

By the Committee on Health Care

317-547A-98

1 A bill to be entitled
2 An act relating to certificates of need;
3 amending s. 400.071, F.S., relating to nursing
4 home licensure; revising certain requirements
5 for the Agency for Health Care Administration
6 in issuing a certificate of need to a nursing
7 home; deleting provisions expressing
8 legislative preference for certificate-of-need
9 applications that indicate intent to meet
10 certain needs of Medicaid recipients with
11 respect to nursing home services; amending s.
12 408.034, F.S.; specifying duties and
13 responsibilities of the agency with respect to
14 administering the certificate-of-need program;
15 deleting a reference to the statewide health
16 plan; making conforming and technical
17 revisions; amending s. 408.036, F.S.; exempting
18 from certificate-of-need regulation certain
19 nursing home beds operated by or on behalf of
20 the Department of Veterans' Affairs; excluding
21 the exempted beds from the nursing home bed
22 inventory; amending s. 408.040, F.S., relating
23 to certificate-of-need conditions and
24 monitoring of certificates of need; authorizing
25 the Agency for Health Care Administration to
26 condition issuance of a certificate of need for
27 nursing home beds on an applicant's indication
28 that it will provide a specified number of beds
29 for Medicaid residents; requiring that such
30 condition be stated on the certificate of need;
31 directing the agency to notify the Medicaid

1 program office and the Department of Elderly
2 Affairs of conditions imposed in an area in
3 which a community diversion pilot project is
4 implemented; correcting references to reflect
5 the transfer of the responsibility for
6 administering the certificate-of-need program
7 from the Department of Health and
8 Rehabilitative Services to the Agency for
9 Health Care Administration; establishing a
10 workgroup to study and monitor market and
11 regulatory developments that may affect certain
12 nursing home bed allocations; requiring
13 reports; providing for workgroup termination;
14 providing an effective date.

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16 Be It Enacted by the Legislature of the State of Florida:

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18 Section 1. Subsection (7) of section 400.071, Florida
19 Statutes, is amended to read:

20 400.071 Application for license.--

21 (7) The agency may not issue a license to a nursing
22 home that fails to receive a certificate of need under the
23 provisions of ss. 408.031-408.045. ~~The agency may consider,~~
24 ~~in addition to the other criteria specified in s. 408.035, the~~
25 ~~statement of intent by the applicant to designate a percentage~~
26 ~~of the beds of the facility for use by patients eligible for~~
27 ~~care under Title XIX of the Social Security Act, the~~
28 ~~percentage to be all or a portion of the need for such beds as~~
29 ~~identified in the local health plan. It is the intent of the~~
30 ~~Legislature that preference be given to an application which~~
31 ~~most closely meets the need for such beds.~~

1 Section 2. Section 408.034, Florida Statutes, is
2 amended to read:

3 408.034 Duties and responsibilities of agency
4 ~~department~~; rules.--

5 (1) The agency ~~department~~ is designated as the single
6 state agency to issue, revoke, or deny certificates of need
7 and to issue, revoke, or deny exemptions from
8 certificate-of-need review in accordance with the district
9 plans, ~~the statewide health plan,~~ and present and future
10 federal and state statutes. The agency ~~department~~ is
11 designated as the state health planning agency for purposes of
12 federal law.

13 (2) In the exercise of its authority to issue licenses
14 to health care facilities and health service providers, as
15 provided under chapters 393, 395, and parts II, IV, and VI †
16 ~~and V~~ of chapter 400, the agency ~~department~~ shall not
17 issue a license to any health care facility, health service
18 provider, hospice, or part of a health care facility which
19 fails to receive a certificate of need for the licensed
20 facility or service.

21 (3) The agency ~~department~~ shall establish, by rule,
22 uniform need methodologies for health services and health
23 facilities. In developing uniform need methodologies, the
24 agency ~~department~~ shall, at a minimum, consider the
25 demographic characteristics of the population, the health
26 status of the population, service use patterns, standards and
27 trends, geographic accessibility, and market economics.

28 (4) The agency ~~department~~ shall establish by rule a
29 nursing-home-bed-need ~~nursing home bed need~~ methodology that
30 ~~which~~ reduces the community nursing home bed need for the
31 areas of the state where the agency ~~department~~ establishes

1 pilot community diversion programs through the Title XIX aging
2 waiver program.

3 (5) The agency ~~department~~ may adopt rules necessary to
4 implement ss. 408.031-408.045.

5 Section 3. Paragraph (o) is added to subsection (3) of
6 section 408.036, Florida Statutes, to read:

7 408.036 Projects subject to review.--

8 (3) EXEMPTIONS.--Upon request, supported by such
9 documentation as the agency requires, the agency shall grant
10 an exemption from the provisions of subsection (1):

11 (o) For state veterans' nursing homes operated by or
12 on behalf of the Florida Department of Veterans' Affairs in
13 accordance with part II of chapter 296 for which at least 50
14 percent of the construction cost is federally funded and for
15 which the federal government pays a per diem rate not to
16 exceed one-half of the cost of the veterans' care in such
17 state nursing homes. These beds shall not be included in the
18 nursing home bed inventory.

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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 4. Section 408.040, Florida Statutes, is
24 amended to read:

25 408.040 Conditions and monitoring.--

26 (1)(a) The agency ~~department~~ may issue a certificate
27 of need predicated upon statements of intent expressed by an
28 applicant in the application for a certificate of need.

29 1. Any certificate of need issued for construction of
30 a new hospital or for the addition of beds to an existing
31 hospital shall include a statement of the number of beds

1 approved by category of service, including rehabilitation or
2 psychiatric service, for which the agency department has
3 adopted by rule a specialty-bed-need methodology. All beds
4 that ~~which~~ are approved, but are not covered by any
5 specialty-bed-need methodology, shall be designated as
6 general.

7 2. The agency may consider, in addition to the other
8 criteria specified in s. 408.035, a statement of intent by the
9 applicant to designate a percentage of the beds of the
10 facility for use by patients eligible for care under Title XIX
11 of the Social Security Act. Any certificate of need issued to
12 a nursing home in reliance upon an applicant's statements to
13 provide a specified number of beds for use by residents
14 eligible for care under Title XIX of the Social Security Act
15 must include a statement that such certification is a
16 condition of issuance of the certificate of need. The
17 certificate-of-need program shall notify the Medicaid program
18 office and the Department of Elderly Affairs when it imposes
19 conditions as authorized in this subparagraph in an area in
20 which a community diversion pilot project is implemented.

21 (b) A certificateholder may apply to the agency for a
22 modification of conditions imposed under paragraph (a). If the
23 holder of a certificate of need demonstrates good cause why
24 the certificate should be modified, the agency department
25 shall reissue the certificate of need with such modifications
26 as may be appropriate. The agency department shall by rule
27 define the factors constituting good cause for modification.

28 (c)~~(b)~~ If the holder of a certificate of need fails to
29 comply with a condition upon which the issuance of the
30 certificate was predicated, the agency department may assess
31 an administrative fine against the certificateholder in an

1 amount not to exceed \$1,000 per failure per day. In assessing
2 the penalty, the agency department shall take into account as
3 mitigation the relative lack of severity of a particular
4 failure. Proceeds of such penalties shall be deposited in the
5 Public Medical Assistance Trust Fund.

6 (2)(a) Unless the applicant has commenced
7 construction, if the project provides for construction, unless
8 the applicant has incurred an enforceable capital expenditure
9 commitment for a project, if the project does not provide for
10 construction, or unless subject to paragraph (b), a
11 certificate of need shall terminate 18 months after the date
12 of issuance, except in the case of a multifacility project, as
13 defined in s. 408.032, where the certificate of need shall
14 terminate 2 years after the date of issuance. The agency shall
15 monitor the progress of the holder of the certificate of need
16 in meeting the timetable for project development specified in
17 the application with the assistance of the local health
18 council as specified in s. 408.033(1)(b)5., and may revoke the
19 certificate of need, if the holder of the certificate is not
20 meeting such timetable and is not making a good faith effort,
21 as defined by rule, to meet it.

22 (b) A certificate of need issued to an applicant
23 holding a provisional certificate of authority under chapter
24 651 shall terminate 1 year after the applicant receives a
25 valid certificate of authority from the Department of
26 Insurance.

27 (c) The certificate-of-need validity period for a
28 project shall be extended by the agency department, to the
29 extent that the applicant demonstrates to the satisfaction of
30 the agency department that good faith commencement of the
31 project is being delayed by litigation or by governmental

1 action or inaction with respect to regulations or permitting
2 precluding commencement of the project.

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

13 (3) The agency ~~department~~ shall require the submission
14 of an executed architect's certification of final payment for
15 each certificate-of-need project approved by the agency
16 ~~department~~. Each project that ~~which~~ involves construction
17 shall submit such certification to the agency ~~department~~
18 within 30 days following completion of construction.

19 Section 5. (1)(a) There is created an interagency
20 workgroup located, for administrative purposes, within the
21 Agency for Health Care Administration. The workgroup will meet
22 on a regular basis, as determined by the agency.

23 (b) Workgroup participants shall be responsible for
24 only the expenses that they generate individually through
25 workgroup participation. However, the Agency for Health Care
26 Administration shall be responsible for expenses incidental to
27 the production of the workgroup reports, as required under
28 subsection (4).

29 (2)(a) The workgroup will study and monitor
30 developments that can ensure that a sufficient supply of
31 nursing home beds is available to Medicaid recipients,

1 identify alternatives to certificate-of-need conditions as a
2 means of securing nursing home beds for Medicaid recipients,
3 and recommend to the Medicaid program alternative approaches
4 for obtaining nursing home beds for Medicaid recipients.

5 (b) The workgroup shall analyze the effects on the
6 Medicaid nursing home bed supply caused by case-mix
7 reimbursement, selective contracting with nursing home
8 providers, and market changes resulting from Medicaid managed
9 care in securing nursing home services.

10 (3) The workgroup will consist of nine members,
11 allocated as follows: three representatives of the Agency for
12 Health Care Administration, with one representative each from
13 the Medicaid program, the certificate-of-need program, and the
14 Division of Health Quality Assurance; one representative of
15 the Department of Elderly Affairs; two representatives of the
16 Florida Health Care Association; two representatives of the
17 Florida Association of Homes for the Aging; and one
18 representative of Florida Legal Services.

19 (4) The workgroup shall submit to the Governor, the
20 President of the Senate, and the Speaker of the House of
21 Representatives an interim report of its findings by December
22 31, 1998, and a final report by December 31, 1999. The
23 workgroup shall be abolished effective January 1, 2000.

24 Section 6. This act shall take effect July 1, 1998.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 250
4 Deletes the requirement that the Agency for Health Care
5 Administration must include on a nursing home facility's
6 license the number of patient days that a nursing home
7 facility licensee agrees to provide Medicaid recipients.
8 Deletes language that directed the Agency for Health Care
9 Administration, in conjunction with the Medicaid program
10 office and the Department of Elderly Affairs, to develop
11 projections of the number of nursing facility patient days
12 needed for Medicaid recipients and, following agreement,
13 publishing the determined number of days in the Florida
14 Administrative Weekly along with the appropriate nursing home
15 bed certificate-of-need batching cycle data; changes
16 references from "number of patient days" to "number of beds"
17 in language authorizing the Agency for Health Care
18 Administration to issue a certificate of need conditioned on
19 statements made by applicants.
20 Deletes language that provided for expedited
21 certificate-of-need review of modifications of conditions
22 imposed on a certificate of need.
23 Changes a requirement that the Agency consult with the
24 Medicaid program office and the Department of Elderly Affairs
25 before imposing conditions on nursing homes operating in an
26 area in which a community diversion pilot project is
27 implemented to a requirement that the Agency notify them and
28 deletes a requirement for development of an impact analysis
29 when processing a request for modification of a
30 certificate-of-need condition.
31 Exempts from CON review state veterans' nursing homes that are
32 operated by or on behalf of the Florida Department of
33 Veterans' Affairs when federal funding accounts for a minimum
34 of 50 percent of the costs of construction of the facility and
35 the federal government pays for one-half of the facility
36 residents' care. The exempted nursing home beds are excluded
37 from the CON nursing home bed inventory.
38 Creates a nine-member interagency workgroup, with
39 private-sector participation, to study and monitor issues
40 relating to ensuring a sufficient number of Medicaid nursing
41 home beds. The workgroup is required to produce two reports
42 and is abolished effective January 1, 2000.