

By the Committee on Health, Aging and Long-Term Care; and
Senator Clary

317-1687C-00

1 A bill to be entitled
2 An act relating to certificates of need;
3 amending s. 400.471, F.S.; deleting the
4 certificate-of-need requirement for licensure
5 of Medicare-certified home health agencies;
6 amending s. 408.032, F.S.; adding definitions
7 of "exemption" and "mental health services";
8 revising the term "health service"; deleting
9 the definitions of "home health agency,"
10 "institutional health service," "intermediate
11 care facility," "multifacility project," and
12 "respite care"; amending s. 408.033, F.S.;
13 deleting references to the state health plan;
14 amending s. 408.034, F.S.; deleting a reference
15 to licensing of home health agencies by the
16 Agency for Health Care Administration; amending
17 s. 408.035, F.S.; deleting obsolete
18 certificate-of-need review criteria and
19 revising other criteria; amending s. 408.036,
20 F.S.; revising provisions relating to projects
21 subject to review; deleting references to
22 Medicare-certified home health agencies;
23 deleting the review of certain acquisitions;
24 specifying the types of bed increases subject
25 to review; deleting cost overruns from review;
26 deleting review of combinations or division of
27 nursing home certificates of need; providing
28 for expedited review of certain conversions of
29 licensed hospital beds; deleting the
30 requirement for an exemption for initiation or
31 expansion of obstetric services, provision of

1 respite care services, establishment of a
2 Medicare-certified home health agency, or
3 provision of a health service exclusively on an
4 outpatient basis; providing exemptions for
5 combinations or divisions of nursing home
6 certificates of need and additions of certain
7 hospital beds and nursing home beds within
8 specified limitations; requiring a fee for each
9 request for exemption; amending s. 408.037,
10 F.S.; deleting reference to the state health
11 plan; amending ss. 408.038, 408.039, 408.044,
12 and 408.045, F.S.; replacing "department" with
13 "agency"; clarifying the opportunity to
14 challenge an intended award of a certificate of
15 need; amending s. 408.040, F.S.; deleting an
16 obsolete reference; revising the format of
17 conditions related to Medicaid; creating a
18 certificate-of-need workgroup within the Agency
19 for Health Care Administration; providing for
20 expenses; providing membership, duties, and
21 meetings; providing for termination; amending
22 s. 651.118, F.S.; excluding a specified number
23 of beds from a time limit imposed on extension
24 of authorization for continuing care
25 residential community providers to use
26 sheltered beds for nonresidents; requiring a
27 facility to report such use after the
28 expiration of the extension; repealing s.
29 400.464(3), F.S., relating to home health
30 agency licenses provided to certificate-of-need
31

1 exempt entities; providing applicability;
2 providing effective dates.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Subsections (2) and (11) of section
7 400.471, Florida Statutes, are amended to read:

8 400.471 Application for license; fee; provisional
9 license; temporary permit.--

10 (2) The applicant must file with the application
11 satisfactory proof that the home health agency is in
12 compliance with this part and applicable rules, including:

13 (a) A listing of services to be provided, either
14 directly by the applicant or through contractual arrangements
15 with existing providers;

16 (b) The number and discipline of professional staff to
17 be employed; and

18 (c) Proof of financial ability to operate.

19
20 ~~If the applicant has applied for a certificate of need under~~
21 ~~ss. 408.0331-408.045 within the preceding 12 months, the~~
22 ~~applicant may submit the proof required during the~~
23 ~~certificate-of-need process along with an attestation that~~
24 ~~there has been no substantial change in the facts and~~
25 ~~circumstances underlying the original submission.~~

26 (11) The agency may not issue a license designated as
27 certified to a home health agency that fails to ~~receive a~~
28 ~~certificate of need under ss. 408.031-408.045 or that fails to~~
29 satisfy the requirements of a Medicare certification survey
30 from the agency.

31

1 Section 2. Section 408.032, Florida Statutes, is
2 amended to read:

3 408.032 Definitions.--As used in ss. 408.031-408.045,
4 the term:

5 (1) "Agency" means the Agency for Health Care
6 Administration.

7 (2) "Capital expenditure" means an expenditure,
8 including an expenditure for a construction project undertaken
9 by a health care facility as its own contractor, which, under
10 generally accepted accounting principles, is not properly
11 chargeable as an expense of operation and maintenance, which
12 is made to change the bed capacity of the facility, or
13 substantially change the services or service area of the
14 health care facility, health service provider, or hospice, and
15 which includes the cost of the studies, surveys, designs,
16 plans, working drawings, specifications, initial financing
17 costs, and other activities essential to acquisition,
18 improvement, expansion, or replacement of the plant and
19 equipment.

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

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

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

3 District 1.--Escambia, Santa Rosa, Okaloosa, and Walton
4 Counties.

5 District 2.--Holmes, Washington, Bay, Jackson,
6 Franklin, Gulf, Gadsden, Liberty, Calhoun, Leon, Wakulla,
7 Jefferson, Madison, and Taylor Counties.

8 District 3.--Hamilton, Suwannee, Lafayette, Dixie,
9 Columbia, Gilchrist, Levy, Union, Bradford, Putnam, Alachua,
10 Marion, Citrus, Hernando, Sumter, and Lake Counties.

11 District 4.--Baker, Nassau, Duval, Clay, St. Johns,
12 Flagler, and Volusia Counties.

13 District 5.--Pasco and Pinellas Counties.

14 District 6.--Hillsborough, Manatee, Polk, Hardee, and
15 Highlands Counties.

16 District 7.--Seminole, Orange, Osceola, and Brevard
17 Counties.

18 District 8.--Sarasota, DeSoto, Charlotte, Lee, Glades,
19 Hendry, and Collier Counties.

20 District 9.--Indian River, Okeechobee, St. Lucie,
21 Martin, and Palm Beach Counties.

22 District 10.--Broward County.

23 District 11.--Dade and Monroe Counties.

24 (6) "Exemption" means the process by which a proposal
25 that would otherwise require a certificate of need may proceed
26 without a certificate of need.

27 (7)~~(6)~~ "Expedited review" means the process by which
28 certain types of applications are not subject to the review
29 cycle requirements contained in s. 408.039(1), and the letter
30 of intent requirements contained in s. 408.039(2).

31

1 ~~(8)(7)~~ "Health care facility" means a hospital,
2 long-term care hospital, skilled nursing facility, hospice,
3 ~~intermediate care facility,~~ or intermediate care facility for
4 the developmentally disabled. A facility relying solely on
5 spiritual means through prayer for healing is not included as
6 a health care facility.

7 ~~(9)(8)~~ "Health services" means diagnostic, curative,
8 or rehabilitative services and includes ~~alcohol treatment,~~
9 ~~drug abuse treatment,~~ and mental health services. Obstetric
10 services are not health services for purposes of ss.
11 408.031-408.045.

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

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

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

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

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

31

1 ~~(12)~~(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 ~~(13)~~(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 (14) "Mental health services" means inpatient services
12 provided in a hospital licensed under chapter 395 and listed
13 on the hospital license as psychiatric beds for adults;
14 psychiatric beds for children and adolescents; intensive
15 residential treatment beds for children and adolescents;
16 substance abuse beds for adults; or substance abuse beds for
17 children and adolescents.

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.~~

30
31

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 (15)~~(17)~~ "Nursing home geographically underserved
8 area" 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 (16)~~(19)~~ "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 (17)~~(20)~~ "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 (18)~~(21)~~ "Regional area" means any of those regional
12 health planning areas established by the agency to which local
13 and district health planning funds are directed to local
14 health councils through the General Appropriations Act.

15 Section 3. Paragraph (b) of subsection (1) and
16 paragraph (a) of subsection (3) of section 408.033, Florida
17 Statutes, are amended to read:

18 408.033 Local and state health planning.--

19 (1) LOCAL HEALTH COUNCILS.--

20 (b) Each local health council may:

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

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

10 2. Advise the agency on health care issues and
11 resource allocations.

12 3. Promote public awareness of community health needs,
13 emphasizing health promotion and cost-effective health service
14 selection.

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

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

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

28 7. Advise and assist local governments within each
29 district on the development of an optional health plan element
30 of the comprehensive plan provided in chapter 163, to assure
31 compatibility with the health goals and policies in the State

1 Comprehensive Plan and district health plan. To facilitate
2 the implementation of this section, the local health council
3 shall annually provide the local governments in its service
4 area, upon request, with:

5 a. A copy and appropriate updates of the district
6 health plan;

7 b. A report of hospital and nursing home utilization
8 statistics for facilities within the local government
9 jurisdiction; and

10 c. Applicable agency rules and calculated need
11 methodologies for health facilities and services regulated
12 under s. 408.034 for the district served by the local health
13 council.

14 8. Monitor and evaluate the adequacy, appropriateness,
15 and effectiveness, within the district, of local, state,
16 federal, and private funds distributed to meet the needs of
17 the medically indigent and other underserved population
18 groups.

19 9. In conjunction with the Agency for Health Care
20 Administration, plan for services at the local level for
21 persons infected with the human immunodeficiency virus.

22 10. Provide technical assistance to encourage and
23 support activities by providers, purchasers, consumers, and
24 local, regional, and state agencies in meeting the health care
25 goals, objectives, and policies adopted by the local health
26 council.

27 11. Provide the agency with data required by rule for
28 the review of certificate-of-need applications and the
29 projection of need for health services and facilities in the
30 district.

31 (3) DUTIES AND RESPONSIBILITIES OF THE AGENCY.--

1 (a) The agency, in conjunction with the local health
2 councils, is responsible for the coordinated planning of ~~all~~
3 health care services in the state ~~and for the preparation of~~
4 ~~the state health plan.~~

5 Section 4. Subsection (2) of section 408.034, Florida
6 Statutes, is amended to read:

7 408.034 Duties and responsibilities of agency;
8 rules.--

9 (2) In the exercise of its authority to issue licenses
10 to health care facilities and health service providers, as
11 provided under chapters 393, 395, and parts II, ~~IV,~~ and VI of
12 chapter 400, the agency may not issue a license to any health
13 care facility, health service provider, hospice, or part of a
14 health care facility which fails to receive a certificate of
15 need or an exemption for the licensed facility or service.

16 Section 5. Section 408.035, Florida Statutes, is
17 amended to read:

18 408.035 Review criteria.--

19 ~~(1)~~ The agency shall determine the reviewability of
20 applications and shall review applications for
21 certificate-of-need determinations for health care facilities
22 and health services in context with the following criteria:

23 (1)~~(a)~~ The need for the health care facilities and
24 health services being proposed in relation to the applicable
25 district health plan, ~~except in emergency circumstances that~~
26 ~~pose a threat to the public health.~~

27 (2)~~(b)~~ The availability, quality of care, efficiency,
28 ~~appropriateness,~~ accessibility, and extent of utilization of,
29 ~~and adequacy of like and~~ existing health care facilities and
30 health services in the service district of the applicant.

31

1 (3)~~(c)~~ The ability of the applicant to provide quality
2 of care and the applicant's record of providing quality of
3 care.

4 ~~(d) The availability and adequacy of other health care~~
5 ~~facilities and health services in the service district of the~~
6 ~~applicant, such as outpatient care and ambulatory or home care~~
7 ~~services, which may serve as alternatives for the health care~~
8 ~~facilities and health services to be provided by the~~
9 ~~applicant.~~

10 ~~(e) Probable economies and improvements in service~~
11 ~~which may be derived from operation of joint, cooperative, or~~
12 ~~shared health care resources.~~

13 (4)~~(f)~~ The need in the service district of the
14 applicant for special health care ~~equipment and~~ services that
15 are not reasonably and economically accessible in adjoining
16 areas.

17 (5)~~(g)~~ The needs of ~~need for~~ research and educational
18 facilities, including, but not limited to, facilities with
19 institutional training programs and community training
20 programs for health care practitioners and for doctors of
21 osteopathic medicine and medicine at the student, internship,
22 and residency training levels.

23 (6)~~(h)~~ The availability of resources, including health
24 personnel, management personnel, and funds for capital and
25 operating expenditures, for project accomplishment and
26 operation. ~~the effects the project will have on clinical~~
27 ~~needs of health professional training programs in the service~~
28 ~~district; the extent to which the services will be accessible~~
29 ~~to schools for health professions in the service district for~~
30 ~~training purposes if such services are available in a limited~~

31

1 ~~number of facilities; the availability of alternative uses of~~
2 ~~such resources for the provision of other health services; and~~

3 (7) The extent to which the proposed services will
4 enhance access to health care for ~~be accessible to all~~
5 residents of the service district.

6 (8)(i) The immediate and long-term financial
7 feasibility of the proposal.

8 ~~(j) The special needs and circumstances of health~~
9 ~~maintenance organizations.~~

10 ~~(k) The needs and circumstances of those entities that~~
11 ~~provide a substantial portion of their services or resources,~~
12 ~~or both, to individuals not residing in the service district~~
13 ~~in which the entities are located or in adjacent service~~
14 ~~districts. Such entities may include medical and other health~~
15 ~~professions, schools, multidisciplinary clinics, and specialty~~
16 ~~services such as open-heart surgery, radiation therapy, and~~
17 ~~renal transplantation.~~

18 (9)(l) The extent to which the proposal will foster
19 competition that promotes quality and cost-effectiveness.~~The~~
20 ~~probable impact of the proposed project on the costs of~~
21 ~~providing health services proposed by the applicant, upon~~
22 ~~consideration of factors including, but not limited to, the~~
23 ~~effects of competition on the supply of health services being~~
24 ~~proposed and the improvements or innovations in the financing~~
25 ~~and delivery of health services which foster competition and~~
26 ~~service to promote quality assurance and cost-effectiveness.~~

27 (10)(m) The costs and methods of the proposed
28 construction, including the costs and methods of energy
29 provision and the availability of alternative, less costly, or
30 more effective methods of construction.

31

1 (11)~~(n)~~ The applicant's past and proposed provision of
2 health care services to Medicaid patients and the medically
3 indigent.

4 ~~(o) The applicant's past and proposed provision of~~
5 ~~services that promote a continuum of care in a multilevel~~
6 ~~health care system, which may include, but are not limited to,~~
7 ~~acute care, skilled nursing care, home health care, and~~
8 ~~assisted living facilities.~~

9 (12)~~(p)~~ The applicant's designation as a Gold Seal
10 Program nursing facility pursuant to s. 400.235, when the
11 applicant is requesting additional nursing home beds at that
12 facility.

13 ~~(2) In cases of capital expenditure proposals for the~~
14 ~~provision of new health services to inpatients, the agency~~
15 ~~shall also reference each of the following in its findings of~~
16 ~~fact:~~

17 ~~(a) That less costly, more efficient, or more~~
18 ~~appropriate alternatives to such inpatient services are not~~
19 ~~available and the development of such alternatives has been~~
20 ~~studied and found not practicable.~~

21 ~~(b) That existing inpatient facilities providing~~
22 ~~inpatient services similar to those proposed are being used in~~
23 ~~an appropriate and efficient manner.~~

24 ~~(c) In the case of new construction or replacement~~
25 ~~construction, that alternatives to the construction, for~~
26 ~~example, modernization or sharing arrangements, have been~~
27 ~~considered and have been implemented to the maximum extent~~
28 ~~practicable.~~

29 ~~(d) That patients will experience serious problems in~~
30 ~~obtaining inpatient care of the type proposed, in the absence~~
31 ~~of the proposed new service.~~

1 ~~(e) In the case of a proposal for the addition of beds~~
2 ~~for the provision of skilled nursing or intermediate care~~
3 ~~services, that the addition will be consistent with the plans~~
4 ~~of other agencies of the state responsible for the provision~~
5 ~~and financing of long-term care, including home health~~
6 ~~services.~~

7 Section 6. Section 408.036, Florida Statutes, is
8 amended to read:

9 408.036 Projects subject to review.--

10 (1) APPLICABILITY.--Unless exempt under subsection
11 (3), all health-care-related projects, as described in
12 paragraphs (a)-(h)~~(k)~~, are subject to review and must file an
13 application for a certificate of need with the agency. The
14 agency is exclusively responsible for determining whether a
15 health-care-related project is subject to review under ss.
16 408.031-408.045.

17 (a) The addition of beds by new construction or
18 alteration.

19 (b) The new construction or establishment of
20 additional health care facilities, including a replacement
21 health care facility when the proposed project site is not
22 located on the same site as the existing health care facility.

23 (c) The conversion from one type of health care
24 facility to another, ~~including the conversion from one level~~
25 ~~of care to another, in a skilled or intermediate nursing~~
26 ~~facility, if the conversion effects a change in the level of~~
27 ~~care of 10 beds or 10 percent of total bed capacity of the~~
28 ~~skilled or intermediate nursing facility within a 2-year~~
29 ~~period. If the nursing facility is certified for both skilled~~
30 ~~and intermediate nursing care, the provisions of this~~
31 ~~paragraph do not apply.~~

1 (d) An ~~Any~~ increase in the total licensed bed capacity
2 of a health care facility.

3 ~~(e) Subject to the provisions of paragraph (3)(i), The~~
4 ~~establishment of a Medicare-certified home health agency, the~~
5 ~~establishment of a hospice or hospice inpatient facility,~~
6 ~~except as provided in s. 408.043 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) 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.~~

17 ~~(f)(g)~~ The establishment of inpatient institutional
18 health services by a health care facility, or a substantial
19 change in such services.

20 ~~(h) The acquisition by any means of an existing health~~
21 ~~care facility by any person, unless the person provides the~~
22 ~~agency with at least 30 days' written notice of the proposed~~
23 ~~acquisition, which notice is to include the services to be~~
24 ~~offered and the bed capacity of the facility, and unless the~~
25 ~~agency does not determine, within 30 days after receipt of~~
26 ~~such notice, that the services to be provided and the bed~~
27 ~~capacity of the facility will be changed.~~

28 ~~(i) An increase in the cost of a project for which a~~
29 ~~certificate of need has been issued when the increase in cost~~
30 ~~exceeds 20 percent of the originally approved cost of the~~
31

1 ~~project, except that a cost overrun review is not necessary~~
2 ~~when the cost overrun is less than \$20,000.~~

3 (g)(j) An increase in the number of beds for acute
4 care, nursing home care beds, specialty burn units, neonatal
5 intensive care units, comprehensive rehabilitation, mental
6 health services, or hospital-based distinct part skilled
7 nursing units, or at a long-term care hospital ~~psychiatric or~~
8 ~~rehabilitation beds.~~

9 (h)(k) The establishment of tertiary health services.

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

13 ~~(a) Cost overruns, as defined in paragraph (1)(i).~~

14 (a)(b) Research, education, and training programs.

15 (b)(c) Shared services contracts or projects.

16 (c)(d) A transfer of a certificate of need.

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

26 ~~(f) Combination within one nursing home facility of~~
27 ~~the beds or services authorized by two or more certificates of~~
28 ~~need issued in the same planning subdistrict.~~

29 ~~(g) Division into two or more nursing home facilities~~
30 ~~of beds or services authorized by one certificate of need~~
31 ~~issued in the same planning subdistrict. Such division shall~~

1 ~~not be approved if it would adversely affect the original~~
2 ~~certificate's approved cost.~~

3 (e)(h) Replacement of a health care facility when the
4 proposed project site is located in the same district and
5 within a 1-mile radius of the replaced health care facility.

6 (f) The conversion of mental health services beds
7 licensed under chapter 395 or hospital-based distinct part
8 skilled nursing unit beds to general acute care beds; the
9 conversion of mental health services beds between or among the
10 licensed bed categories defined as beds for mental health
11 services; or the conversion of general acute care beds to beds
12 for mental health services.

13 1. Conversion under this paragraph shall not establish
14 a new licensed bed category at the hospital but shall apply
15 only to categories of beds licensed at that hospital.

16 2. Beds converted under this paragraph must be
17 licensed and operational for at least 12 months before the
18 hospital may apply for additional conversion affecting beds of
19 the same type.

20
21 The agency shall develop rules to implement the provisions for
22 expedited review, including time schedule, application content
23 which may be reduced from the full requirements of s.
24 408.037(1), and application processing.

25 (3) EXEMPTIONS.--Upon request, the following projects
26 are subject to supported by such documentation as the agency
27 requires, the agency shall grant an exemption from the
28 provisions of subsection (1):

29 ~~(a) For the initiation or expansion of obstetric~~
30 ~~services.~~

31

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

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

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

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

30 (d)(f) For the addition of nursing home beds at a
31 skilled nursing facility that is part of a retirement

1 community that provides a variety of residential settings and
2 supportive services and that has been incorporated and
3 operated in this state for at least 65 years on or before July
4 1, 1994. All nursing home beds must not be available to the
5 public but must be for the exclusive use of the community
6 residents.

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

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

30 ~~(i) For the establishment of a Medicare-certified home~~
31 ~~health agency. This paragraph shall take effect 90 days after~~

1 ~~the adjournment sine die of the next regular session of the~~
2 ~~Legislature occurring after the legislative session in which~~
3 ~~the Legislature receives a report from the Director of Health~~
4 ~~Care Administration certifying that the federal Health Care~~
5 ~~Financing Administration has implemented a per-episode~~
6 ~~prospective pay system for Medicare-certified home health~~
7 ~~agencies.~~

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

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

15 ~~(g)(l)~~ For the termination of an inpatient a health
16 care service.

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

22 ~~(i)(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 inpatient diagnostic
8 cardiac catheterization programs established pursuant to the
9 exemption provided in this paragraph. The rules shall ensure
10 that such programs:

11 a. Perform only adult inpatient 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 times of operation and
18 protocols to ensure availability and appropriate referrals in
19 the event of emergencies.

20 d. Maintain appropriate program volumes to ensure
21 quality and safety.

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

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

31

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

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

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

16 ~~4. The agency shall not grant any exemption under this~~
17 ~~paragraph until the adoption of the rules required under this~~
18 ~~paragraph, or until March 1, 1998, whichever comes first.~~
19 ~~However, if final rules have not been adopted by March 1,~~
20 ~~1998, the proposed rules governing the exemptions shall be~~
21 ~~used by the agency to grant exemptions under the provisions of~~
22 ~~this paragraph until final rules become effective.~~

23 (j)~~(o)~~ For ~~any expenditure to provide~~ mobile surgical
24 facilities and related health care services provided under
25 contract with the Department of Corrections or a private
26 correctional facility operating pursuant to chapter 957.

27 (k)~~(p)~~ For state veterans' nursing homes operated by
28 or on behalf of the Florida Department of Veterans' Affairs in
29 accordance with part II of chapter 296 for which at least 50
30 percent of the construction cost is federally funded and for
31 which the Federal Government pays a per diem rate not to

1 exceed one-half of the cost of the veterans' care in such
2 state nursing homes. These beds shall not be included in the
3 nursing home bed inventory.

4 (l) For combination within one nursing home facility
5 of the beds or services authorized by two or more certificates
6 of need issued in the same planning subdistrict. An exemption
7 granted under this paragraph shall extend the validity period
8 of the certificates of need to be consolidated by the length
9 of the period beginning upon submission of the exemption
10 request and ending with issuance of the exemption. The
11 longest validity period among the certificates shall be
12 applicable to each of the combined certificates.

13 (m) For division into two or more nursing home
14 facilities of beds or services authorized by one certificate
15 of need issued in the same planning subdistrict. An exemption
16 granted under this paragraph shall extend the validity period
17 of the certificate of need to be divided by the length of the
18 period beginning upon submission of the exemption request and
19 ending with issuance of the exemption.

20 (n) For the addition of hospital beds licensed under
21 chapter 395 for acute care, mental health services, or a
22 hospital-based distinct part skilled nursing unit in a number
23 that may not exceed 10 total beds or 10 percent of the
24 licensed capacity of the bed category being expanded,
25 whichever is greater. Beds for specialty burn units, neonatal
26 intensive care units, or comprehensive rehabilitation, or at a
27 long-term care hospital, may not be increased under this
28 paragraph.

29 1. In addition to any other documentation otherwise
30 required by the agency, a request for exemption submitted
31 under this paragraph must:

1 a. Certify that the prior 12-month average occupancy
2 rate for the category of licensed beds being expanded at the
3 facility meets or exceeds 80 percent or, for a hospital-based
4 distinct part skilled nursing unit, the prior 12-month average
5 occupancy rate meets or exceeds 96 percent.

6 b. Certify that any beds of the same type authorized
7 for the facility under this paragraph before the date of the
8 current request for an exemption have been licensed and
9 operational for at least 12 months.

10 2. The timeframes and monitoring process specified in
11 s. 408.040(2)(a)-(c) apply to any exemption issued under this
12 paragraph.

13 3. The agency shall count beds authorized under this
14 paragraph as approved beds in the published inventory of
15 hospital beds until the beds are licensed.

16 (o) For the addition of acute care beds, as authorized
17 by rule consistent with s. 395.003(4), in a number that may
18 not exceed 10 total beds or 10 percent of licensed bed
19 capacity, whichever is greater, for temporary beds in a
20 hospital that has experienced high seasonal occupancy within
21 the prior 12-month period or in a hospital that must respond
22 to emergency or exigent circumstances.

23 (p) For the addition of nursing home beds licensed
24 under chapter 400 in a number not exceeding 10 total beds or
25 10 percent of the number of beds licensed in the facility
26 being expanded, whichever is greater.

27 1. In addition to any other documentation required by
28 the agency, a request for exemption submitted under this
29 paragraph must:

30
31

1 a. Effective until June 30, 2001, certify that the
2 facility has not had any class I or class II deficiencies
3 within the 30 months preceding the request for addition.

4 b. Effective on July 1, 2001, certify that the
5 facility has been designated as a Gold Seal nursing home under
6 s. 400.235.

7 c. Certify that the prior 12-month average occupancy
8 rate for the nursing home beds at the facility meets or
9 exceeds 96 percent.

10 d. Certify that any beds authorized for the facility
11 under this paragraph before the date of the current request
12 for an exemption have been licensed and operational for at
13 least 12 months.

14 2. The timeframes and monitoring process specified in
15 s. 408.040(2)(a)-(c) apply to any exemption issued under this
16 paragraph.

17 3. The agency shall count beds authorized under this
18 paragraph as approved beds in the published inventory of
19 nursing home beds until the beds are licensed.

20 (4) A request for exemption under ~~this~~ subsection(3)
21 may be made at any time and is not subject to the batching
22 requirements of this section. The request shall be supported
23 by such documentation as the agency requires by rule. The
24 agency shall assess a fee of \$250 for each request for
25 exemption submitted under subsection (3).

26 Section 7. Paragraph (a) of subsection (1) of section
27 408.037, Florida Statutes, is amended to read:

28 408.037 Application content.--

29 (1) An application for a certificate of need must
30 contain:

31

1 (a) A detailed description of the proposed project and
2 statement of its purpose and need in relation to the local
3 health plan ~~and the state health plan.~~

4 Section 8. Section 408.038, Florida Statutes, is
5 amended to read:

6 408.038 Fees.--The agency ~~department~~ shall assess fees
7 on certificate-of-need applications. Such fees shall be for
8 the purpose of funding the functions of the local health
9 councils and the activities of the agency ~~department~~ and shall
10 be allocated as provided in s. 408.033. The fee shall be
11 determined as follows:

12 (1) A minimum base fee of \$5,000.

13 (2) In addition to the base fee of \$5,000, 0.015 of
14 each dollar of proposed expenditure, except that a fee may not
15 exceed \$22,000.

16 Section 9. Subsections (3) and (4) and paragraphs (a)
17 and (b) of subsection (6) of section 408.039, Florida
18 Statutes, are amended to read:

19 408.039 Review process.--The review process for
20 certificates of need shall be as follows:

21 (3) APPLICATION PROCESSING.--

22 (a) An applicant shall file an application with the
23 agency ~~department~~, and shall furnish a copy of the application
24 to the local health council and the agency ~~department~~. Within
25 15 days after the applicable application filing deadline
26 established by agency ~~department~~ rule, the staff of the agency
27 ~~department~~ shall determine if the application is complete. If
28 the application is incomplete, the staff shall request
29 specific information from the applicant necessary for the
30 application to be complete; however, the staff may make only
31 one such request. If the requested information is not filed

1 with the agency ~~department~~ within 21 days of the receipt of
2 the staff's request, the application shall be deemed
3 incomplete and deemed withdrawn from consideration.

4 (b) Upon the request of any applicant or substantially
5 affected person within 14 days after notice that an
6 application has been filed, a public hearing may be held at
7 the agency's ~~department's~~ discretion if the agency ~~department~~
8 determines that a proposed project involves issues of great
9 local public interest. The public hearing shall allow
10 applicants and other interested parties reasonable time to
11 present their positions and to present rebuttal information. A
12 recorded verbatim record of the hearing shall be maintained.
13 The public hearing shall be held at the local level within 21
14 days after the application is deemed complete.

15 (4) STAFF RECOMMENDATIONS.--

16 (a) The agency's ~~department's~~ review of and final
17 agency action on applications shall be in accordance with the
18 district health plan, and statutory criteria, and the
19 implementing administrative rules. In the application review
20 process, the agency ~~department~~ shall give a preference, as
21 defined by rule of the agency ~~department~~, to an applicant
22 which proposes to develop a nursing home in a nursing home
23 geographically underserved area.

24 (b) Within 60 days after all the applications in a
25 review cycle are determined to be complete, the agency
26 ~~department~~ shall issue its State Agency Action Report and
27 Notice of Intent to grant a certificate of need for the
28 project in its entirety, to grant a certificate of need for
29 identifiable portions of the project, or to deny a certificate
30 of need. The State Agency Action Report shall set forth in
31 writing its findings of fact and determinations upon which its

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

13 (c) The agency ~~department~~ shall publish its proposed
14 decision set forth in the Notice of Intent in the Florida
15 Administrative Weekly within 14 days after the Notice of
16 Intent is issued.

17 (d) If no administrative hearing is requested pursuant
18 to subsection (5), the State Agency Action Report and the
19 Notice of Intent shall become the final order of the agency
20 ~~department~~. The agency ~~department~~ shall provide a copy of the
21 final order to the appropriate local health council.

22 (6) JUDICIAL REVIEW.--

23 (a) A party to an administrative hearing for an
24 application for a certificate of need has the right, within
25 not more than 30 days after the date of the final order, to
26 seek judicial review in the District Court of Appeal pursuant
27 to s. 120.68. The agency ~~department~~ shall be a party in any
28 such proceeding.

29 (b) In such judicial review, the court shall affirm
30 the final order of the agency ~~department~~, unless the decision
31

1 is arbitrary, capricious, or not in compliance with ss.
2 408.031-408.045.

3 Section 10. Subsections (1) and (2) of section
4 408.040, Florida Statutes, are amended to read:

5 408.040 Conditions and monitoring.--

6 (1)(a) The agency may issue a certificate of need
7 predicated upon statements of intent expressed by an applicant
8 in the application for a certificate of need. Any conditions
9 imposed on a certificate of need based on such statements of
10 intent shall be stated on the face of the certificate of need.

11 ~~1. Any certificate of need issued for construction of~~
12 ~~a new hospital or for the addition of beds to an existing~~
13 ~~hospital shall include a statement of the number of beds~~
14 ~~approved by category of service, including rehabilitation or~~
15 ~~psychiatric service, for which the agency has adopted by rule~~
16 ~~a specialty-bed-need methodology. All beds that are approved,~~
17 ~~but are not covered by any specialty-bed-need methodology,~~
18 ~~shall be designated as general.~~

19 ~~(b)2.~~ The agency may consider, in addition to the
20 other criteria specified in s. 408.035, a statement of intent
21 by the applicant that a specified ~~to designate~~ a percentage of
22 the annual patient days at ~~beds of~~ the facility will be
23 utilized for use by patients eligible for care under Title XIX
24 of the Social Security Act. Any certificate of need issued to
25 a nursing home in reliance upon an applicant's statements that
26 ~~to provide~~ a specified percentage number of annual patient
27 days will be utilized ~~beds for use~~ by residents eligible for
28 care under Title XIX of the Social Security Act must include a
29 statement that such certification is a condition of issuance
30 of the certificate of need. The certificate-of-need program
31 shall notify the Medicaid program office and the Department of

1 Elderly Affairs when it imposes conditions as authorized in
2 this paragraph ~~subparagraph~~ in an area in which a community
3 diversion pilot project is implemented.

4 (c)~~(b)~~ A certificateholder may apply to the agency for
5 a modification of conditions imposed under paragraph (a) or
6 paragraph (b). If the holder of a certificate of need
7 demonstrates good cause why the certificate should be
8 modified, the agency shall reissue the certificate of need
9 with such modifications as may be appropriate. The agency
10 shall by rule define the factors constituting good cause for
11 modification.

12 (d)~~(c)~~ If the holder of a certificate of need fails to
13 comply with a condition upon which the issuance of the
14 certificate was predicated, the agency may assess an
15 administrative fine against the certificateholder in an amount
16 not to exceed \$1,000 per failure per day. In assessing the
17 penalty, the agency shall take into account as mitigation the
18 relative lack of severity of a particular failure. Proceeds
19 of such penalties shall be deposited in the Public Medical
20 Assistance Trust Fund.

21 (2)(a) Unless the applicant has commenced
22 construction, if the project provides for construction, unless
23 the applicant has incurred an enforceable capital expenditure
24 commitment for a project, if the project does not provide for
25 construction, or unless subject to paragraph (b), a
26 certificate of need shall terminate 18 months after the date
27 of issuance, ~~except in the case of a multifacility project, as~~
28 ~~defined in s. 408.032, where the certificate of need shall~~
29 ~~terminate 2 years after the date of issuance.~~ The agency shall
30 monitor the progress of the holder of the certificate of need
31 in meeting the timetable for project development specified in

1 the application with the assistance of the local health
2 council as specified in s. 408.033(1)(b)5., and may revoke the
3 certificate of need, if the holder of the certificate is not
4 meeting such timetable and is not making a good-faith ~~good~~
5 ~~faith~~ effort, as defined by rule, to meet it.

6 (b) A certificate of need issued to an applicant
7 holding a provisional certificate of authority under chapter
8 651 shall terminate 1 year after the applicant receives a
9 valid certificate of authority from the Department of
10 Insurance.

11 (c) The certificate-of-need validity period for a
12 project shall be extended by the agency, to the extent that
13 the applicant demonstrates to the satisfaction of the agency
14 that good-faith ~~good-faith~~ commencement of the project is
15 being delayed by litigation or by governmental action or
16 inaction with respect to regulations or permitting precluding
17 commencement of the project.

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

28 Section 11. Section 408.044, Florida Statutes, is
29 amended to read:

30 408.044 Injunction.--Notwithstanding the existence or
31 pursuit of any other remedy, the agency ~~department~~ may

1 maintain an action in the name of the state for injunction or
2 other process against any person to restrain or prevent the
3 pursuit of a project subject to review under ss.
4 408.031-408.045, in the absence of a valid certificate of
5 need.

6 Section 12. Section 408.045, Florida Statutes, is
7 amended to read:

8 408.045 Certificate of need; competitive sealed
9 proposals.--

10 (1) The application, review, and issuance procedures
11 for a certificate of need for an intermediate care facility
12 for the developmentally disabled may be made by the agency
13 ~~department~~ by competitive sealed proposals.

14 (2) The agency ~~department~~ shall make a decision
15 regarding the issuance of the certificate of need in
16 accordance with the provisions of s. 287.057(15), rules
17 adopted by the agency ~~department~~ relating to intermediate care
18 facilities for the developmentally disabled, and the criteria
19 in s. 408.035, as further defined by rule.

20 (3) Notification of the decision shall be issued to
21 all applicants not later than 28 calendar days after the date
22 responses to a request for proposal are due.

23 (4) The procedures provided for under this section are
24 exempt from the batching cycle requirements and the public
25 hearing requirement of s. 408.039.

26 (5) The agency ~~department~~ may use the competitive
27 sealed proposal procedure for determining a certificate of
28 need for other types of health care facilities and services if
29 the agency ~~department~~ identifies an unmet health care need and
30 when funding in whole or in part for such health care
31 facilities or services is authorized by the Legislature.

1 Section 13. (1)(a) There is created a
2 certificate-of-need workgroup staffed by the Agency for Health
3 Care Administration.

4 (b) Workgroup participants shall be responsible for
5 only the expenses that they generate individually through
6 workgroup participation. The agency shall be responsible for
7 expenses incidental to the production of any required data or
8 reports.

9 (2) The workgroup shall consist of 30 members, 10
10 appointed by the Governor, 10 appointed by the President of
11 the Senate, and 10 appointed by the Speaker of the House of
12 Representatives. The workgroup chairperson shall be selected
13 by majority vote of a quorum present. Sixteen members shall
14 constitute a quorum. The membership shall include, but not be
15 limited to, representatives from health care provider
16 organizations, health care facilities, individual health care
17 practitioners, local health councils, and consumer
18 organizations, and persons with health care market expertise
19 as a private-sector consultant.

20 (3) Appointment to the workgroup shall be as follows:

21 (a) The Governor shall appoint one representative each
22 from the hospital industry; nursing home industry; hospice
23 industry; local health councils; a consumer organization; and
24 three health care market consultants, one of whom is a
25 recognized expert on hospital markets, one of whom is a
26 recognized expert on nursing home or long-term-care markets,
27 and one of whom is a recognized expert on hospice markets; one
28 representative from the Medicaid program; and one
29 representative from a health care facility that provides a
30 tertiary service.

31

1 (b) The President of the Senate shall appoint a
2 representative of a for-profit hospital, a representative of a
3 not-for-profit hospital, a representative of a public
4 hospital, two representatives of the nursing home industry,
5 two representatives of the hospice industry, a representative
6 of a consumer organization, a representative from the
7 Department of Elderly Affairs involved with the implementation
8 of a long-term-care community diversion program, and a health
9 care market consultant with expertise in health care
10 economics.

11 (c) The Speaker of the House of Representatives shall
12 appoint a representative from the Florida Hospital
13 Association, a representative of the Association of Community
14 Hospitals and Health Systems of Florida, a representative of
15 the Florida League of Health Systems, a representative of the
16 Florida Health Care Association, a representative of the
17 Florida Association of Homes for the Aging, three
18 representatives of Florida Hospices and Palliative Care, one
19 representative of local health councils, and one
20 representative of a consumer organization.

21 (4) The workgroup shall study issues pertaining to the
22 certificate-of-need program, including the impact of trends in
23 health care delivery and financing. The workgroup shall study
24 issues relating to implementation of the certificate-of-need
25 program.

26 (5) The workgroup shall meet at least annually, at the
27 request of the chairperson. The workgroup shall submit an
28 interim report by December 31, 2001, and a final report by
29 December 31, 2002. The workgroup is abolished effective July
30 1, 2003.

31

1 Section 14. Subsection (7) of section 651.118, Florida
2 Statutes, is amended to read:

3 651.118 Agency for Health Care Administration;
4 certificates of need; sheltered beds; community beds.--

5 (7) Notwithstanding the provisions of subsection (2),
6 at the discretion of the continuing care provider, sheltered
7 nursing home beds may be used for persons who are not
8 residents of the facility and who are not parties to a
9 continuing care contract for a period of up to 5 years after
10 the date of issuance of the initial nursing home license. A
11 provider whose 5-year period has expired or is expiring may
12 request the Agency for Health Care Administration for an
13 extension, not to exceed 30 percent of the total sheltered
14 nursing home beds, if the utilization by residents of the
15 facility in the sheltered beds will not generate sufficient
16 income to cover facility expenses, as evidenced by one of the
17 following:

18 (a) The facility has a net loss for the most recent
19 fiscal year as determined under generally accepted accounting
20 principles, excluding the effects of extraordinary or unusual
21 items, as demonstrated in the most recently audited financial
22 statement; or

23 (b) The facility would have had a pro forma loss for
24 the most recent fiscal year, excluding the effects of
25 extraordinary or unusual items, if revenues were reduced by
26 the amount of revenues from persons in sheltered beds who were
27 not residents, as reported on by a certified public
28 accountant.

29

30 The agency shall be authorized to grant an extension to the
31 provider based on the evidence required in this subsection.

1 The agency may request a facility to use up to 25 percent of
2 the patient days generated by new admissions of nonresidents
3 during the extension period to serve Medicaid recipients for
4 those beds authorized for extended use if there is a
5 demonstrated need in the respective service area and if funds
6 are available. A provider who obtains an extension is
7 prohibited from applying for additional sheltered beds under
8 the provision of subsection (2), unless additional residential
9 units are built or the provider can demonstrate need by
10 facility residents to the Agency for Health Care
11 Administration. The 5-year limit does not apply to up to five
12 sheltered beds designated for inpatient hospice care as part
13 of a contractual arrangement with a hospice licensed under
14 part VI of chapter 400. A facility that uses such beds after
15 the 5-year period shall report such use to the Agency for
16 Health Care Administration. For purposes of this subsection,
17 "resident" means a person who, upon admission to the facility,
18 initially resides in a part of the facility not licensed under
19 part II of chapter 400.

20 Section 15. Subsection (3) of section 400.464, Florida
21 Statutes, is repealed.

22 Section 16. Applications for certificates of need
23 submitted under section 408.031-408.045, Florida Statutes,
24 before the effective date of this act shall be governed by the
25 law in effect at the time the application was submitted.

26 Section 17. Except as otherwise provided in this act,
27 this act shall take effect July 1, 2000.

28
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 420

Modifies current certificate-of-need regulation as provided in statute, including conforming changes to affected licensure law. Defines the terms "exemption" and "mental health services;" revises the term "health service;" and deletes the terms "home health agency," "institutional health service," "intermediate care facility," "multifacility project," and "respite care." Deletes obsolete CON review criteria and revises other CON review criteria to simplify the application review process. Deregulates under CON review, by lessening the level of review, home health agencies and certain cost overruns as well as other activities and services that are subject to certificate-of-need review. Authorizes the addition of a limited number of hospital beds or nursing home beds through an exemption request under certain circumstances, including temporary beds for seasonal increases in patient admissions and emergencies. Excludes certain sheltered beds designated for inpatient hospice care that are operated by continuing care residential communities from a time limit imposed on extensions for such use. Creates a workgroup to study issues pertaining to the CON program, including implementation. Preserves applicability of existing CON law for applications filed prior to the effective date of the bill.