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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.

15  
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 ~~may~~ ~~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.

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 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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