

By Representative Minton

1                                   A bill to be entitled  
 2           An act relating to certificates of need;  
 3           amending s. 408.036, F.S.; eliminating from  
 4           certificate-of-need requirements projects  
 5           involving an addition of beds by new  
 6           construction or alteration or an increase in  
 7           licensed bed capacity; eliminating nursing home  
 8           facilities from certificate-of-need  
 9           requirements; amending s. 408.039, F.S.;  
 10          eliminating provisions relating to preferences  
 11          in the certificate-of-need review process for  
 12          nursing homes in geographically underserved  
 13          areas; amending s. 408.040, F.S.; conforming  
 14          provisions relating to certificate-of-need  
 15          applications; amending ss. 430.705 and 400.702,  
 16          F.S.; conforming provisions relating to  
 17          calculation of nursing home bed needs;  
 18          repealing s. 400.071(8), F.S., relating to  
 19          certificate-of-need requirement for licensure  
 20          of nursing homes; repealing s. 408.032(17),  
 21          F.S., relating to definition of "nursing home  
 22          geographically underserved area"; repealing ss.  
 23          408.034(4) and 430.708, F.S., relating to  
 24          calculation of nursing home bed needs;  
 25          providing an effective date.

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

28  
 29           Section 1. Section 408.036, Florida Statutes, 1998  
 30 Supplement, is amended to read:  
 31           408.036 Projects subject to review.--

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

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

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

14           (b)~~(c)~~ The conversion from one type of health care  
15 facility to another, including the conversion from one level  
16 of care to another, in a skilled or intermediate nursing  
17 facility, if the conversion effects a change in the level of  
18 care of 10 beds or 10 percent of total bed capacity of the  
19 skilled or intermediate nursing facility within a 2-year  
20 period. If the nursing facility is certified for both skilled  
21 and intermediate nursing care, the provisions of this  
22 paragraph do not apply.

23           ~~(d) Any increase in licensed bed capacity.~~

24           (c)~~(e)~~ Subject to the provisions of paragraph(3)~~(g)~~  
25 ~~(3)(i)~~, the establishment of a Medicare-certified home health  
26 agency, the establishment of a hospice, or the direct  
27 provision of such services by a health care facility or health  
28 maintenance organization for those other than the subscribers  
29 of the health maintenance organization; except that this  
30 paragraph does not apply to the establishment of a  
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1 Medicare-certified home health agency by a facility described  
2 in paragraph (3)(f)~~(3)(h)~~.

3 (d)~~(f)~~ An acquisition by or on behalf of a health care  
4 facility or health maintenance organization, by any means,  
5 which acquisition would have required review if the  
6 acquisition had been by purchase.

7 (e)~~(g)~~ The establishment of inpatient institutional  
8 health services by a health care facility, or a substantial  
9 change in such services.

10 (f)~~(h)~~ The acquisition by any means of an existing  
11 health care facility by any person, unless the person provides  
12 the agency with at least 30 days' written notice of the  
13 proposed acquisition, which notice is to include the services  
14 to be offered and the bed capacity of the facility, and unless  
15 the agency does not determine, within 30 days after receipt of  
16 such notice, that the services to be provided and the bed  
17 capacity of the facility will be changed.

18 (g)~~(i)~~ An increase in the cost of a project for which  
19 a certificate of need has been issued when the increase in  
20 cost exceeds 20 percent of the originally approved cost of the  
21 project, except that a cost overrun review is not necessary  
22 when the cost overrun is less than \$20,000.

23 (h)~~(j)~~ An increase in the number of psychiatric or  
24 rehabilitation beds.

25 (i)~~(k)~~ The establishment of tertiary health services.

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

29 (a) Cost overruns, as defined in paragraph (1)(g)  
30 ~~(1)(i)~~.

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

- 1           (c) Shared services contracts or projects.
- 2           (d) A transfer of a certificate of need.
- 3           ~~(e) A 50-percent increase in nursing home beds for a~~  
4 ~~facility incorporated and operating in this state for at least~~  
5 ~~60 years on or before July 1, 1988, which has a licensed~~  
6 ~~nursing home facility located on a campus providing a variety~~  
7 ~~of residential settings and supportive services. The~~  
8 ~~increased nursing home beds shall be for the exclusive use of~~  
9 ~~the campus residents. Any application on behalf of an~~  
10 ~~applicant meeting this requirement shall be subject to the~~  
11 ~~base fee of \$5,000 provided in s. 408.038.~~
- 12           ~~(f) Combination within one nursing home facility of~~  
13 ~~the beds or services authorized by two or more certificates of~~  
14 ~~need issued in the same planning subdistrict.~~
- 15           ~~(g) Division into two or more nursing home facilities~~  
16 ~~of beds or services authorized by one certificate of need~~  
17 ~~issued in the same planning subdistrict. Such division shall~~  
18 ~~not be approved if it would adversely affect the original~~  
19 ~~certificate's approved cost.~~
- 20           (e)(h) Replacement of a health care facility when the  
21 proposed project site is located in the same district and  
22 within a 1-mile radius of the replaced health care facility.
- 23
- 24 The agency shall develop rules to implement the provisions for  
25 expedited review, including time schedule, application  
26 content, and application processing.
- 27           (3) EXEMPTIONS.--Upon request, supported by such  
28 documentation as the agency requires, the agency shall grant  
29 an exemption from the provisions of subsection (1):
- 30           (a) For the initiation or expansion of obstetric  
31 services.

1           (b) For any expenditure to replace or renovate any  
2 part of a licensed health care facility, provided that the  
3 number of licensed beds will not increase and, in the case of  
4 a replacement facility, the project site is the same as the  
5 facility being replaced.

6           (c) For providing respite care services. An individual  
7 may be admitted to a respite care program in a hospital  
8 without regard to inpatient requirements relating to admitting  
9 order and attendance of a member of a medical staff.

10           (d) For hospice services or home health services  
11 provided by a rural hospital, as defined in s. 395.602, or for  
12 swing beds in such rural hospital in a number that does not  
13 exceed one-half of its licensed beds.

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

28           ~~(f) For the addition of nursing home beds at a skilled~~  
29 ~~nursing facility that is part of a retirement community that~~  
30 ~~provides a variety of residential settings and supportive~~  
31 ~~services and that has been incorporated and operated in this~~

1 ~~state for at least 65 years on or before July 1, 1994. All~~  
2 ~~nursing home beds must not be available to the public but must~~  
3 ~~be for the exclusive use of the community residents.~~

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

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

27 (g)~~(i)~~ For the establishment of a Medicare-certified  
28 home health agency. This paragraph shall take effect 90 days  
29 after the adjournment sine die of the next regular session of  
30 the Legislature occurring after the legislative session in  
31 which the Legislature receives a report from the Director of

1 Health Care Administration certifying that the federal Health  
2 Care Financing Administration has implemented a per-episode  
3 prospective pay system for Medicare-certified home health  
4 agencies.

5 (h)~~(j)~~ For an inmate health care facility built by or  
6 for the exclusive use of the Department of Corrections as  
7 provided in chapter 945. This exemption expires when such  
8 facility is converted to other uses.

9 (i)~~(k)~~ For an expenditure by or on behalf of a health  
10 care facility to provide a health service exclusively on an  
11 outpatient basis.

12 (j)~~(l)~~ For the termination of a health care service.

13 (k)~~(m)~~ For the delicensure of beds. An application  
14 submitted under this paragraph must identify the number, the  
15 classification, and the name of the facility in which the beds  
16 to be delicensed are located.

17 (l)~~(n)~~ For the provision of adult inpatient diagnostic  
18 cardiac catheterization services in a hospital.

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

22 a. The applicant must certify it will not provide  
23 therapeutic cardiac catheterization pursuant to the grant of  
24 the exemption.

25 b. The applicant must certify it will meet and  
26 continuously maintain the minimum licensure requirements  
27 adopted by the agency governing such programs pursuant to  
28 subparagraph 2.

29 c. The applicant must certify it will provide a  
30 minimum of 2 percent of its services to charity and Medicaid  
31 patients.

1           2. The agency shall adopt licensure requirements by  
2 rule which govern the operation of adult inpatient diagnostic  
3 cardiac catheterization programs established pursuant to the  
4 exemption provided in this paragraph. The rules shall ensure  
5 that such programs:

6           a. Perform only adult inpatient diagnostic cardiac  
7 catheterization services authorized by the exemption and will  
8 not provide therapeutic cardiac catheterization or any other  
9 services not authorized by the exemption.

10           b. Maintain sufficient appropriate equipment and  
11 health personnel to ensure quality and safety.

12           c. Maintain appropriate times of operation and  
13 protocols to ensure availability and appropriate referrals in  
14 the event of emergencies.

15           d. Maintain appropriate program volumes to ensure  
16 quality and safety.

17           e. Provide a minimum of 2 percent of its services to  
18 charity and Medicaid patients each year.

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

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

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

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

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

18 (m)~~(o)~~ For any expenditure to provide mobile surgical  
19 facilities and related health care services under contract  
20 with the Department of Corrections or a private correctional  
21 facility operating pursuant to chapter 957.

22 ~~(p) For state veterans' nursing homes operated by or~~  
23 ~~on behalf of the Florida Department of Veterans' Affairs in~~  
24 ~~accordance with part II of chapter 296 for which at least 50~~  
25 ~~percent of the construction cost is federally funded and for~~  
26 ~~which the Federal Government pays a per diem rate not to~~  
27 ~~exceed one-half of the cost of the veterans' care in such~~  
28 ~~state nursing homes. These beds shall not be included in the~~  
29 ~~nursing home bed inventory.~~

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1 A request for exemption under this subsection may be made at  
2 any time and is not subject to the batching requirements of  
3 this section.

4 Section 2. Paragraph (a) of subsection (4) of section  
5 408.039, Florida Statutes, is amended to read:

6 408.039 Review process.--The review process for  
7 certificates of need shall be as follows:

8 (4) STAFF RECOMMENDATIONS.--

9 (a) The department's review of and final agency action  
10 on applications shall be in accordance with the district plan,  
11 and statutory criteria, and the implementing administrative  
12 rules. ~~In the application review process, the department shall~~  
13 ~~give a preference, as defined by rule of the department, to an~~  
14 ~~applicant which proposes to develop a nursing home in a~~  
15 ~~nursing home geographically underserved area.~~

16 Section 3. Paragraph (a) of subsection (1) and  
17 paragraph (d) of subsection (2) of section 408.040, Florida  
18 Statutes, 1998 Supplement, are amended to read:

19 408.040 Conditions and monitoring.--

20 (1)(a) The agency may issue a certificate of need  
21 predicated upon statements of intent expressed by an applicant  
22 in the application for a certificate of need.

23 1. Any certificate of need issued for construction of  
24 a new hospital or for the addition of beds to an existing  
25 hospital shall include a statement of the number of beds  
26 approved by category of service, including rehabilitation or  
27 psychiatric service, for which the agency has adopted by rule  
28 a specialty-bed-need methodology. All beds that are approved,  
29 but are not covered by any specialty-bed-need methodology,  
30 shall be designated as general.

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

15           (2)

16           ~~(d) If an application is filed to consolidate two or~~  
17 ~~more certificates as authorized by s. 408.036(2)(f) or to~~  
18 ~~divide a certificate of need into two or more facilities as~~  
19 ~~authorized by s. 408.036(2)(g), the validity period of the~~  
20 ~~certificate or certificates of need to be consolidated or~~  
21 ~~divided shall be extended for the period beginning upon~~  
22 ~~submission of the application and ending when final agency~~  
23 ~~action and any appeal from such action has been concluded.~~  
24 ~~However, no such suspension shall be effected if the~~  
25 ~~application is withdrawn by the applicant.~~

26           Section 4. Subsection (5) of section 430.705, Florida  
27 Statutes, 1998 Supplement, is amended to read:

28           430.705 Implementation of the long-term care community  
29 diversion pilot projects.--

30           (5) In selecting the pilot project area, the  
31 department shall consider the following factors in the area:

- 1 (a) The nursing home occupancy level.  
2 ~~(b) The number of certificates of need awarded for~~  
3 ~~nursing home beds for which renovation, expansion, or~~  
4 ~~construction has not begun.~~  
5 (b)~~(c)~~ The annual number of additional nursing home  
6 beds.  
7 ~~(c)~~(d) The annual number of nursing home admissions.  
8 ~~(d)~~(e) The adequacy of community-based long-term care  
9 service providers.

10 Section 5. The introductory paragraph and paragraph  
11 (d) of subsection (1) of section 400.702, Florida Statutes,  
12 are amended to read:

13 400.702 Development of intermediate care facilities.--

14 (1) The Department of Children and Family Health and  
15 ~~Rehabilitative~~ Services is directed to issue a request for  
16 proposals, pursuant to the provisions of chapter 287, for a  
17 pilot program of intermediate-level care facilities. The  
18 development of intermediate-level care facilities under this  
19 pilot program shall be limited to four projects in geographic  
20 locations distributed in the south, north, and central part of  
21 the state and shall not exceed a total of 120 beds in each  
22 location. None of the projects may accept residents prior to  
23 July 1, 1990. The intermediate-level care facilities shall:

24 (d) Be exempt from all requirements to obtain a  
25 certificate of need pursuant to ss. 408.031-408.045 ~~however,~~  
26 ~~the beds so utilized will be counted in the total bed supply~~  
27 ~~for determination of nursing home bed needs.~~

28 Section 6. Subsection (8) of section 400.071 and  
29 subsection (4) of section 408.034, Florida Statutes, 1998  
30 Supplement, and subsection (17) of section 408.032 and section  
31 430.708, Florida Statutes, are repealed.

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Section 7. This act shall take effect July 1, 1999.

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HOUSE SUMMARY

Eliminates certificate-of-need requirements for nursing homes and for health-care-related projects involving either an addition of beds by new construction or alteration or an increase in licensed bed capacity.