

By the Committee on Health Regulation and Representative
Rubio

1 A bill to be entitled
2 An act relating to certificate of need;
3 amending s. 408.036, F.S.; providing
4 legislative intent; exempting open heart
5 surgery programs from certificate-of-need
6 review; providing application and licensure
7 requirements; providing for rules of the Agency
8 for Health Care Administration; correcting
9 cross references; providing a grandfather
10 clause; amending ss. 408.0361 and 408.039,
11 F.S.; correcting cross references; amending s.
12 15 of ch. 2000-318, Laws of Florida; providing
13 new dates for final report to the Governor and
14 Legislature and termination of the
15 certificate-of-need workgroup; providing an
16 effective date.

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18 Be It Enacted by the Legislature of the State of Florida:

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20 Section 1. Section 408.036, Florida Statutes, is
21 amended to read:

22 408.036 Projects subject to review.--

23 (1) LEGISLATIVE INTENT.--The Legislature finds that
24 rising health care costs, combined with an increase in the
25 uninsured and elderly population places government as the
26 primary payor of all health services. The Legislature finds
27 further that it is difficult for the health care industry to
28 be a competitive market, when health regulations deter
29 entrepreneurial market concepts that would allow the health
30 care industry to independently develop ways in which to
31 deliver quality health care outcomes in a more reasonable

1 cost-effective manner. In addition, the Legislature finds
2 that, increasingly, hospitals and doctors are competing for
3 contracts to provide a full range of services in exchange for
4 a negotiated fixed payment. This payment method makes it less
5 likely that the creation of excess hospitals and services will
6 occur, thereby limiting the possibility that additional cost
7 to the public is passed on to maintain these services; and,
8 therefore, limiting the need of regulatory oversight initiated
9 prior to the customary use of such contractual agreements. It
10 is therefore the intent of the Legislature to provide a more
11 competitive environment within the health care industry while
12 supporting the development of cutting-edge medical technology,
13 thereby maintaining access to quality health care services for
14 all citizens.

15 (2)~~(1)~~ APPLICABILITY.--Unless exempt under subsection
16 ~~(4)~~~~(3)~~, all health-care-related projects, as described in
17 paragraphs (a)-(h), are subject to review and must file an
18 application for a certificate of need with the agency. The
19 agency is exclusively responsible for determining whether a
20 health-care-related project is subject to review under ss.
21 408.031-408.045.

22 (a) The addition of beds by new construction or
23 alteration.

24 (b) The new construction or establishment of
25 additional health care facilities, including a replacement
26 health care facility when the proposed project site is not
27 located on the same site as the existing health care facility.

28 (c) The conversion from one type of health care
29 facility to another.

30 (d) An increase in the total licensed bed capacity of
31 a health care facility.

1 (e) The establishment of a hospice or hospice
2 inpatient facility, except as provided in s. 408.043.

3 (f) The establishment of inpatient health services by
4 a health care facility, or a substantial change in such
5 services.

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

11 (h) The establishment of tertiary health services.

12 (3)~~(2)~~ PROJECTS SUBJECT TO EXPEDITED REVIEW.--Unless
13 exempt pursuant to subsection(4)~~(3)~~, projects subject to an
14 expedited review shall include, but not be limited to:

15 (a) Research, education, and training programs.

16 (b) Shared services contracts or projects.

17 (c) A transfer of a certificate of need.

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

27 (e) Replacement of a health care facility when the
28 proposed project site is located in the same district and
29 within a 1-mile radius of the replaced health care facility.

30 (f) The conversion of mental health services beds
31 licensed under chapter 395 or hospital-based distinct part

1 skilled nursing unit beds to general acute care beds; the
2 conversion of mental health services beds between or among the
3 licensed bed categories defined as beds for mental health
4 services; or the conversion of general acute care beds to beds
5 for mental health services.

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

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

13
14 The agency shall develop rules to implement the provisions for
15 expedited review, including time schedule, application content
16 which may be reduced from the full requirements of s.
17 408.037(1), and application processing.

18 (4)~~(3)~~ EXEMPTIONS.--Upon request, the following
19 projects are subject to exemption from the provisions of
20 subsection(2)~~(1)~~:

21 (a) For replacement of a licensed health care facility
22 on the same site, provided that the number of beds in each
23 licensed bed category will not increase.

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

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

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

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

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

25 (f) For an inmate health care facility built by or for
26 the exclusive use of the Department of Corrections as provided
27 in chapter 945. This exemption expires when such facility is
28 converted to other uses.

29 (g) For the termination of an inpatient health care
30 service, upon 30 days' written notice to the agency.

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1 (h) For the delicensure of beds, upon 30 days' written
2 notice to the agency. A request for exemption submitted under
3 this paragraph must identify the number, the category of beds,
4 and the name of the facility in which the beds to be
5 delicensed are located.

6 (i) For the provision of adult inpatient diagnostic
7 cardiac catheterization services in a hospital.

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

11 a. The applicant must certify it will not provide
12 therapeutic cardiac catheterization pursuant to the grant of
13 the exemption.

14 b. The applicant must certify it will meet and
15 continuously maintain the minimum licensure requirements
16 adopted by the agency governing such programs pursuant to
17 subparagraph 2.

18 c. The applicant must certify it will provide a
19 minimum of 2 percent of its services to charity and Medicaid
20 patients.

21 2. The agency shall adopt licensure requirements by
22 rule which govern the operation of adult inpatient diagnostic
23 cardiac catheterization programs established pursuant to the
24 exemption provided in this paragraph. The rules shall ensure
25 that such programs:

26 a. Perform only adult inpatient diagnostic cardiac
27 catheterization services authorized by the exemption and will
28 not provide therapeutic cardiac catheterization or any other
29 services not authorized by the exemption.

30 b. Maintain sufficient appropriate equipment and
31 health personnel to ensure quality and safety.

1 c. Maintain appropriate times of operation and
2 protocols to ensure availability and appropriate referrals in
3 the event of emergencies.

4 d. Maintain appropriate program volumes to ensure
5 quality and safety.

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

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

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

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

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

30 (j) For mobile surgical facilities and related health
31 care services provided under contract with the Department of

1 Corrections or a private correctional facility operating
2 pursuant to chapter 957.

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

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

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

27 (n) For the addition of hospital beds licensed under
28 chapter 395 for acute care, mental health services, or a
29 hospital-based distinct part skilled nursing unit in a number
30 that may not exceed 10 total beds or 10 percent of the
31 licensed capacity of the bed category being expanded,

1 whichever is greater. Beds for specialty burn units, neonatal
2 intensive care units, or comprehensive rehabilitation, or at a
3 long-term care hospital, may not be increased under this
4 paragraph.

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

8 a. Certify that the prior 12-month average occupancy
9 rate for the category of licensed beds being expanded at the
10 facility meets or exceeds 80 percent or, for a hospital-based
11 distinct part skilled nursing unit, the prior 12-month average
12 occupancy rate meets or exceeds 96 percent.

13 b. Certify that any beds of the same type authorized
14 for the facility under this paragraph before the date of the
15 current request for an exemption have been licensed and
16 operational for at least 12 months.

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

20 3. The agency shall count beds authorized under this
21 paragraph as approved beds in the published inventory of
22 hospital beds until the beds are licensed.

23 (o) For the addition of acute care beds, as authorized
24 by rule consistent with s. 395.003(4), in a number that may
25 not exceed 10 total beds or 10 percent of licensed bed
26 capacity, whichever is greater, for temporary beds in a
27 hospital that has experienced high seasonal occupancy within
28 the prior 12-month period or in a hospital that must respond
29 to emergency circumstances.

30 (p) For the addition of nursing home beds licensed
31 under chapter 400 in a number not exceeding 10 total beds or

1 10 percent of the number of beds licensed in the facility
2 being expanded, whichever is greater.

3 1. In addition to any other documentation required by
4 the agency, a request for exemption submitted under this
5 paragraph must:

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

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

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

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

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

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

25 (q) For establishment of a specialty hospital offering
26 a range of medical service restricted to a defined age or
27 gender group of the population or a restricted range of
28 services appropriate to the diagnosis, care, and treatment of
29 patients with specific categories of medical illnesses or
30 disorders, through the transfer of beds and services from an
31 existing hospital in the same county.

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

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

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

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

15 (III) If the exemption for a program expires pursuant
16 to sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the
17 agency shall not grant an exemption pursuant to this paragraph
18 for an adult open heart surgery program located at the same
19 hospital until 2 years following the date of the determination
20 by the agency that the program failed to comply with the rules
21 adopted pursuant to subparagraph 2.

22 ~~(5)(4)~~ REQUEST FOR EXEMPTION; FEE.--A request for
23 exemption under subsection(4)(3)may be made at any time and
24 is not subject to the batching requirements of this section.
25 The request shall be supported by such documentation as the
26 agency requires by rule. The agency shall assess a fee of \$250
27 for each request for exemption submitted under subsection(4)
28 (3).

29 (6) GRANDFATHER CLAUSE.--A facility authorized by the
30 state to provide open heart surgery prior to June 30, 2001,
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1 shall continue to be authorized to provide such service on and
2 after the effective date of this act.

3 Section 2. Section 408.0361, Florida Statutes, is
4 amended to read:

5 408.0361 Diagnostic cardiac catheterization services
6 providers; compliance with guidelines and requirements.--Each
7 provider of diagnostic cardiac catheterization services shall
8 comply with the requirements of s. 408.036(4)(i)2.a.-d.
9 ~~(3)(n)2.a.-d.~~, and rules of the Agency for Health Care
10 Administration governing the operation of adult inpatient
11 diagnostic cardiac catheterization programs, including the
12 most recent guidelines of the American College of Cardiology
13 and American Heart Association Guidelines for Cardiac
14 Catheterization and Cardiac Catheterization Laboratories.

15 Section 3. Paragraph (c) of subsection (5) of section
16 408.039, Florida Statutes, is amended to read:

17 408.039 Review process.--The review process for
18 certificates of need shall be as follows:

19 (5) ADMINISTRATIVE HEARINGS.--

20 (c) In administrative proceedings challenging the
21 issuance or denial of a certificate of need, only applicants
22 considered by the agency in the same batching cycle are
23 entitled to a comparative hearing on their applications.
24 Existing health care facilities may initiate or intervene in
25 an administrative hearing upon a showing that an established
26 program will be substantially affected by the issuance of any
27 certificate of need, whether reviewed under s. 408.036(2)(1)
28 ~~or(3)(2)~~, to a competing proposed facility or program within
29 the same district.

30 Section 4. Section 15 of chapter 2000-318, Laws of
31 Florida, is amended to read:

1 Section 15. (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.

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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 to the
29 Governor, the President of the Senate, and the Speaker of the
30 House of Representatives by January 7, ~~December 31,~~ 2002. The
31 workgroup is abolished effective May 3, 2002 ~~July 1, 2003.~~

1 Section 5. This act shall take effect July 1, 2001.
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