state health policy issues, state and local~~
24 ~~health planning activities, and state health regulation~~
25 ~~programs;~~
26 ~~(b) Prepare a state health plan that specifies~~
27 ~~subgoals, quantifiable objectives, strategies, and resource~~
28 ~~requirements to implement the goals and policies of the health~~
29 ~~element of the State Comprehensive Plan. The plan must assess~~
30 ~~the health status of residents of this state; evaluate the~~
31 ~~adequacy, accessibility, and affordability of health services~~

1 ~~and facilities; assess government-financed programs and~~
2 ~~private health care insurance coverages; and address other~~
3 ~~topical local and state health care issues. Within 2 years~~
4 ~~after the health element of the State Comprehensive Plan is~~
5 ~~amended, and by July 1 of every 3rd year, if it is not~~
6 ~~amended, the Statewide Health Council shall submit the state~~
7 ~~health plan to the Executive Office of the Governor, the~~
8 ~~secretary of the department, the President of the Senate, and~~
9 ~~the Speaker of the House of Representatives;~~

10 ~~(c) Promote public awareness of state health care~~
11 ~~issues and, in conjunction with the local health councils,~~
12 ~~conduct public forums throughout the state to solicit the~~
13 ~~comments and advice of the public on the adequacy,~~
14 ~~accessibility, and affordability of health care services in~~
15 ~~this state and other health care issues;~~

16 ~~(d) Consult with local health councils, the Department~~
17 ~~of Insurance, the Department of Health and Rehabilitative~~
18 ~~Services, and other appropriate public and private entities,~~
19 ~~including health care industry representatives regarding the~~
20 ~~development of health policies;~~

21 ~~(e) Serve as a forum for the discussion of local~~
22 ~~health planning issues of concern to the local health councils~~
23 ~~and regional planning councils;~~

24 ~~(f) Review district health plans for consistency with~~
25 ~~the State Comprehensive Plan and the state health plan;~~

26 ~~(g) Review the health components of agency functional~~
27 ~~plans for consistency with the health element of the State~~
28 ~~Comprehensive Plan, advise the Executive Office of the~~
29 ~~Governor regarding inconsistencies, and recommend revisions to~~
30 ~~agency functional plans to make them consistent with the State~~
31 ~~Comprehensive Plan;~~

1 ~~(h) Review any strategic regional plans that address~~
2 ~~health issues for consistency with the health element of the~~
3 ~~State Comprehensive Plan, advise the Executive Office of the~~
4 ~~Governor regarding inconsistencies, and recommend revisions to~~
5 ~~strategic regional policy plans to make them consistent with~~
6 ~~the State Comprehensive Plan;~~

7 ~~(i) Assist the Department of Community Affairs in the~~
8 ~~review of local government comprehensive plans to ensure~~
9 ~~consistency with policy developed in the district health~~
10 ~~plans;~~

11 ~~(j) With the assistance of the local health councils,~~
12 ~~conduct public forums and use other means to determine the~~
13 ~~opinions of health care consumers, providers, payors, and~~
14 ~~insurers regarding the state's health care goals and policies~~
15 ~~and develop suggested revisions to the health element of the~~
16 ~~State Comprehensive Plan. The council shall submit the~~
17 ~~proposed revisions to the health element of the State~~
18 ~~Comprehensive Plan to the Governor, the President of the~~
19 ~~Senate, and the Speaker of the House of Representatives by~~
20 ~~February 1, 1993, and shall widely circulate the proposed~~
21 ~~revisions to affected parties. The council shall periodically~~
22 ~~assess the progress made in achieving the goals and policies~~
23 ~~contained in the health element of the State Comprehensive~~
24 ~~Plan and report to the department, the Governor, the President~~
25 ~~of the Senate, and the Speaker of the House of~~
26 ~~Representatives; and~~

27 ~~(k) Conduct any other functions or studies and~~
28 ~~analyses falling under the duties listed above.~~

29 (2)~~(3)~~ FUNDING.--

30 (a) The Legislature intends that the cost of local
31 health councils ~~and the Statewide Health Council~~ be borne by

1 application fees for certificates of need and by assessments
2 on selected health care facilities subject to facility
3 licensure by the Agency for Health Care Administration,
4 including abortion clinics, assisted living facilities,
5 ambulatory surgical centers, birthing centers, clinical
6 laboratories except community nonprofit blood banks, home
7 health agencies, hospices, hospitals, intermediate care
8 facilities for the developmentally disabled, nursing homes,
9 and multiphasic testing centers and by assessments on
10 organizations subject to certification by the agency pursuant
11 to chapter 641, part III, including health maintenance
12 organizations and prepaid health clinics.

13 (b)1. A hospital licensed under chapter 395, a nursing
14 home licensed under chapter 400, and an assisted living
15 facility licensed under chapter 400 shall be assessed an
16 annual fee based on number of beds.

17 2. All other facilities and organizations listed in
18 paragraph (a) shall each be assessed an annual fee of \$150.

19 3. Facilities operated by the Department of Health ~~and~~
20 ~~Rehabilitative Services~~ or the Department of Corrections and
21 any hospital which meets the definition of rural hospital
22 pursuant to s. 395.602 are exempt from the assessment required
23 in this subsection.

24 (f) The agency shall deposit in the Health Care Trust
25 Fund all health care facility assessments that are assessed
26 under this subsection and proceeds from the
27 certificate-of-need application fees which are sufficient to
28 maintain the aggregate funding level for the local health
29 councils ~~and the Statewide Health Council~~ as specified in the
30 General Appropriations Act. The remaining certificate-of-need
31 application fees shall be used only for the purpose of

1 administering the Health Facility and Services Development
2 Act.

3 (3)~~(4)~~ DUTIES AND RESPONSIBILITIES OF THE AGENCY
4 DEPARTMENT.--

5 (a) The agency department, in conjunction with ~~the~~
6 ~~Statewide Health Council and~~ the local health councils, is
7 responsible for the planning of all health care services in
8 the state ~~and for assisting the Statewide Health Council in~~
9 ~~the preparation of the state health plan.~~

10 (b) The agency department shall develop and maintain a
11 comprehensive health care database for the purpose of health
12 planning and for certificate-of-need determinations. The
13 agency department or its contractor is authorized to require
14 the submission of information from health facilities, health
15 service providers, and licensed health professionals which is
16 determined by the agency department, through rule, to be
17 necessary for meeting the agency's department's
18 responsibilities as established in this section.

19 (c) The agency department shall assist personnel of
20 the local health councils in providing an annual orientation
21 to council members about council member responsibilities.

22 (d) The agency department shall contract with the
23 local health councils for the services specified in subsection
24 (1). All contract funds shall be distributed according to an
25 allocation plan developed by the agency department that
26 provides for a minimum and equal funding base for each local
27 health council. Any remaining funds shall be distributed
28 based on adjustments for workload. The agency department may
29 also make grants to or reimburse local health councils from
30 federal funds provided to the state for activities related to
31 those functions set forth in this section. The agency

1 ~~department~~ may withhold funds from a local health council or
2 cancel its contract with a local health council which does not
3 meet performance standards agreed upon by the agency
4 ~~department~~ and local health councils.

5 Section 3. Section 408.035, Florida Statutes, is
6 amended to read:

7 408.035 Review criteria.--

8 (1) The agency shall determine the reviewability of
9 applications and shall review applications for
10 certificate-of-need determinations for health care facilities
11 and health services, ~~hospices, and health maintenance~~
12 ~~organizations~~ in context with the following criteria:

13 (a) The need for the health care facilities and health
14 ~~services and hospices~~ being proposed in relation to the
15 applicable district plan ~~and state health plan~~, except in
16 emergency circumstances that ~~which~~ pose a threat to the public
17 health.

18 (b) The availability, quality of care, efficiency,
19 appropriateness, accessibility, extent of utilization, and
20 adequacy of like and existing health care facilities and
21 health services ~~and hospices~~ in the service district of the
22 applicant.

23 (c) The ability of the applicant to provide quality of
24 care and the applicant's record of providing quality of care.

25 (d) The availability and adequacy of other health care
26 facilities and health services ~~and hospices~~ in the service
27 district of the applicant, such as outpatient care and
28 ambulatory or home care services, which may serve as
29 alternatives for the health care facilities and health
30 services to be provided by the applicant.

31

1 (e) Probable economies and improvements in service
2 which ~~that~~ may be derived from operation of joint,
3 cooperative, or shared health care resources.

4 (f) The need in the service district of the applicant
5 for special equipment and services that ~~which~~ are not
6 reasonably and economically accessible in adjoining areas.

7 (g) The need for research and educational facilities,
8 including, but not limited to, institutional training programs
9 and community training programs for health care practitioners
10 and for doctors of osteopathy and medicine at the student,
11 internship, and residency training levels.

12 (h) The availability of resources, including health
13 manpower, management personnel, and funds for capital and
14 operating expenditures, for project accomplishment and
15 operation; the effects the project will have on clinical needs
16 of health professional training programs in the service
17 district; the extent to which the services will be accessible
18 to schools for health professions in the service district for
19 training purposes if such services are available in a limited
20 number of facilities; the availability of alternative uses of
21 such resources for the provision of other health services; and
22 the extent to which the proposed services will be accessible
23 to all residents of the service district.

24 (i) The immediate and long-term financial feasibility
25 of the proposal.

26 (j) The special needs and circumstances of health
27 maintenance organizations.

28 (k) The needs and circumstances of those entities that
29 ~~which~~ provide a substantial portion of their services or
30 resources, or both, to individuals not residing in the service
31 district in which the entities are located or in adjacent

1 service districts. Such entities may include medical and
2 other health professions, schools, multidisciplinary clinics,
3 and specialty services such as open-heart surgery, radiation
4 therapy, and renal transplantation.

5 (1) The probable impact of the proposed project on the
6 costs of providing health services proposed by the applicant,
7 upon consideration of factors including, but not limited to,
8 the effects of competition on the supply of health services
9 being proposed and the improvements or innovations in the
10 financing and delivery of health services which foster
11 competition and service to promote quality assurance and
12 cost-effectiveness.

13 (m) The costs and methods of the proposed
14 construction, including the costs and methods of energy
15 provision and the availability of alternative, less costly, or
16 more effective methods of construction.

17 (n) The applicant's past and proposed provision of
18 health care services to Medicaid patients and the medically
19 indigent.

20 (o) The applicant's past and proposed provision of
21 services that ~~which~~ promote a continuum of care in a
22 multilevel health care system, which may include, but are ~~is~~
23 not limited to, acute care, skilled nursing care, home health
24 care, and assisted living facilities.

25 (2) In cases of capital expenditure proposals for the
26 provision of new health services to inpatients, the agency
27 ~~department~~ shall also reference each of the following in its
28 findings of fact:

29 (a) That less costly, more efficient, or more
30 appropriate alternatives to such inpatient services are not
31

1 available and the development of such alternatives has been
2 studied and found not practicable.

3 (b) That existing inpatient facilities providing
4 inpatient services similar to those proposed are being used in
5 an appropriate and efficient manner.

6 (c) In the case of new construction or replacement
7 construction, that alternatives to the new construction, for
8 example, modernization or sharing arrangements, have been
9 considered and have been implemented to the maximum extent
10 practicable.

11 (d) That patients will experience serious problems in
12 obtaining inpatient care of the type proposed, in the absence
13 of the proposed new service.

14 (e) In the case of a proposal for the addition of beds
15 for the provision of skilled nursing or intermediate care
16 services, that the addition will be consistent with the plans
17 of other agencies of the state responsible for the provision
18 and financing of long-term care, including home health
19 services.

20 ~~(3) For any application authorized by s. 381.706(2)(j)~~
21 ~~or (k) involving an approved facility based on a~~
22 ~~certificate-of-need application filed prior to December 31,~~
23 ~~1984, the department shall approve such application unless the~~
24 ~~proposed consolidation or division would result in a facility~~
25 ~~or facilities not meeting the criterion of financial~~
26 ~~feasibility or unless the consolidation or division would~~
27 ~~result in beds or services being moved more than 15 miles from~~
28 ~~their original certificated location.~~

29 Section 4. Section 408.036, Florida Statutes, as
30 amended by chapters 93-214, 94-206, and 95-418, Laws of
31 Florida, is amended to read:

1 408.036 Projects subject to review.--

2 (1) APPLICABILITY.--Unless exempt under subsection
3 (3), all health-care-related projects, as described in
4 paragraphs (a)-(k)~~(a)-(n)~~, are subject to review and must
5 file an application for a certificate of need with the agency
6 ~~department~~. The agency ~~department~~ is exclusively responsible
7 for determining whether a health-care-related project is
8 subject to review under ss. 408.031-408.045.

9 (a) The addition of beds by new construction or
10 alteration.

11 (b) The new construction or establishment of
12 additional health care facilities, including a replacement
13 health care facility when the proposed project site is not
14 located on the same site as the existing health care facility.

15 ~~(c) A capital expenditure of \$1 million or more by or~~
16 ~~on behalf of a health care facility or hospice for a purpose~~
17 ~~directly related to the furnishing of health services at such~~
18 ~~facility; provided that a certificate of need is not required~~
19 ~~for an expenditure to provide an outpatient health service, or~~
20 ~~to acquire equipment or refinance debt, for which a~~
21 ~~certificate of need is not otherwise required under this~~
22 ~~subsection. The department shall, by rule, adjust the capital~~
23 ~~expenditure threshold annually using an appropriate inflation~~
24 ~~index.~~

25 (c)~~(d)~~ The conversion from one type of health care
26 facility to another, including the conversion from one level
27 of care to another, in a skilled or intermediate nursing
28 facility, if the conversion effects a change in the level of
29 care of 10 beds or 10 percent of total bed capacity of the
30 skilled or intermediate nursing facility within a 2-year
31 period. If the nursing facility is certified for both skilled

1 and intermediate nursing care, the provisions of this
2 paragraph do not apply.

3 ~~(d)(e)~~ Any increase ~~change~~ in licensed bed capacity.

4 ~~(e)(f)~~ Subject to the provisions of paragraph (3)(i),
5 the establishment of a Medicare-certified home health agency,
6 the establishment of a hospice, or the direct provision of
7 such services by a health care facility or health maintenance
8 organization for those other than the subscribers of the
9 health maintenance organization; except that this paragraph
10 does not apply to the establishment of a Medicare-certified
11 home health agency by a facility described in paragraph
12 (3)(h).

13 ~~(f)(g)~~ An acquisition by or on behalf of a health care
14 facility or health maintenance organization, by any means,
15 which acquisition would have required review if the
16 acquisition had been by purchase, ~~including an acquisition at~~
17 ~~less than fair market value if the fair market value is~~
18 ~~greater than the capital expenditure threshold.~~

19 ~~(g)(h)~~ The establishment of inpatient institutional
20 health services by a health care facility, or a substantial
21 change in such services, ~~or the obligation of capital~~
22 ~~expenditures for the offering of, or a substantial change in,~~
23 ~~any such services which entails a capital expenditure in any~~
24 ~~amount, or an annual operating cost of \$500,000 or more. The~~
25 ~~department shall, by rule, adjust the annual operating cost~~
26 ~~threshold annually using an appropriate inflation index.~~

27 ~~(h)(i)~~ The acquisition by any means of an existing
28 health care facility by any person, unless the person provides
29 the agency ~~department~~ with at least 30 days' written notice of
30 the proposed acquisition, which notice is to include the
31 services to be offered and the bed capacity of the facility,

1 and unless the agency ~~department~~ does not determine, within 30
2 days after receipt of such notice, that the services to be
3 provided and the bed capacity of the facility will be changed.

4 ~~(j) The acquisition, by any means, of major medical~~
5 ~~equipment by a health maintenance organization or health care~~
6 ~~facility to the extent that the health maintenance~~
7 ~~organization or health care facility is not exempt under~~
8 ~~former s. 381.713(1).~~

9 ~~(i)(k)~~ An increase in the cost of a project for which
10 a certificate of need has been issued when the increase in
11 cost exceeds 20 ~~the limits set forth in paragraph (c),~~
12 ~~paragraph (h), or s. 408.032, or 10~~ percent of the originally
13 approved cost of the project, ~~whichever is less,~~ except that a
14 cost overrun review is not necessary when the cost overrun is
15 less than ~~\$20,000~~ \$10,000.

16 ~~(j)(l)~~ An increase ~~A change~~ in the number of
17 psychiatric or rehabilitation beds.

18 ~~(k)(m)~~ The establishment of tertiary health services.

19 ~~(n) A transfer of a certificate of need, in which case~~
20 ~~an expedited review must be conducted according to rule and in~~
21 ~~accordance with s. 408.042.~~

22 (2) PROJECTS SUBJECT TO EXPEDITED REVIEW.--Unless
23 exempt pursuant to subsection (3), projects subject to an
24 expedited review shall include, but not be limited to:

25 (a) Cost overruns, as defined in paragraph (1)(i)
26 ~~unless such cost overruns are caused by a change in service or~~
27 ~~scope which the department determines are otherwise~~
28 ~~reviewable.~~

29 (b) Research, education, and training programs.

30 ~~(c) Donations, when market value equals or exceeds the~~
31 ~~applicable capital expenditure thresholds for operating~~

1 ~~expenditures, or major medical equipment, as defined in this~~
2 ~~act.~~

3 ~~(d) Acquisition of land which is to be used for the~~
4 ~~construction of a health care facility, or office facilities~~
5 ~~for health care providers.~~

6 ~~(e) Termination of a health care service.~~

7 (c)(f) Shared services contracts or projects.

8 (d)(g) A transfer of a certificate of need.

9 ~~(h) Emergency projects and unforeseen major public~~
10 ~~health hazards.~~

11 (e)(i) A 50-percent increase in nursing home beds for
12 a facility incorporated and operating in this state for at
13 least 60 years on or before July 1, 1988, which has a licensed
14 nursing home facility located on a campus providing a variety
15 of residential settings and supportive services. The
16 increased nursing home beds shall be for the exclusive use of
17 the campus residents. Any application on behalf of an
18 applicant meeting this requirement shall be subject to the
19 base fee of \$5,000 provided in s. 408.038.

20 (f)(j) Combination within one nursing home facility of
21 the beds or services authorized by two or more certificates of
22 need issued in the same planning subdistrict.

23 (g)(k) Division into two or more nursing home
24 facilities of beds or services authorized by one certificate
25 of need issued in the same planning subdistrict. Such
26 division shall not be approved if it would adversely affect
27 the original certificate's approved cost.

28 (h) Replacement of a health care facility when the
29 proposed project site is located in the same district and
30 within a 1-mile radius of the replaced health care facility.

31

1 The agency ~~department~~ shall develop rules to implement the
2 provisions for expedited review, including time schedule,
3 application content, and application processing.

4 (3) EXEMPTIONS.--Upon request, supported by such
5 documentation as the agency ~~department~~ requires, the agency
6 ~~department~~ shall grant an exemption from the provisions of
7 subsection (1):

8 ~~(a) For any expenditure by or on behalf of a health~~
9 ~~care facility for any part of the physical plant which is not~~
10 ~~to be directly used for providing health services or housing~~
11 ~~health care providers. This exemption applies to expenditures~~
12 ~~for parking facilities, meeting rooms, cafeterias,~~
13 ~~administrative data processing facilities, research buildings,~~
14 ~~landscaping, and similar projects, but does not apply to~~
15 ~~expenditures for office facilities for health care providers.~~

16 ~~(b) For any expenditure to eliminate or prevent safety~~
17 ~~hazards as defined by federal, state, or local codes.~~

18 ~~(c) For any expenditure to replace any part of a~~
19 ~~facility or equipment which is destroyed as a result of fire,~~
20 ~~civil disturbance, or storm or any other act of God.~~

21 ~~(d) For any expenditure to acquire major medical~~
22 ~~equipment that is a substantially identical replacement for~~
23 ~~existing equipment being taken out of service.~~

24 (a)~~(e)~~ For the initiation or expansion of obstetric
25 services after July 1, 1988.

26 (b)~~(f)~~ For any expenditure to replace or renovate any
27 part of a licensed health care nursing facility, provided that
28 the number of licensed beds will not increase and, in the case
29 of a replacement facility, the project site is the same as the
30 facility being replaced.

31

1 (c)~~(g)~~ For providing respite care services. ~~As used~~
2 ~~in this paragraph, the term "respite care" means short-term~~
3 ~~care in a licensed health care facility which is personal or~~
4 ~~custodial in nature and is provided by reason of chronic~~
5 ~~illness, physical infirmity, or advanced age for the purpose~~
6 ~~of temporarily relieving family members of the burden of~~
7 ~~providing care and attendance in the home. In providing~~
8 ~~respite care, the health care facility must be the primary~~
9 ~~caregiver.~~An individual may be admitted to a respite care
10 program in a hospital without regard to inpatient requirements
11 relating to admitting order and attendance of a member of a
12 medical staff.

13 (d)~~(h)~~ For hospice services provided by a rural
14 hospital, as defined in s. 395.602, or for swing beds in such
15 rural hospital in a number that does not exceed one-half of
16 its licensed beds.

17 (e)~~(i)~~ For the conversion of licensed acute care
18 hospital beds to Medicare and Medicaid certified skilled
19 nursing beds in a rural hospital as defined in s. 395.602, so
20 long as the conversion of the beds does not involve the
21 construction of new facilities. The total number of skilled
22 nursing beds, including swing beds, may not exceed one-half of
23 the total number of licensed beds in the rural hospital as of
24 July 1, 1993. Certified skilled nursing beds designated under
25 this paragraph, excluding swing beds, shall be included in the
26 community nursing home bed inventory. A rural hospital which
27 subsequently decertifies any acute care beds exempted under
28 this paragraph shall notify the agency of the decertification,
29 and the agency shall adjust the community nursing home bed
30 inventory accordingly.

31

1 ~~(f)(j)~~ For the addition of nursing home beds at a
2 skilled nursing facility that is part of a retirement
3 community that provides a variety of residential settings and
4 supportive services and that has been incorporated and
5 operated in this state for at least 65 years on or before July
6 1, 1994. All nursing home beds must not be available to the
7 public but must be for the exclusive use of the community
8 residents.

9 ~~(g)(k)~~ For an increase in the bed capacity of a
10 nursing facility licensed for at least 50 beds as of January
11 1, 1994, under part II of chapter 400 which is not part of a
12 continuing care facility if, after the increase, the total
13 licensed bed capacity of that facility is not more than 60
14 beds and if the facility has been continuously licensed since
15 1950 and has received a superior rating on each of its two
16 most recent licensure surveys.

17 (h) For the establishment of a Medicare-certified home
18 health agency by a facility certified under chapter 651; a
19 retirement community, as defined in s. 400.404(2)(e); or a
20 residential facility that serves only retired military
21 personnel, their dependents, and the surviving dependents of
22 deceased military personnel. Medicare-reimbursed home health
23 services provided through such agency shall be offered
24 exclusively to residents of the facility or retirement
25 community or to residents of facilities or retirement
26 communities owned, operated, or managed by the same corporate
27 entity. Each visit made to deliver Medicare-reimbursable home
28 health services to a home health patient who, at the time of
29 service, is not a resident of the facility or retirement
30 community shall be a deceptive and unfair trade practice and
31 constitutes a violation of ss. 501.201-501.213.

1 (i) For the establishment of a Medicare-certified home
2 health agency. This paragraph shall take effect 90 days after
3 the adjournment sine die of the next regular session of the
4 Legislature occurring after the legislative session in which
5 the Legislature receives a report from the Director of Health
6 Care Administration certifying that the federal Health Care
7 Financing Administration has implemented a per-episode
8 prospective pay system for Medicare-certified home health
9 agencies.

10 (j) For an inmate health care facility built by or for
11 the exclusive use of the Department of Corrections as provided
12 in chapter 945. This exemption expires when such facility is
13 converted to other uses.

14 (k) For an expenditure by or on behalf of a health
15 care facility to provide a health service exclusively on an
16 outpatient basis.

17 (l) For the termination of a health care service.

18 (m) For the delicensure of beds. An application
19 submitted under this paragraph must identify the number, the
20 classification, and the name of the facility in which the beds
21 to be delicensed are located.

22 (n) For the provision of adult inpatient diagnostic
23 cardiac catheterization services in a hospital.

24 1. In addition to any other documentation otherwise
25 required by the agency, a request for an exemption submitted
26 under this paragraph must comply with the following criteria:

27 a. The applicant must certify it will not provide
28 therapeutic cardiac catheterization pursuant to the grant of
29 the exemption.

30 b. The applicant must certify it will meet and
31 continuously maintain the minimum licensure requirements

1 adopted by the agency governing such programs pursuant to
2 subparagraph 2.

3 c. The applicant must certify it will provide a
4 minimum of 2 percent of its services to charity and Medicaid
5 patients.

6 2. The agency shall adopt licensure requirements by
7 rule which govern the operation of adult diagnostic cardiac
8 catheterization programs established pursuant to the exemption
9 provided in this paragraph. The rules shall ensure that such
10 programs:

11 a. Perform only adult diagnostic cardiac
12 catheterization services authorized by the exemption and will
13 not provide therapeutic cardiac catheterization or any other
14 services not authorized by the exemption.

15 b. Maintain sufficient appropriate equipment and
16 health personnel to ensure quality and safety.

17 c. Maintain appropriate program volumes to ensure
18 quality and safety.

19 d. Provide a minimum of 2 percent of its services to
20 charity and Medicaid patients each year.

21 3.a. The exemption provided by this paragraph shall
22 not apply unless the agency determines that the program is in
23 compliance with the requirements of subparagraph 1. and that
24 the program will, after beginning operation, continuously
25 comply with the rules adopted pursuant to subparagraph 2. The
26 agency shall monitor such programs to ensure compliance with
27 the requirements of subparagraph 2.

28 b.(I) The exemption for a program shall expire
29 immediately when the program fails to comply with the rules
30 adopted pursuant to sub-subparagraphs 2.a., b., and c.

31

1 (II) Beginning 18 months after a program first begins
2 treating patients, the exemption for a program shall expire
3 when the program fails to comply with the rules adopted
4 pursuant to sub-subparagraphs 2.c. and d.

5 (III) If the exemption for a program expires pursuant
6 to sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the
7 agency shall not grant an exemption pursuant to this paragraph
8 for an adult diagnostic cardiac catheterization program
9 located at the same hospital until 2 years following the date
10 of the determination by the agency that the program failed to
11 comply with the rules adopted pursuant to subparagraph 2.

12 4. The agency shall not grant any exemption under this
13 paragraph until the adoption of the rules required under this
14 paragraph, or until March 1, 1998, whichever comes first.
15 However, if final rules have not been adopted by March 1,
16 1998, the proposed rules governing the exemptions shall be
17 used by the agency to grant exemptions under the provisions of
18 this paragraph until final rules become effective.

19
20 A request for exemption under this subsection may be made at
21 any time and is not subject to the batching requirements of
22 this section.

23 Section 5. Section 408.037, Florida Statutes, is
24 amended to read:

25 408.037 Application content.--

26 (1) An application for a certificate of need must
27 shall contain:

28 (a)(1) A detailed description of the proposed project
29 and statement of its purpose and need in relation to ~~the~~
30 ~~applicant's long-range plan, the local health plan, and the~~
31 state health plan.

1 **(b)**~~(2)~~ A statement of the financial resources needed
2 by and available to the applicant to accomplish the proposed
3 project. This statement must ~~shall~~ include:

4 **1.**~~(a)~~ A complete listing of all capital projects,
5 including new health facility development projects and health
6 facility acquisitions applied for, pending, approved, or
7 underway in any state at the time of application, regardless
8 of whether or not that state has a certificate-of-need program
9 or a capital expenditure review program pursuant to s. 1122 of
10 the Social Security Act. The agency ~~department~~ may, by rule,
11 require less-detailed information from major health care
12 providers. This listing must ~~shall~~ include the applicant's
13 actual or proposed financial commitment to those projects and
14 an assessment of their impact on the applicant's ability to
15 provide the proposed project.

16 **2.**~~(b)~~ A detailed listing of the needed capital
17 expenditures, including sources of funds.

18 **3.**~~(c)~~ A detailed financial projection, including a
19 statement of the projected revenue and expenses ~~for the period~~
20 ~~of construction and~~ for the first 2 years of operation after
21 completion of the proposed project. This statement must ~~shall~~
22 include a detailed evaluation of the impact of the proposed
23 project on the cost of other services provided by the
24 applicant.

25 **(c)**~~(3)~~ An audited financial statement of the
26 applicant. In an application submitted by an existing health
27 care facility, health maintenance organization, or hospice,
28 financial condition documentation must ~~shall~~ include, but need
29 not be limited to, a balance sheet and a profit-and-loss
30 statement of the 2 previous fiscal years' operation.

31

1 (2) The applicant must certify that it will license
2 and operate the health care facility. For an existing health
3 care facility, the applicant must be the licenseholder of the
4 facility.

5 ~~(4) A certified copy of a resolution by the board of~~
6 ~~directors of the applicant, or other governing authority if~~
7 ~~not a corporation, authorizing the filing of the application;~~
8 ~~authorizing the applicant to incur the expenditures necessary~~
9 ~~to accomplish the proposed project; certifying that if issued~~
10 ~~a certificate, the applicant shall accomplish the proposed~~
11 ~~project within the time allowed by law and at or below the~~
12 ~~costs contained in the application; and certifying that the~~
13 ~~applicant shall license and operate the facility.~~

14 Section 6. Section 408.038, Florida Statutes, is
15 amended to read:

16 408.038 Fees.--The department shall assess fees on
17 certificate-of-need applications. Such fees shall be for the
18 purpose of funding ~~the Statewide Health Council,~~the functions
19 of the local health councils, and the activities of the
20 department and shall be allocated as provided in s. 408.033.

21 (1) The fee shall be determined as follows:

22 (a)~~(1)~~ A minimum base fee of \$5,000.

23 (b)~~(2)~~ In addition to the base fee of \$5,000, 0.015 of
24 each dollar of proposed expenditure, except that a fee may not
25 exceed \$22,000.

26 (2) The fee is fully refundable:

27 (a) When an application is not accepted by the agency;
28 or

29 (b) When an accepted application is deemed incomplete
30 and is withdrawn by the agency as a result of the omissions
31 review.

1 (3) The fee is refundable, except for the \$5,000 base
2 fee, when an accepted application is deemed incomplete as a
3 result of a legal challenge or is deemed complete and is
4 voluntarily withdrawn by the applicant.

5 Section 7. Subsections (1), (2), and (5) and paragraph
6 (b) of subsection (4) of section 408.039, Florida Statutes,
7 1996 Supplement, are amended to read:

8 408.039 Review process.--The review process for
9 certificates of need shall be as follows:

10 (1) REVIEW CYCLES.--The agency department by rule
11 shall provide for applications to be submitted on a timetable
12 or cycle basis; provide for review on a timely basis; and
13 provide for all completed applications pertaining to similar
14 types of services or, facilities, ~~or equipment~~ affecting the
15 same service district to be considered in relation to each
16 other no less often than two times a year.

17 (2) LETTERS OF INTENT.--

18 (a) At least 30 days prior to filing an application, a
19 letter of intent shall be filed by the applicant with the
20 agency local health council and the department, respecting the
21 development of a proposal subject to review. No letter of
22 intent is required for expedited projects as defined by rule
23 by the agency department.

24 (b) The agency department shall provide a mechanism by
25 which applications may be filed to compete with proposals
26 described in filed letters of intent.

27 (c) Letters of intent must shall describe the
28 proposal; specify the with specificity, including proposed
29 capital expenditures, number of beds sought, if any; identify
30 the, services to be provided and the, specific subdistrict
31 location; and identify, identification of the applicant,

1 ~~including the names of those with controlling interest in the~~
2 ~~applicant, and such other information as the department may by~~
3 ~~rule prescribe. The letter of intent shall contain a certified~~
4 ~~copy of a resolution by the board of directors of the~~
5 ~~applicant, or other governing authority if not a corporation,~~
6 ~~authorizing the filing of the application described in the~~
7 ~~letter of intent; authorizing the applicant to incur the~~
8 ~~expenditures necessary to accomplish the proposed project;~~
9 ~~certifying that if issued a certificate, the applicant shall~~
10 ~~accomplish the proposed project within the time allowed by law~~
11 ~~and at or below the costs contained in the application; and~~
12 ~~certifying that the applicant shall license and operate the~~
13 ~~facility.~~

14 (d) Within 21 ~~14~~ days after filing a letter of intent,
15 the agency ~~the applicant shall publish a notice of filing to~~
16 ~~be published in a newspaper of general circulation in the area~~
17 ~~affected by the proposal. The notice of filing shall be~~
18 ~~published once a week for 2 consecutive weeks on forms and in~~
19 ~~the format and content specified by the department by rule.~~
20 ~~Within 21 days after the filing, the department shall publish~~
21 ~~notice of the filing of letters of intent in the Florida~~
22 ~~Administrative Weekly and notice that, if requested, a public~~
23 ~~hearing shall be held at the local level within 21 days after~~
24 ~~the application is deemed complete. Notices under this~~
25 paragraph must ~~subsection shall~~ contain due dates applicable
26 to the cycle for filing applications and for requesting a
27 hearing.

28 (4) STAFF RECOMMENDATIONS.--

29 (b) Within 60 days after all the applications in a
30 review cycle are determined to be complete, the department
31 shall issue its State Agency Action Report and Notice of

1 Intent to grant a certificate of need for the project in its
2 entirety, to grant a certificate of need for identifiable
3 portions of the project, or to deny a certificate of need.
4 The State Agency Action Report shall set forth in writing its
5 findings of fact and determinations upon which its decision is
6 based. If a finding of fact or determination by the
7 department is counter to the district plan of the local health
8 council, the department shall provide in writing its reason
9 for its findings, item by item, to the local health council
10 ~~and the Statewide Health Council~~. If the department intends
11 to grant a certificate of need, the State Agency Action Report
12 or the Notice of Intent shall also include any conditions
13 which the department intends to attach to the certificate of
14 need. The department shall designate by rule a senior staff
15 person, other than the person who issues the final order, to
16 issue State Agency Action Reports and Notices of Intent.

17 (5) ADMINISTRATIVE HEARINGS.--

18 (a) Within 21 days after publication of notice of the
19 State Agency Action Report and Notice of Intent, any person
20 authorized under paragraph (c) ~~(b)~~ to participate in a hearing
21 may file a request for an administrative hearing; failure to
22 file a request for hearing within 21 days of publication of
23 notice shall constitute a waiver of any right to a hearing and
24 a waiver of the right to contest the final decision of the
25 agency ~~department~~. A copy of the request for hearing shall be
26 served on the applicant.

27 (b) Hearings shall be held in Tallahassee unless the
28 administrative law judge determines that changing the location
29 will facilitate the proceedings. ~~In administrative proceedings~~
30 ~~challenging the issuance or denial of a certificate of need,~~
31 ~~only applicants considered by the department in the same~~

1 ~~batching cycle are entitled to a comparative hearing on their~~
2 ~~applications. Existing health care facilities may initiate or~~
3 ~~intervene in such administrative hearing upon a showing that~~
4 ~~an established program will be substantially affected by the~~
5 ~~issuance of a certificate of need to a competing proposed~~
6 ~~facility or program within the same district, provided that~~
7 ~~existing health care providers, other than the applicant, have~~
8 ~~no standing or right to initiate or intervene in an~~
9 ~~administrative hearing involving a health care project which~~
10 ~~is subject to certificate-of-need review solely on the basis~~
11 ~~of s. 408.036(1)(c).The agency department shall assign~~
12 ~~proceedings requiring hearings to the Division of~~
13 ~~Administrative Hearings of the Department of Management~~
14 ~~Services within 10 days after the time has expired for~~
15 ~~requesting run to request a hearing. Except upon unanimous~~
16 ~~consent of the parties or upon the granting by the~~
17 ~~administrative law judge of a motion of continuance, hearings~~
18 ~~shall commence within 60 days after the administrative law~~
19 ~~judge has been assigned. All ~~non-state-agency~~ parties, except~~
20 ~~the agency, shall bear their own expense of preparing a~~
21 ~~transcript. In any application for a certificate of need which~~
22 ~~is referred to the Division of Administrative Hearings for~~
23 ~~hearing, the administrative law judge shall complete and~~
24 ~~submit to the parties a recommended order as provided in ss.~~
25 ~~120.569 and 120.57. The recommended order shall be issued~~
26 ~~within 30 days after the receipt of the proposed recommended~~
27 ~~orders or the deadline for submission of such proposed~~
28 ~~recommended orders, whichever is earlier. The division shall~~
29 ~~adopt procedures for administrative hearings which shall~~
30 ~~maximize the use of stipulated facts and shall provide for the~~
31 ~~admission of prepared testimony.~~

1 (c) In administrative proceedings challenging the
2 issuance or denial of a certificate of need, only applicants
3 considered by the agency in the same batching cycle are
4 entitled to a comparative hearing on their applications.
5 Existing health care facilities may initiate or intervene in
6 such administrative hearing upon a showing that an established
7 program will be substantially affected by the issuance of a
8 certificate of need to a competing proposed facility or
9 program within the same district.~~The department shall issue~~
10 ~~its final order within 45 days after receipt of the~~
11 ~~recommended order.~~

12 (d) The applicant's failure to strictly comply with
13 the requirements of s. 408.037(1) or paragraph (2)(c) is not
14 cause for dismissal of the application, unless the failure to
15 comply impairs the fairness of the proceeding or affects the
16 correctness of the action taken by the agency.~~If the~~
17 ~~department fails to take action within the time specified in~~
18 ~~paragraph (4)(a) or paragraph (5)(c), or as otherwise agreed~~
19 ~~to by the applicant and the department, the applicant may take~~
20 ~~appropriate legal action to compel the department to act. When~~
21 ~~making a determination on an application for a certificate of~~
22 ~~need, the department is specifically exempt from the time~~
23 ~~limitations provided in s. 120.60(1).~~

24 (e) The agency shall issue its final order within 45
25 days after receipt of the recommended order. If the agency
26 fails to take action within such time, or as otherwise agreed
27 to by the applicant and the agency, the applicant may take
28 appropriate legal action to compel the agency to act. When
29 making a determination on an application for a certificate of
30 need, the agency is specifically exempt from the time
31 limitations provided in s. 120.60(1).

1 Section 8. Paragraphs (a), (b), and (d) of subsection
2 (2) of section 408.040, Florida Statutes, are amended to read:
3 408.040 Conditions and monitoring.--
4 (2)(a) Unless the applicant has commenced
5 construction, if the project provides for construction, unless
6 the applicant has incurred an enforceable capital expenditure
7 commitment for a project, if the project does not provide for
8 construction, or unless subject to paragraph (b), a
9 certificate of need shall terminate 18 months ~~1 year~~ after the
10 date of issuance, except in the case of a multifacility
11 project, as defined in s. 408.032~~(17)~~, where the certificate
12 of need shall terminate 2 years after the date of issuance.
13 ~~The department may extend the period of validity of the~~
14 ~~certificate for an additional period of up to 6 months, upon a~~
15 ~~showing of good cause, as defined by rule, by the applicant~~
16 ~~for the extension.~~The agency department shall monitor the
17 progress of the holder of the certificate of need in meeting
18 the timetable for project development specified in the
19 application with the assistance of the local health council as
20 specified in s. 408.033(1)(b)5., and may revoke the
21 certificate of need, if the holder of the certificate is not
22 meeting such timetable and is not making a good-faith ~~good~~
23 ~~faith~~ effort, as defined by rule, to meet it.
24 (b) A certificate of need issued to an applicant
25 holding a provisional certificate of authority under chapter
26 651 shall terminate 1 year after the applicant receives a
27 valid certificate of authority from the Department of
28 Insurance. ~~The certificate of need validity period may be~~
29 ~~extended by the department for an additional period of up to 6~~
30 ~~months upon a showing of good cause, as defined by rule, by~~
31 ~~the applicant for the extension.~~

1 (d) If an application is filed to consolidate two or
2 more certificates as authorized by s. 408.036(2)(f)(~~t~~) or to
3 divide a certificate of need into two or more facilities as
4 authorized by s. 408.036(2)(g)(~~k~~), the validity period of the
5 certificate or certificates of need to be consolidated or
6 divided shall be extended for the period beginning upon
7 submission of the application and ending when final agency
8 action and any appeal from such action has been concluded.
9 However, no such suspension shall be effected if the
10 application is withdrawn by the applicant.

11 Section 9. Section 408.042, Florida Statutes, is
12 amended to read:

13 408.042 Limitation on transfer.--The holder of a
14 certificate of need shall not charge a price for the transfer
15 of the certificate of need to another person that exceeds the
16 total amount of the actual costs incurred by the holder in
17 obtaining the certificate of need. Such actual costs must be
18 documented by an affidavit executed by the transferor under
19 oath. A holder who violates this subsection is guilty of a
20 misdemeanor of the first degree, punishable as provided in s.
21 775.082, or by a fine not exceeding \$10,000, or both. ~~Nothing~~
22 ~~in this section shall be construed to prevent or alter the~~
23 ~~value of a transfer or sale by an existing facility of a~~
24 ~~certificate of need obtained before June 17, 1987, when such~~
25 ~~facility is transferred with the certificate of need.~~

26 Section 10. Section 408.043, Florida Statutes, is
27 amended to read:

28 408.043 Special provisions.--

29 (1) OSTEOPATHIC ACUTE CARE HOSPITALS.--When an
30 application is made for a certificate of need to construct or
31 to expand an osteopathic acute care hospital, the need for

1 such hospital shall be determined on the basis of the need for
2 and availability of osteopathic services and osteopathic acute
3 care hospitals in the district. When a prior certificate of
4 need to establish an osteopathic acute care hospital has been
5 issued in a district, and the facility is no longer used for
6 that purpose, the agency ~~department~~ may continue to count such
7 facility and beds as an existing osteopathic facility in any
8 subsequent application for construction of an osteopathic
9 acute care hospital.

10 (2) HOSPICES.--When an application is made for a
11 certificate of need to establish or to expand a hospice, the
12 need for such hospice shall be determined on the basis of the
13 need for and availability of hospice services in the
14 community. The formula on which the certificate of need is
15 based shall discourage regional monopolies and promote
16 competition. The inpatient hospice care component of a
17 hospice which is a freestanding facility, or a part of a
18 facility, which is primarily engaged in providing inpatient
19 care and related services and is not licensed as a health care
20 facility shall also be required to obtain a certificate of
21 need. Provision of hospice care by any current provider of
22 health care is a significant change in service and therefore
23 requires a certificate of need for such services.

24 ~~(3) VALIDITY OF CERTIFICATE OF NEED.--A certificate of~~
25 ~~need issued by the department for nursing home facilities of~~
26 ~~100 beds or more prior to February 14, 1986, is valid,~~
27 ~~provided that such facility has expended at least \$50,000 in~~
28 ~~reliance upon such certificate of need, excluding legal fees,~~
29 ~~prior to the initiation of proceedings under the~~
30 ~~Administrative Procedure Act subsequent to February 14, 1986,~~
31 ~~contesting the validity of the certificate of need. If such~~

1 ~~nursing home certificate of need includes beds that have not~~
2 ~~yet been licensed as of June 17, 1987, such beds shall not be~~
3 ~~considered or utilized in the determination of need or~~
4 ~~included in the inventory of licensed or approved nursing home~~
5 ~~beds by the department, with respect to applications filed~~
6 ~~before June 17, 1987. This subsection shall only apply to~~
7 ~~nursing home beds. Nothing contained herein shall be~~
8 ~~construed to deny action pursuant to s. 120.69, or to~~
9 ~~eliminate any conditions of the certificate of need or time~~
10 ~~requirements to commence construction, including any~~
11 ~~authorized extensions.~~

12 (3)~~(4)~~ RURAL HEALTH NETWORKS.--Preference shall be
13 given in the award of a certificate of need to members of
14 certified rural health networks, as provided for in s.
15 381.0406, subject to the following conditions:

16 (a) Need must be shown pursuant to s. 408.035.

17 (b) The proposed project must:

18 1. Strengthen health care services in rural areas
19 through partnerships between rural care providers; or

20 2. Increase access to inpatient health care services
21 for Medicaid recipients or other low-income persons who live
22 in rural areas.

23 (c) No preference shall be given under this section
24 for the establishment of skilled nursing facility services by
25 a hospital.

26 (4) PRIVATE ACCREDITATION NOT REQUIRED.--Accreditation
27 by any private organization may not be a requirement for the
28 issuance or maintenance of a certificate of need under ss.
29 408.031-408.045.

30 Section 11. Section 408.0455, Florida Statutes, is
31 amended to read:

1 408.0455 ~~Effect of ss. 408.031-408.045;~~ Rules; health
2 ~~councils and plans;~~ pending proceedings.--

3 ~~(1) Nothing contained in ss. 408.031-408.045 is~~
4 ~~intended to repeal or modify any of the existing rules of the~~
5 ~~Department of Health and Rehabilitative Services, which shall~~
6 ~~remain in effect and shall be enforceable by the Agency for~~
7 ~~Health Care Administration; the existing composition of the~~
8 ~~local health councils and the Statewide Health Council; or the~~
9 ~~state health plan; or any of the local district health plans,~~
10 ~~unless, and only to the extent that, there is a direct~~
11 ~~conflict with the provisions of ss. 408.031-408.045.~~

12 ~~(2) The rules of the agency Department of Health and~~
13 ~~Rehabilitative Services in effect on June 30, 1997 ~~1992~~, which~~
14 ~~implement the provisions of former ss. 381.701-381.715, shall~~
15 ~~remain in effect and shall be enforceable by the agency for~~
16 ~~Health Care Administration with respect to ss. 408.031-408.045~~
17 ~~until such rules are repealed or amended by the agency for~~
18 ~~Health Care Administration, and no judicial or administrative~~
19 ~~proceeding pending on July 1, 1997 ~~1992~~, shall be abated as a~~
20 ~~result of the provisions of ss. 408.031-408.043(1) and (2); s.~~
21 ~~408.044; or s. 408.045.~~

22 Section 12. Paragraph (i) of subsection (4) of section
23 240.5121, Florida Statutes, is amended to read:

24 240.5121 Cancer control and research.--

25 (4) FLORIDA CANCER CONTROL AND RESEARCH ADVISORY
26 COUNCIL; CREATION; COMPOSITION.--

27 (i) The council shall approve each year a program for
28 cancer control and research to be known as the "Florida Cancer
29 Plan" which shall be ~~consistent with the State Health Plan~~
30 ~~developed by the Statewide Health Council and integrated and~~
31 ~~coordinated with existing programs in this state.~~

1 Section 13. Subsection (1) of section 395.604, Florida
2 Statutes, is amended to read:

3 395.604 Other rural hospital programs.--

4 (1) The agency may license rural primary care
5 hospitals subject to federal approval for participation in the
6 Medicare and Medicaid programs. Rural primary care hospitals
7 shall be treated in the same manner as emergency care
8 hospitals and rural hospitals with respect to ss.
9 395.605(2)-(8)(a), 408.033(2)(b)3.~~(3)(b)3.~~, and 408.038.

10 Section 14. Subsection (1) of section 408.702, Florida
11 Statutes, is amended to read:

12 408.702 Community health purchasing alliance;
13 establishment.--

14 (1) There is hereby created a community health
15 purchasing alliance in each of the 11 health service planning
16 districts established under s. 408.032~~(5)~~. Each alliance must
17 be operated as a state-chartered, nonprofit private
18 organization organized pursuant to chapter 617.

19 Section 15. Subsection (6) of section 400.602, Florida
20 Statutes, is amended to read:

21 400.602 Licensure required; prohibited acts;
22 exemptions; display, transferability of license.--

23 (6) Notwithstanding s. 400.601(3)~~(2)~~, at any time
24 after July 1, 1995, any entity entitled to licensure under
25 subsection (5) may obtain a license for up to two additional
26 hospices in accordance with the other requirements of this
27 part and upon receipt of any certificate of need that may be
28 required under the provisions of ss. 408.031-408.045.

29 Section 16. Paragraph (c) of subsection (1) of section
30 641.60, Florida Statutes, 1996 Supplement, is amended to read:

31 641.60 Statewide Managed Care Ombudsman Committee.--

1 (1) As used in ss. 641.60-641.75:
2 (c) "District" means one of the health service
3 planning districts as defined in s. 408.032~~(5)~~.
4 Section 17. Subsection (9) of section 186.003,
5 subsection (9) of section 186.503, and sections 408.0365 and
6 408.0366, Florida Statutes, are repealed.
7 Section 18. Subject to any final order of the Florida
8 Supreme Court, ss. 408.036(1)(b) and 408.039(5)(c), Florida
9 Statutes, as amended by this act, do not apply to any
10 replacement application filed with the Agency for Health Care
11 Administration prior to or pending a final hearing before the
12 Division of Administrative Hearings as of April 1, 1997. It is
13 the intent of the Legislature that the remaining provisions of
14 this act do not apply to applications that have been filed
15 prior to the effective date of this act.

16 Section 19. This act shall take effect July 1, 1997.

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19 HOUSE SUMMARY

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21 With respect to certificate-of-need review: revises
22 definitions; revises review criteria; revises categories
23 of facilities, services, and expenditures subject to
24 review or expedited review, or exempt from review;
25 revises requirements relating to an applicant's
26 description of a proposed project, financial projection,
27 and licensure; provides for refund of certain application
28 fees; revises scope of review cycles, and requirements
29 and procedures relating to letters of intent and
30 administrative hearings; increases the validity period of
31 certificates; removes a special provision relating to the
validity of certain nursing home facility certificates;
provides that private accreditation is not required for
certificate issuance or maintenance; provides for
continuation of certain rules and pending proceedings;
removes provisions relating to the Statewide Health
Council and duties thereof. See bill for details.

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31