

By the Committees on Governmental Rules & Regulations,  
Health Care Licensing & Regulation and Representatives Minton,  
Tullis, Johnson and Greenstein

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

1 service exclusively on an outpatient basis;  
2 providing a sunset date for review of the  
3 establishment of a hospice program or hospice  
4 inpatient facility; 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. 401.25, F.S.; providing that certain  
23 municipalities may issue the certificate of  
24 public convenience and necessity required for  
25 licensure as a basic or an advanced life  
26 support service; amending s. 651.118, F.S.;  
27 excluding a specified number of beds from a  
28 time limit imposed on extension of  
29 authorization for continuing care residential  
30 community providers to use sheltered beds for  
31 nonresidents; requiring a facility to report

1           such use after the expiration of the extension;  
2           repealing s. 400.464(3), F.S., relating to home  
3           health agency licenses provided to  
4           certificate-of-need exempt entities; providing  
5           effective dates.

6  
7 Be It Enacted by the Legislature of the State of Florida:

8  
9           Section 1. Subsections (2) and (11) of section  
10 400.471, Florida Statutes, are amended to read:

11           400.471 Application for license; fee; provisional  
12 license; temporary permit.--

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

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

19           (b) The number and discipline of professional staff to  
20 be employed; and

21           (c) Proof of financial ability to operate.

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

29           (11) The agency may not issue a license designated as  
30 certified to a home health agency that fails to ~~receive a~~  
31 ~~certificate of need under ss. 408.031-408.045 or that fails to~~

1 satisfy the requirements of a Medicare certification survey  
2 from the agency.

3 Section 2. Subsections (5) and (6) of section 400.606,  
4 Florida Statutes, are amended to read:

5 400.606 License; application; renewal; conditional  
6 license or permit; certificate of need.--

7 (5) The agency shall not issue a license to a hospice  
8 that fails to receive a certificate of need if required under  
9 the provisions of ss. 408.031-408.045. A licensed hospice is a  
10 health care facility as that term is used in s. 408.039(5) and  
11 is entitled to initiate or intervene in an administrative  
12 hearing.

13 (6) A freestanding hospice facility that is primarily  
14 engaged in providing inpatient and related services and that  
15 is not otherwise licensed as a health care facility shall ~~be~~  
16 ~~required to~~ obtain a certificate of need if required under the  
17 provisions of ss. 408.031-408.045. However, a freestanding  
18 hospice facility with six or fewer beds shall not be required  
19 to comply with institutional standards such as, but not  
20 limited to, standards requiring sprinkler systems, emergency  
21 electrical systems, or special lavatory devices.

22 Section 3. Section 408.032, Florida Statutes, is  
23 amended to read:

24 408.032 Definitions.--As used in ss. 408.031-408.045,  
25 the term:

26 (1) "Agency" means the Agency for Health Care  
27 Administration.

28 (2) "Capital expenditure" means an expenditure,  
29 including an expenditure for a construction project undertaken  
30 by a health care facility as its own contractor, which, under  
31 generally accepted accounting principles, is not properly

1 chargeable as an expense of operation and maintenance, which  
2 is made to change the bed capacity of the facility, or  
3 substantially change the services or service area of the  
4 health care facility, health service provider, or hospice, and  
5 which includes the cost of the studies, surveys, designs,  
6 plans, working drawings, specifications, initial financing  
7 costs, and other activities essential to acquisition,  
8 improvement, expansion, or replacement of the plant and  
9 equipment.

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

14 (4) "Commenced construction" means initiation of and  
15 continuous activities beyond site preparation associated with  
16 erecting or modifying a health care facility, including  
17 procurement of a building permit applying the use of  
18 agency-approved construction documents, proof of an executed  
19 owner/contractor agreement or an irrevocable or binding forced  
20 account, and actual undertaking of foundation forming with  
21 steel installation and concrete placing.

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

24 District 1.--Escambia, Santa Rosa, Okaloosa, and Walton  
25 Counties.

26 District 2.--Holmes, Washington, Bay, Jackson,  
27 Franklin, Gulf, Gadsden, Liberty, Calhoun, Leon, Wakulla,  
28 Jefferson, Madison, and Taylor Counties.

29 District 3.--Hamilton, Suwannee, Lafayette, Dixie,  
30 Columbia, Gilchrist, Levy, Union, Bradford, Putnam, Alachua,  
31 Marion, Citrus, Hernando, Sumter, and Lake Counties.

1           District 4.--Baker, Nassau, Duval, Clay, St. Johns,  
2 Flagler, and Volusia Counties.  
3           District 5.--Pasco and Pinellas Counties.  
4           District 6.--Hillsborough, Manatee, Polk, Hardee, and  
5 Highlands Counties.  
6           District 7.--Seminole, Orange, Osceola, and Brevard  
7 Counties.  
8           District 8.--Sarasota, DeSoto, Charlotte, Lee, Glades,  
9 Hendry, and Collier Counties.  
10          District 9.--Indian River, Okeechobee, St. Lucie,  
11 Martin, and Palm Beach Counties.  
12          District 10.--Broward County.  
13          District 11.--Dade and Monroe Counties.  
14          (6) "Exemption" means the process by which a proposal  
15 that would otherwise require a certificate of need may proceed  
16 without a certificate of need.  
17          (7)~~(6)~~ "Expedited review" means the process by which  
18 certain types of applications are not subject to the review  
19 cycle requirements contained in s. 408.039(1), and the letter  
20 of intent requirements contained in s. 408.039(2).  
21          (8)~~(7)~~ "Health care facility" means a hospital,  
22 long-term care hospital, skilled nursing facility, hospice,  
23 ~~intermediate care facility,~~ or intermediate care facility for  
24 the developmentally disabled. A facility relying solely on  
25 spiritual means through prayer for healing is not included as  
26 a health care facility.  
27          (9)~~(8)~~ "Health services" means diagnostic, curative,  
28 or rehabilitative services and includes ~~alcohol treatment,~~  
29 ~~drug abuse treatment,~~ and mental health services. Obstetric  
30 services are not health services for purposes of ss.  
31 408.031-408.045.

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

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

6       (11) "Hospital" means a health care facility licensed  
7 under chapter 395.

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

13       ~~(13) "Intermediate care facility" means an institution~~  
14 ~~which provides, on a regular basis, health-related care and~~  
15 ~~services to individuals who do not require the degree of care~~  
16 ~~and treatment which a hospital or skilled nursing facility is~~  
17 ~~designed to provide, but who, because of their mental or~~  
18 ~~physical condition, require health-related care and services~~  
19 ~~above the level of room and board.~~

20       (12)~~(14)~~ "Intermediate care facility for the  
21 developmentally disabled" means a residential facility  
22 licensed under chapter 393 and certified by the Federal  
23 Government pursuant to the Social Security Act as a provider  
24 of Medicaid services to persons who are mentally retarded or  
25 who have a related condition.

26       (13)~~(15)~~ "Long-term care hospital" means a hospital  
27 licensed under chapter 395 which meets the requirements of 42  
28 C.F.R. s. 412.23(e) and seeks exclusion from the Medicare  
29 prospective payment system for inpatient hospital services.

30       (14) "Mental health services" means inpatient services  
31 provided in a hospital licensed under chapter 395 and listed

1 on the hospital license as psychiatric beds for adults;  
2 psychiatric beds for children and adolescents; intensive  
3 residential treatment beds for children and adolescents;  
4 substance abuse beds for adults; or substance abuse beds for  
5 children and adolescents.

6 ~~(16) "Multifacility project" means an integrated~~  
7 ~~residential and health care facility consisting of independent~~  
8 ~~living units, assisted living facility units, and nursing home~~  
9 ~~beds certificated on or after January 1, 1987, where:~~

10 ~~(a) The aggregate total number of independent living~~  
11 ~~units and assisted living facility units exceeds the number of~~  
12 ~~nursing home beds.~~

13 ~~(b) The developer of the project has expended the sum~~  
14 ~~of \$500,000 or more on the certificated and noncertificated~~  
15 ~~elements of the project combined, exclusive of land costs, by~~  
16 ~~the conclusion of the 18th month of the life of the~~  
17 ~~certificate of need.~~

18 ~~(c) The total aggregate cost of construction of the~~  
19 ~~certificated element of the project, when combined with other,~~  
20 ~~noncertificated elements, is \$10 million or more.~~

21 ~~(d) All elements of the project are contiguous or~~  
22 ~~immediately adjacent to each other and construction of all~~  
23 ~~elements will be continuous.~~

24 (15)(17) "Nursing home geographically underserved  
25 area" means:

26 (a) A county in which there is no existing or approved  
27 nursing home;

28 (b) An area with a radius of at least 20 miles in  
29 which there is no existing or approved nursing home; or

30 (c) An area with a radius of at least 20 miles in  
31 which all existing nursing homes have maintained at least a 95



1 percent occupancy rate for the most recent 6 months or a 90  
2 percent occupancy rate for the most recent 12 months.

3 ~~(18)~~ "Respite care" means short-term care in a  
4 licensed health care facility which is personal or custodial  
5 and is provided for chronic illness, physical infirmity, or  
6 advanced age for the purpose of temporarily relieving family  
7 members of the burden of providing care and attendance.

8 (16)~~(19)~~ "Skilled nursing facility" means an  
9 institution, or a distinct part of an institution, which is  
10 primarily engaged in providing, to inpatients, skilled nursing  
11 care and related services for patients who require medical or  
12 nursing care, or rehabilitation services for the  
13 rehabilitation of injured, disabled, or sick persons.

14 (17)~~(20)~~ "Tertiary health service" means a health  
15 service which, due to its high level of intensity, complexity,  
16 specialized or limited applicability, and cost, should be  
17 limited to, and concentrated in, a limited number of hospitals  
18 to ensure the quality, availability, and cost-effectiveness of  
19 such service. Examples of such service include, but are not  
20 limited to, organ transplantation, specialty burn units,  
21 neonatal intensive care units, comprehensive rehabilitation,  
22 and medical or surgical services which are experimental or  
23 developmental in nature to the extent that the provision of  
24 such services is not yet contemplated within the commonly  
25 accepted course of diagnosis or treatment for the condition  
26 addressed by a given service. The agency shall establish by  
27 rule a list of all tertiary health services.

28 (18)~~(21)~~ "Regional area" means any of those regional  
29 health planning areas established by the agency to which local  
30 and district health planning funds are directed to local  
31 health councils through the General Appropriations Act.

1           Section 4. Paragraph (b) of subsection (1) and  
2 paragraph (a) of subsection (3) of section 408.033, Florida  
3 Statutes, are amended to read:  
4           408.033 Local and state health planning.--  
5           (1) LOCAL HEALTH COUNCILS.--  
6           (b) Each local health council may:  
7           1. Develop a district or regional area health plan  
8 that permits ~~is consistent with the objectives and strategies~~  
9 ~~in the state health plan, but that shall permit~~ each local  
10 health council to develop strategies and set priorities for  
11 implementation based on its unique local health needs. The  
12 district or regional area health plan must contain preferences  
13 for the development of health services and facilities, which  
14 may be considered by the agency in its review of  
15 certificate-of-need applications. The district health plan  
16 shall be submitted to the agency and updated periodically. The  
17 district health plans shall use a uniform format and be  
18 submitted to the agency according to a schedule developed by  
19 the agency in conjunction with the local health councils. The  
20 schedule must provide for ~~coordination between the development~~  
21 ~~of the state health plan and the district health plans and for~~  
22 the development of district health plans by major sections  
23 over a multiyear period. The elements of a district plan  
24 which are necessary to the review of certificate-of-need  
25 applications for proposed projects within the district may be  
26 adopted by the agency as a part of its rules.  
27           2. Advise the agency on health care issues and  
28 resource allocations.  
29           3. Promote public awareness of community health needs,  
30 emphasizing health promotion and cost-effective health service  
31 selection.

- 1           4. Collect data and conduct analyses and studies  
2 related to health care needs of the district, including the  
3 needs of medically indigent persons, and assist the agency and  
4 other state agencies in carrying out data collection  
5 activities that relate to the functions in this subsection.  
6           5. Monitor the onsite construction progress, if any,  
7 of certificate-of-need approved projects and report council  
8 findings to the agency on forms provided by the agency.  
9           6. Advise and assist any regional planning councils  
10 within each district that have elected to address health  
11 issues in their strategic regional policy plans with the  
12 development of the health element of the plans to address the  
13 health goals and policies in the State Comprehensive Plan.  
14           7. Advise and assist local governments within each  
15 district on the development of an optional health plan element  
16 of the comprehensive plan provided in chapter 163, to assure  
17 compatibility with the health goals and policies in the State  
18 Comprehensive Plan and district health plan. To facilitate  
19 the implementation of this section, the local health council  
20 shall annually provide the local governments in its service  
21 area, upon request, with:  
22           a. A copy and appropriate updates of the district  
23 health plan;  
24           b. A report of hospital and nursing home utilization  
25 statistics for facilities within the local government  
26 jurisdiction; and  
27           c. Applicable agency rules and calculated need  
28 methodologies for health facilities and services regulated  
29 under s. 408.034 for the district served by the local health  
30 council.  
31

1           8. Monitor and evaluate the adequacy, appropriateness,  
2 and effectiveness, within the district, of local, state,  
3 federal, and private funds distributed to meet the needs of  
4 the medically indigent and other underserved population  
5 groups.

6           9. In conjunction with the Agency for Health Care  
7 Administration, plan for services at the local level for  
8 persons infected with the human immunodeficiency virus.

9           10. Provide technical assistance to encourage and  
10 support activities by providers, purchasers, consumers, and  
11 local, regional, and state agencies in meeting the health care  
12 goals, objectives, and policies adopted by the local health  
13 council.

14           11. Provide the agency with data required by rule for  
15 the review of certificate-of-need applications and the  
16 projection of need for health services and facilities in the  
17 district.

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

19           (a) The agency, in conjunction with the local health  
20 councils, is responsible for the coordinated planning of ~~all~~  
21 health care services in the state ~~and for the preparation of~~  
22 ~~the state health plan.~~

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

25           408.034 Duties and responsibilities of agency;  
26 rules.--

27           (2) In the exercise of its authority to issue licenses  
28 to health care facilities and health service providers, as  
29 provided under chapters 393, 395, and parts II, ~~IV~~, and VI of  
30 chapter 400, the agency may not issue a license to any health  
31 care facility, health service provider, hospice, or part of a

1 health care facility which fails to receive a certificate of  
2 need or an exemption for the licensed facility or service.

3 Section 6. Section 408.035, Florida Statutes, is  
4 amended to read:

5 408.035 Review criteria.--

6 ~~(1)~~ The agency shall determine the reviewability of  
7 applications and shall review applications for  
8 certificate-of-need determinations for health care facilities  
9 and health services in context with the following criteria:

10 (1)~~(a)~~ The need for the health care facilities and  
11 health services being proposed in relation to the applicable  
12 district health plan, ~~except in emergency circumstances that~~  
13 ~~pose a threat to the public health.~~

14 (2)~~(b)~~ The availability, quality of care, ~~efficiency,~~  
15 ~~appropriateness,~~accessibility, and extent of utilization of,  
16 ~~and adequacy of like and~~ existing health care facilities and  
17 health services in the service district of the applicant.

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

21 ~~(d)~~ ~~The availability and adequacy of other health care~~  
22 ~~facilities and health services in the service district of the~~  
23 ~~applicant, such as outpatient care and ambulatory or home care~~  
24 ~~services, which may serve as alternatives for the health care~~  
25 ~~facilities and health services to be provided by the~~  
26 ~~applicant.~~

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

30 (4)~~(f)~~ The need in the service district of the  
31 applicant for special health care ~~equipment and~~ services that

1 are not reasonably and economically accessible in adjoining  
2 areas.

3 (5)~~(g)~~ The needs of ~~need for~~ research and educational  
4 facilities, including, but not limited to, facilities with  
5 institutional training programs and community training  
6 programs for health care practitioners and for doctors of  
7 osteopathic medicine and medicine at the student, internship,  
8 and residency training levels.

9 (6)~~(h)~~ The availability of resources, including health  
10 personnel, management personnel, and funds for capital and  
11 operating expenditures, for project accomplishment and  
12 operation. ~~the effects the project will have on clinical~~  
13 ~~needs of health professional training programs in the service~~  
14 ~~district; the extent to which the services will be accessible~~  
15 ~~to schools for health professions in the service district for~~  
16 ~~training purposes if such services are available in a limited~~  
17 ~~number of facilities; the availability of alternative uses of~~  
18 ~~such resources for the provision of other health services; and~~

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

22 (8)~~(i)~~ The immediate and long-term financial  
23 feasibility of the proposal.

24 ~~(j) The special needs and circumstances of health~~  
25 ~~maintenance organizations.~~

26 ~~(k) The needs and circumstances of those entities that~~  
27 ~~provide a substantial portion of their services or resources,~~  
28 ~~or both, to individuals not residing in the service district~~  
29 ~~in which the entities are located or in adjacent service~~  
30 ~~districts. Such entities may include medical and other health~~  
31 ~~professions, schools, multidisciplinary clinics, and specialty~~

1 ~~services such as open-heart surgery, radiation therapy, and~~  
2 ~~renal transplantation.~~

3 (9)(1) The extent to which the proposal will foster  
4 competition that promotes quality and cost-effectiveness.~~The~~  
5 ~~probable impact of the proposed project on the costs of~~  
6 ~~providing health services proposed by the applicant, upon~~  
7 ~~consideration of factors including, but not limited to, the~~  
8 ~~effects of competition on the supply of health services being~~  
9 ~~proposed and the improvements or innovations in the financing~~  
10 ~~and delivery of health services which foster competition and~~  
11 ~~service to promote quality assurance and cost-effectiveness.~~

12 (10)(m) The costs and methods of the proposed  
13 construction, including the costs and methods of energy  
14 provision and the availability of alternative, less costly, or  
15 more effective methods of construction.

16 (11)(n) The applicant's past and proposed provision of  
17 health care services to Medicaid patients and the medically  
18 indigent.

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

24 (12)(p) The applicant's designation as a Gold Seal  
25 Program nursing facility pursuant to s. 400.235, when the  
26 applicant is requesting additional nursing home beds at that  
27 facility.

28 ~~(2) In cases of capital expenditure proposals for the~~  
29 ~~provision of new health services to inpatients, the agency~~  
30 ~~shall also reference each of the following in its findings of~~  
31 ~~fact:~~

1           ~~(a) That less costly, more efficient, or more~~  
2 ~~appropriate alternatives to such inpatient services are not~~  
3 ~~available and the development of such alternatives has been~~  
4 ~~studied and found not practicable.~~

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

8           ~~(c) In the case of new construction or replacement~~  
9 ~~construction, that alternatives to the construction, for~~  
10 ~~example, modernization or sharing arrangements, have been~~  
11 ~~considered and have been implemented to the maximum extent~~  
12 ~~practicable.~~

13           ~~(d) That patients will experience serious problems in~~  
14 ~~obtaining inpatient care of the type proposed, in the absence~~  
15 ~~of the proposed new service.~~

16           ~~(e) In the case of a proposal for the addition of beds~~  
17 ~~for the provision of skilled nursing or intermediate care~~  
18 ~~services, that the addition will be consistent with the plans~~  
19 ~~of other agencies of the state responsible for the provision~~  
20 ~~and financing of long-term care, including home health~~  
21 ~~services.~~

22           Section 7. Section 408.036, Florida Statutes, is  
23 amended to read:

24           408.036 Projects subject to review.--

25           (1) APPLICABILITY.--Unless exempt under subsection  
26 (3), all health-care-related projects, as described in  
27 paragraphs (a)-(h)~~(\*)~~, are subject to review and must file an  
28 application for a certificate of need with the agency. The  
29 agency is exclusively responsible for determining whether a  
30 health-care-related project is subject to review under ss.  
31 408.031-408.045.



- 1           (a) The addition of beds by new construction or  
2 alteration.
- 3           (b) The new construction or establishment of  
4 additional health care facilities, including a replacement  
5 health care facility when the proposed project site is not  
6 located on the same site as the existing health care facility.
- 7           (c) The conversion from one type of health care  
8 facility to another, ~~including the conversion from one level~~  
9 ~~of care to another, in a skilled or intermediate nursing~~  
10 ~~facility, if the conversion effects a change in the level of~~  
11 ~~care of 10 beds or 10 percent of total bed capacity of the~~  
12 ~~skilled or intermediate nursing facility within a 2-year~~  
13 ~~period. If the nursing facility is certified for both skilled~~  
14 ~~and intermediate nursing care, the provisions of this~~  
15 ~~paragraph do not apply.~~
- 16           (d) An Any increase in the total licensed bed capacity  
17 of a health care facility.
- 18           (e) ~~Subject to the provisions of paragraph (3)(i), the~~  
19 ~~establishment of a Medicare-certified home health agency, The~~  
20 ~~establishment of a hospice or hospice inpatient facility, or~~  
21 ~~the direct provision of such services by a health care~~  
22 ~~facility or health maintenance organization for those other~~  
23 ~~than the subscribers of the health maintenance organization,~~  
24 ~~except that this paragraph does not apply to the establishment~~  
25 ~~of a Medicare-certified home health agency by a facility~~  
26 ~~described in paragraph (3)(h).~~
- 27           (f) ~~An acquisition by or on behalf of a health care~~  
28 ~~facility or health maintenance organization, by any means,~~  
29 ~~which acquisition would have required review if the~~  
30 ~~acquisition had been by purchase.~~
- 31

1           ~~(f)~~(g) The establishment of inpatient institutional  
2 health services by a health care facility, or a substantial  
3 change in such services.

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

12           ~~(i)~~ ~~An increase in the cost of a project for which a~~  
13 ~~certificate of need has been issued when the increase in cost~~  
14 ~~exceeds 20 percent of the originally approved cost of the~~  
15 ~~project, except that a cost overrun review is not necessary~~  
16 ~~when the cost overrun is less than \$20,000.~~

17           ~~(g)~~(j) An increase in the number of beds for acute  
18 care, specialty burn units, neonatal intensive care units,  
19 comprehensive rehabilitation, mental health services, or  
20 hospital-based distinct part skilled nursing units, or at a  
21 long-term care hospital ~~psychiatric or rehabilitation beds.~~

22           ~~(h)~~(k) The establishment of tertiary health services.

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

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

27           (a)~~(b)~~ Research, education, and training programs.

28           (b)~~(c)~~ Shared services contracts or projects.

29           (c)~~(d)~~ A transfer of a certificate of need.

30           (d)~~(e)~~ A 50-percent increase in nursing home beds for  
31 a facility incorporated and operating in this state for at

1 least 60 years on or before July 1, 1988, which has a licensed  
2 nursing home facility located on a campus providing a variety  
3 of residential settings and supportive services. The  
4 increased nursing home beds shall be for the exclusive use of  
5 the campus residents. Any application on behalf of an  
6 applicant meeting this requirement shall be subject to the  
7 base fee of \$5,000 provided in s. 408.038.

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

11 ~~(g) Division into two or more nursing home facilities~~  
12 ~~of beds or services authorized by one certificate of need~~  
13 ~~issued in the same planning subdistrict. Such division shall~~  
14 ~~not be approved if it would adversely affect the original~~  
15 ~~certificate's approved cost.~~

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

19 (f) The conversion of mental health services beds  
20 licensed under chapter 395 or hospital-based distinct part  
21 skilled nursing unit beds to general acute care beds; the  
22 conversion of mental health services beds between or among the  
23 licensed bed categories defined as beds for mental health  
24 services; or the conversion of general acute care beds to beds  
25 for mental health services.

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

29 2. Beds converted under this paragraph must be  
30 licensed and operational for at least 12 months before the  
31

1 hospital may apply for additional conversion affecting beds of  
2 the same type.

3  
4 The agency shall develop rules to implement the provisions for  
5 expedited review, including time schedule, application content  
6 which may be reduced from the full requirements of s.  
7 408.037(1), and application processing.

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

12 ~~(a) For the initiation or expansion of obstetric~~  
13 ~~services.~~

14 ~~(a)(b) For replacement of any expenditure to replace~~  
15 ~~or renovate any part of a licensed health care facility on the~~  
16 same site, provided that the number of licensed beds in each  
17 licensed bed category will not increase ~~and, in the case of a~~  
18 ~~replacement facility, the project site is the same as the~~  
19 ~~facility being replaced.~~

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

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

28 ~~(c)(e) For the conversion of licensed acute care~~  
29 hospital beds to Medicare and Medicaid certified skilled  
30 nursing beds in a rural hospital as defined in s. 395.602, so  
31 long as the conversion of the beds does not involve the

1 construction of new facilities. The total number of skilled  
2 nursing beds, including swing beds, may not exceed one-half of  
3 the total number of licensed beds in the rural hospital as of  
4 July 1, 1993. Certified skilled nursing beds designated under  
5 this paragraph, excluding swing beds, shall be included in the  
6 community nursing home bed inventory. A rural hospital which  
7 subsequently decertifies any acute care beds exempted under  
8 this paragraph shall notify the agency of the decertification,  
9 and the agency shall adjust the community nursing home bed  
10 inventory accordingly.

11 (d)~~(f)~~ For the addition of nursing home beds at a  
12 skilled nursing facility that is part of a retirement  
13 community that provides a variety of residential settings and  
14 supportive services and that has been incorporated and  
15 operated in this state for at least 65 years on or before July  
16 1, 1994. All nursing home beds must not be available to the  
17 public but must be for the exclusive use of the community  
18 residents.

19 (e)~~(g)~~ For an increase in the bed capacity of a  
20 nursing facility licensed for at least 50 beds as of January  
21 1, 1994, under part II of chapter 400 which is not part of a  
22 continuing care facility if, after the increase, the total  
23 licensed bed capacity of that facility is not more than 60  
24 beds and if the facility has been continuously licensed since  
25 1950 and has received a superior rating on each of its two  
26 most recent licensure surveys.

27 ~~(h) For the establishment of a Medicare-certified home~~  
28 ~~health agency by a facility certified under chapter 651; a~~  
29 ~~retirement community, as defined in s. 400.404(2)(g); or a~~  
30 ~~residential facility that serves only retired military~~  
31 ~~personnel, their dependents, and the surviving dependents of~~

1 ~~deceased military personnel. Medicare-reimbursed home health~~  
2 ~~services provided through such agency shall be offered~~  
3 ~~exclusively to residents of the facility or retirement~~  
4 ~~community or to residents of facilities or retirement~~  
5 ~~communities owned, operated, or managed by the same corporate~~  
6 ~~entity. Each visit made to deliver Medicare-reimbursable home~~  
7 ~~health services to a home health patient who, at the time of~~  
8 ~~service, is not a resident of the facility or retirement~~  
9 ~~community shall be a deceptive and unfair trade practice and~~  
10 ~~constitutes a violation of ss. 501.201-501.213.~~

11 ~~(i) For the establishment of a Medicare-certified home~~  
12 ~~health agency. This paragraph shall take effect 90 days after~~  
13 ~~the adjournment sine die of the next regular session of the~~  
14 ~~Legislature occurring after the legislative session in which~~  
15 ~~the Legislature receives a report from the Director of Health~~  
16 ~~Care Administration certifying that the federal Health Care~~  
17 ~~Financing Administration has implemented a per-episode~~  
18 ~~prospective pay system for Medicare-certified home health~~  
19 ~~agencies.~~

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

24 ~~(k) For an expenditure by or on behalf of a health~~  
25 ~~care facility to provide a health service exclusively on an~~  
26 ~~outpatient basis.~~

27 ~~(g)(l)~~ (g) For the termination of an inpatient a health  
28 care service, upon 30 days' written notice to the agency.

29 ~~(h)(m)~~ (h) For the delicensure of beds, upon 30 days'  
30 written notice to the agency. A request for exemption An  
31 application submitted under this paragraph must identify the

1 number, the category of beds classification, and the name of  
2 the facility in which the beds to be delicensed are located.  
3 (i)~~(n)~~ For the provision of adult inpatient diagnostic  
4 cardiac catheterization services in a hospital.  
5 1. In addition to any other documentation otherwise  
6 required by the agency, a request for an exemption submitted  
7 under this paragraph must comply with the following criteria:  
8 a. The applicant must certify it will not provide  
9 therapeutic cardiac catheterization pursuant to the grant of  
10 the exemption.  
11 b. The applicant must certify it will meet and  
12 continuously maintain the minimum licensure requirements  
13 adopted by the agency governing such programs pursuant to  
14 subparagraph 2.  
15 c. The applicant must certify it will provide a  
16 minimum of 2 percent of its services to charity and Medicaid  
17 patients.  
18 2. The agency shall adopt licensure requirements by  
19 rule which govern the operation of adult inpatient diagnostic  
20 cardiac catheterization programs established pursuant to the  
21 exemption provided in this paragraph. The rules shall ensure  
22 that such programs:  
23 a. Perform only adult inpatient diagnostic cardiac  
24 catheterization services authorized by the exemption and will  
25 not provide therapeutic cardiac catheterization or any other  
26 services not authorized by the exemption.  
27 b. Maintain sufficient appropriate equipment and  
28 health personnel to ensure quality and safety.  
29 c. Maintain appropriate times of operation and  
30 protocols to ensure availability and appropriate referrals in  
31 the event of emergencies.

1           d. Maintain appropriate program volumes to ensure  
2 quality and safety.

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

5           3.a. The exemption provided by this paragraph shall  
6 not apply unless the agency determines that the program is in  
7 compliance with the requirements of subparagraph 1. and that  
8 the program will, after beginning operation, continuously  
9 comply with the rules adopted pursuant to subparagraph 2. The  
10 agency shall monitor such programs to ensure compliance with  
11 the requirements of subparagraph 2.

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

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

19           (III) If the exemption for a program expires pursuant  
20 to sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the  
21 agency shall not grant an exemption pursuant to this paragraph  
22 for an adult inpatient diagnostic cardiac catheterization  
23 program located at the same hospital until 2 years following  
24 the date of the determination by the agency that the program  
25 failed to comply with the rules adopted pursuant to  
26 subparagraph 2.

27           ~~4. The agency shall not grant any exemption under this~~  
28 ~~paragraph until the adoption of the rules required under this~~  
29 ~~paragraph, or until March 1, 1998, whichever comes first.~~  
30 ~~However, if final rules have not been adopted by March 1,~~  
31 ~~1998, the proposed rules governing the exemptions shall be~~



1 ~~used by the agency to grant exemptions under the provisions of~~  
2 ~~this paragraph until final rules become effective.~~

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

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

15 (l) For combination within one nursing home facility  
16 of the beds or services authorized by two or more certificates  
17 of need issued in the same planning subdistrict. An exemption  
18 granted under this paragraph shall extend the validity period  
19 of the certificates of need to be consolidated by the length  
20 of the period beginning upon submission of the exemption  
21 request and ending with issuance of the exemption. The  
22 longest validity period among the certificates shall be  
23 applicable to each of the combined certificates.

24 (m) For division into two or more nursing home  
25 facilities of beds or services authorized by one certificate  
26 of need issued in the same planning subdistrict. An exemption  
27 granted under this paragraph shall extend the validity period  
28 of the certificate of need to be divided by the length of the  
29 period beginning upon submission of the exemption request and  
30 ending with issuance of the exemption.

31

1       (n) For the addition of hospital beds licensed under  
2 chapter 395 for acute care, mental health services, or a  
3 hospital-based distinct part skilled nursing unit in a number  
4 that may not exceed 10 total beds or 10 percent of the  
5 licensed capacity of the bed category being expanded,  
6 whichever is greater. Beds for specialty burn units, neonatal  
7 intensive care units, or comprehensive rehabilitation, or at a  
8 long-term care hospital, may not be increased under this  
9 paragraph.

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

13           a. Certify that the prior 12-month average occupancy  
14 rate for the category of licensed beds being expanded at the  
15 facility meets or exceeds 80 percent or, for a hospital-based  
16 distinct part skilled nursing unit, the prior 12-month average  
17 occupancy rate meets or exceeds 96 percent.

18           b. Certify that any beds of the same type authorized  
19 for the facility under this paragraph before the date of the  
20 current request for an exemption have been licensed and  
21 operational for at least 12 months.

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

25       3. The agency shall count beds authorized under this  
26 paragraph as approved beds in the published inventory of  
27 hospital beds until the beds are licensed.

28       (o) For the addition of acute care beds, as authorized  
29 by rule consistent with s. 395.003(4), in a number that may  
30 not exceed 10 total beds or 10 percent of licensed bed  
31 capacity, whichever is greater, for temporary beds in a

1 hospital which has experienced high seasonal occupancy within  
2 the prior 12-month period or in a hospital that must respond  
3 to emergency or exigent circumstances.

4 (p) For the addition of nursing home beds licensed  
5 under chapter 400 in a number not exceeding 10 total beds or  
6 10 percent of the number of beds licensed in the facility  
7 being expanded, whichever is greater.

8 1. In addition to any other documentation required by  
9 the agency, a request for exemption submitted under this  
10 paragraph must:

11 a. Certify that the facility has not had any class I  
12 or class II deficiencies within the 30 months preceding the  
13 request for addition.

14 b. Certify that the prior 12-month average occupancy  
15 rate for the nursing home beds at the facility meets or  
16 exceeds 96 percent.

17 c. Certify that any beds authorized for the facility  
18 under this paragraph before the date of the current request  
19 for an exemption have been licensed and operational for at  
20 least 12 months.

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

24 3. The agency shall count beds authorized under this  
25 paragraph as approved beds in the published inventory of  
26 nursing home beds until the beds are licensed.

27 (4) A request for exemption under ~~this~~ subsection(3)  
28 may be made at any time and is not subject to the batching  
29 requirements of this section. The request shall be supported  
30 by such documentation as the agency requires by rule. The  
31

1 agency shall assess a fee of \$250 for each request for  
2 exemption submitted under subsection (3).

3 Section 8. Paragraph (a) of subsection (1) of section  
4 408.037, Florida Statutes, is amended to read:

5 408.037 Application content.--

6 (1) An application for a certificate of need must  
7 contain:

8 (a) A detailed description of the proposed project and  
9 statement of its purpose and need in relation to the district  
10 ~~local~~ health plan ~~and the state health plan.~~

11 Section 9. Section 408.038, Florida Statutes, is  
12 amended to read:

13 408.038 Fees.--The agency ~~department~~ shall assess fees  
14 on certificate-of-need applications. Such fees shall be for  
15 the purpose of funding the functions of the local health  
16 councils and the activities of the agency ~~department~~ and shall  
17 be allocated as provided in s. 408.033. The fee shall be  
18 determined as follows:

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

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

23 Section 10. Subsections (3) and (4), paragraph (c) of  
24 subsection (5), and paragraphs (a) and (b) of subsection (6)  
25 of section 408.039, Florida Statutes, are amended to read:

26 408.039 Review process.--The review process for  
27 certificates of need shall be as follows:

28 (3) APPLICATION PROCESSING.--

29 (a) An applicant shall file an application with the  
30 agency ~~department~~, and shall furnish a copy of the application  
31 to the local health council and the agency ~~department~~. Within

1 15 days after the applicable application filing deadline  
2 established by agency ~~department~~ rule, the staff of the agency  
3 ~~department~~ shall determine if the application is complete. If  
4 the application is incomplete, the staff shall request  
5 specific information from the applicant necessary for the  
6 application to be complete; however, the staff may make only  
7 one such request. If the requested information is not filed  
8 with the agency ~~department~~ within 21 days of the receipt of  
9 the staff's request, the application shall be deemed  
10 incomplete and deemed withdrawn from consideration.

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

22 (4) STAFF RECOMMENDATIONS.--

23 (a) The agency's ~~department's~~ review of and final  
24 agency action on applications shall be in accordance with the  
25 district health plan, and statutory criteria, and the  
26 implementing administrative rules. In the application review  
27 process, the agency ~~department~~ shall give a preference, as  
28 defined by rule of the agency ~~department~~, to an applicant  
29 which proposes to develop a nursing home in a nursing home  
30 geographically underserved area.

31

1           (b) Within 60 days after all the applications in a  
2 review cycle are determined to be complete, the agency  
3 ~~department~~ shall issue its State Agency Action Report and  
4 Notice of Intent to grant a certificate of need for the  
5 project in its entirety, to grant a certificate of need for  
6 identifiable portions of the project, or to deny a certificate  
7 of need. The State Agency Action Report shall set forth in  
8 writing its findings of fact and determinations upon which its  
9 decision is based. If a finding of fact or determination by  
10 the agency ~~department~~ is counter to the district health plan  
11 of the local health council, the agency ~~department~~ shall  
12 provide in writing its reason for its findings, item by item,  
13 to the local health council. If the agency ~~department~~ intends  
14 to grant a certificate of need, the State Agency Action Report  
15 or the Notice of Intent shall also include any conditions  
16 which the agency ~~department~~ intends to attach to the  
17 certificate of need. The agency ~~department~~ shall designate by  
18 rule a senior staff person, other than the person who issues  
19 the final order, to issue State Agency Action Reports and  
20 Notices of Intent.

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

25           (d) If no administrative hearing is requested pursuant  
26 to subsection (5), the State Agency Action Report and the  
27 Notice of Intent shall become the final order of the agency  
28 ~~department~~. The agency ~~department~~ shall provide a copy of the  
29 final order to the appropriate local health council.

30           (5) ADMINISTRATIVE HEARINGS.--

31

1           (c) In administrative proceedings challenging the  
2 issuance or denial of a certificate of need, only applicants  
3 considered by the agency in the same batching cycle are  
4 entitled to a comparative hearing on their applications.  
5 Existing health care facilities may initiate or intervene in  
6 an administrative hearing upon a showing that an established  
7 program will be substantially affected by the issuance of any  
8 certificate of need, whether reviewed under s. 408.036(1) or  
9 (2), to a competing proposed facility or program within the  
10 same district.

11           (6) JUDICIAL REVIEW.--

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

18           (b) In such judicial review, the court shall affirm  
19 the final order of the agency ~~department~~, unless the decision  
20 is arbitrary, capricious, or not in compliance with ss.  
21 408.031-408.045.

22           Section 11. Subsections (1) and (2) of section  
23 408.040, Florida Statutes, are amended to read:

24           408.040 Conditions and monitoring.--

25           (1)(a) The agency may issue a certificate of need  
26 predicated upon statements of intent expressed by an applicant  
27 in the application for a certificate of need. Any conditions  
28 imposed on a certificate of need based on such statements of  
29 intent shall be stated on the face of the certificate of need.

30           ~~1. Any certificate of need issued for construction of~~  
31 ~~a new hospital or for the addition of beds to an existing~~

1 ~~hospital shall include a statement of the number of beds~~  
2 ~~approved by category of service, including rehabilitation or~~  
3 ~~psychiatric service, for which the agency has adopted by rule~~  
4 ~~a specialty-bed-need methodology. All beds that are approved,~~  
5 ~~but are not covered by any specialty-bed-need methodology,~~  
6 ~~shall be designated as general.~~  
7       **(b)2.** The agency may consider, in addition to the  
8 other criteria specified in s. 408.035, a statement of intent  
9 by the applicant that a specified ~~to designate~~ a percentage of  
10 the annual patient days at beds of the facility will be  
11 utilized for use by patients eligible for care under Title XIX  
12 of the Social Security Act. Any certificate of need issued to  
13 a nursing home in reliance upon an applicant's statements that  
14 ~~to provide~~ a specified percentage number of annual patient  
15 days will be utilized beds for use by residents eligible for  
16 care under Title XIX of the Social Security Act must include a  
17 statement that such certification is a condition of issuance  
18 of the certificate of need. The certificate-of-need program  
19 shall notify the Medicaid program office and the Department of  
20 Elderly Affairs when it imposes conditions as authorized in  
21 this paragraph ~~subparagraph~~ in an area in which a community  
22 diversion pilot project is implemented.  
23       **(c)(b)** A certificateholder may apply to the agency for  
24 a modification of conditions imposed under paragraph (a) or  
25 paragraph (b). If the holder of a certificate of need  
26 demonstrates good cause why the certificate should be  
27 modified, the agency shall reissue the certificate of need  
28 with such modifications as may be appropriate. The agency  
29 shall by rule define the factors constituting good cause for  
30 modification.  
31



1        (d)~~(e)~~ If the holder of a certificate of need fails to  
2 comply with a condition upon which the issuance of the  
3 certificate was predicated, the agency may assess an  
4 administrative fine against the certificateholder in an amount  
5 not to exceed \$1,000 per failure per day. In assessing the  
6 penalty, the agency shall take into account as mitigation the  
7 relative lack of severity of a particular failure. Proceeds  
8 of such penalties shall be deposited in the Public Medical  
9 Assistance Trust Fund.

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

26        (b) A certificate of need issued to an applicant  
27 holding a provisional certificate of authority under chapter  
28 651 shall terminate 1 year after the applicant receives a  
29 valid certificate of authority from the Department of  
30 Insurance.

31

1           (c) The certificate-of-need validity period for a  
2 project shall be extended by the agency, to the extent that  
3 the applicant demonstrates to the satisfaction of the agency  
4 that good faith commencement of the project is being delayed  
5 by litigation or by governmental action or inaction with  
6 respect to regulations or permitting precluding commencement  
7 of the project.

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

18           Section 12. Section 408.044, Florida Statutes, is  
19 amended to read:

20           408.044 Injunction.--Notwithstanding the existence or  
21 pursuit of any other remedy, the agency ~~department~~ may  
22 maintain an action in the name of the state for injunction or  
23 other process against any person to restrain or prevent the  
24 pursuit of a project subject to review under ss.  
25 408.031-408.045, in the absence of a valid certificate of  
26 need.

27           Section 13. Section 408.045, Florida Statutes, is  
28 amended to read:

29           408.045 Certificate of need; competitive sealed  
30 proposals.--

31

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

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

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

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

17           (5) The agency ~~department~~ may use the competitive  
18 sealed proposal procedure for determining a certificate of  
19 need for other types of health care facilities and services if  
20 the agency ~~department~~ identifies an unmet health care need and  
21 when funding in whole or in part for such health care  
22 facilities or services is authorized by the Legislature.

23           Section 14. (1)(a) There is created a  
24 certificate-of-need workgroup staffed by the Agency for Health  
25 Care Administration.

26           (b) Workgroup participants shall be responsible for  
27 only the expenses that they generate individually through  
28 workgroup participation. The agency shall be responsible for  
29 expenses incidental to the production of any required data or  
30 reports.

31

1           (2) The workgroup shall consist of 30 members, 10  
2 appointed by the Governor, 10 appointed by the President of  
3 the Senate, and 10 appointed by the Speaker of the House of  
4 Representatives. The workgroup chair shall be selected by  
5 majority vote of a quorum present. Sixteen members shall  
6 constitute a quorum. The membership shall include, but not be  
7 limited to, representatives from health care provider  
8 organizations, health care facilities, individual health care  
9 practitioners, local health councils, and consumer  
10 organizations, and persons with health care market expertise  
11 as private-sector consultants.

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

13           (a) The Governor shall appoint one representative each  
14 from the hospital industry; nursing home industry; hospice  
15 industry; local health councils; a consumer organization; and  
16 three health care market consultants, one of whom is a  
17 recognized expert on hospital markets, one of whom is a  
18 recognized expert on nursing home or long-term-care markets,  
19 and one of whom is a recognized expert on hospice markets; one  
20 representative from the Medicaid program; and one  
21 representative from a health care facility that provides a  
22 tertiary service.

23           (b) The President of the Senate shall appoint a  
24 representative of a for-profit hospital, a representative of a  
25 not-for-profit hospital, a representative of a public  
26 hospital, two representatives of the nursing home industry,  
27 two representatives of the hospice industry, a representative  
28 of a consumer organization, a representative from the  
29 Department of Elderly Affairs involved with the implementation  
30 of a long-term-care community diversion program, and a health  
31

1 care market consultant with expertise in health care  
2 economics.

3 (c) The Speaker of the House of Representatives shall  
4 appoint a representative from the Florida Hospital  
5 Association, a representative of the Association of Community  
6 Hospitals and Health Systems of Florida, a representative of  
7 the Florida League of Health Systems, a representative of the  
8 Florida Health Care Association, a representative of the  
9 Florida Association of Homes for the Aging, three  
10 representatives of Florida Hospices and Palliative Care, one  
11 representative of local health councils, and one  
12 representative of a consumer organization.

13 (4) The workgroup shall study issues pertaining to the  
14 certificate-of-need program, including the impact of trends in  
15 health care delivery and financing. The workgroup shall study  
16 issues relating to implementation of the certificate-of-need  
17 program.

18 (5) The workgroup shall meet at least annually, at the  
19 request of the chair. The workgroup shall submit an interim  
20 report by December 31, 2001, and a final report by December  
21 31, 2002. The workgroup is abolished effective July 1, 2003.

22 Section 15. Effective upon becoming a law, paragraph  
23 (d) of subsection (2) and subsection (6) of section 401.25,  
24 Florida Statutes, are amended to read:

25 401.25 Licensure as a basic life support or an  
26 advanced life support service.--

27 (2) The department shall issue a license for operation  
28 to any applicant who complies with the following requirements:

29 (d) The applicant has obtained a certificate of public  
30 convenience and necessity from each county in which the  
31 applicant will operate or, if the applicant will operate in a

1 municipality with a population greater than 30,000, from that  
2 municipality. In issuing the certificate of public convenience  
3 and necessity, the governing body of each county shall  
4 consider the recommendations of municipalities within its  
5 jurisdiction, and the governing body of a municipality shall  
6 consider the recommendations of appropriate agencies under its  
7 jurisdiction.

8 (6) The governing body of each county, and each  
9 municipality with a population greater than 30,000, may adopt  
10 ordinances that provide reasonable standards for certificates  
11 of public convenience and necessity for basic or advanced life  
12 support services and air ambulance services. In developing  
13 standards for certificates of public convenience and  
14 necessity, the governing body of the ~~each~~ county or  
15 municipality must consider state guidelines and,  
16 recommendations of the local or regional trauma agency created  
17 under chapter 395, the governing body of a county must  
18 consider ~~and~~ the recommendations of municipalities within its  
19 jurisdiction, and the governing body of a municipality must  
20 consider the recommendations of appropriate agencies under its  
21 jurisdiction.

22 Section 16. Subsection (7) of section 651.118, Florida  
23 Statutes, is amended to read:

24 651.118 Agency for Health Care Administration;  
25 certificates of need; sheltered beds; community beds.--

26 (7) Notwithstanding the provisions of subsection (2),  
27 at the discretion of the continuing care provider, sheltered  
28 nursing home beds may be used for persons who are not  
29 residents of the facility and who are not parties to a  
30 continuing care contract for a period of up to 5 years after  
31 the date of issuance of the initial nursing home license. A

1 provider whose 5-year period has expired or is expiring may  
2 request the Agency for Health Care Administration for an  
3 extension, not to exceed 30 percent of the total sheltered  
4 nursing home beds, if the utilization by residents of the  
5 facility in the sheltered beds will not generate sufficient  
6 income to cover facility expenses, as evidenced by one of the  
7 following:

8 (a) The facility has a net loss for the most recent  
9 fiscal year as determined under generally accepted accounting  
10 principles, excluding the effects of extraordinary or unusual  
11 items, as demonstrated in the most recently audited financial  
12 statement; or

13 (b) The facility would have had a pro forma loss for  
14 the most recent fiscal year, excluding the effects of  
15 extraordinary or unusual items, if revenues were reduced by  
16 the amount of revenues from persons in sheltered beds who were  
17 not residents, as reported on by a certified public  
18 accountant.

19  
20 The agency shall be authorized to grant an extension to the  
21 provider based on the evidence required in this subsection.  
22 The agency may request a facility to use up to 25 percent of  
23 the patient days generated by new admissions of nonresidents  
24 during the extension period to serve Medicaid recipients for  
25 those beds authorized for extended use if there is a  
26 demonstrated need in the respective service area and if funds  
27 are available. A provider who obtains an extension is  
28 prohibited from applying for additional sheltered beds under  
29 the provision of subsection (2), unless additional residential  
30 units are built or the provider can demonstrate need by  
31 facility residents to the Agency for Health Care

1 Administration. The 5-year limit does not apply to up to 5  
2 sheltered beds designated for inpatient hospice care as part  
3 of a contractual arrangement with a hospice licensed under  
4 part VI of chapter 400. A facility that uses such beds after  
5 the 5-year period shall report such use to the Agency for  
6 Health Care Administration.For purposes of this subsection,  
7 "resident" means a person who, upon admission to the facility,  
8 initially resides in a part of the facility not licensed under  
9 part II of chapter 400.

10 Section 17. Subsection (3) of section 400.464, Florida  
11 Statutes, is repealed.

12 Section 18. Except as otherwise provided herein, this  
13 act shall take effect July 1, 2000.

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