

By Senator Clary

7-1652-99

See HB

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, 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
31

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. Subsection (1) of section 400.702, Florida
11 Statutes, is amended to read:

12 400.702 Development of intermediate care facilities.--

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

23 (a) Provide care to residents whose condition requires
24 intermediate care services, including 24-hour observation and
25 care and the constant availability of medical and nursing
26 treatment and care, but not to the degree of care and
27 treatment provided in a hospital or that which meets the
28 criteria for skilled nursing services.

29 (b) Accept only low-income residents who receive
30 subsidized housing vouchers through the United States
31

1 Department of Housing and Urban Development or other
2 subsidized housing programs.

3 (c) Accept only low-income residents who are Medicaid
4 recipients.

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

9 (e) Be licensed as a nursing home pursuant to part II
10 and ss. 408.061, 408.08, and 408.20, except that the
11 department is given the authority to waive any requirement
12 that unnecessarily restricts the development of intermediate
13 care facilities, provided such waiver does not contravene
14 federal or state law. The department shall, however, ensure
15 that the health and safety of residents of intermediate care
16 facilities are adequately protected.

17 Section 6. Subsection (8) of section 400.071 and
18 subsection (4) of section 408.034, Florida Statutes, 1998
19 Supplement, and subsection (17) of section 408.032 and section
20 430.708, Florida Statutes, are repealed.

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

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24 LEGISLATIVE SUMMARY

25
26 Eliminates certificate-of-need requirements for nursing
27 homes and for health-care-related projects involving
28 either an addition of beds by new construction or
29 alteration or an increase in licensed bed capacity.
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31