

By the Committees on Appropriations; Health, Aging, and Long-Term Care; and Senators Bennett and Fasano

309-2344-03

1 A bill to be entitled
2 An act relating to nursing homes; creating s.
3 400.244, F.S.; allowing nursing homes to
4 convert beds to alternative uses as specified;
5 providing restrictions on uses of funding under
6 assisted-living Medicaid waivers; providing
7 procedures; providing for the applicability of
8 certain fire and life safety codes; providing
9 applicability of certain laws; requiring a
10 nursing home to submit to the Agency for Health
11 Care Administration a written request for
12 permission to convert beds to alternative uses;
13 providing conditions for disapproving such a
14 request; providing for periodic review;
15 providing for retention of nursing home
16 licensure for converted beds; providing for
17 reconversion of the beds; providing
18 applicability of licensure fees; requiring a
19 report to the agency; amending s. 400.021,
20 F.S.; redefining the term "resident care plan,"
21 as used in part I of ch. 400, F.S.; amending s.
22 400.23, F.S.; providing that certain
23 information from the Agency for Health Care
24 Administration must reflect final agency
25 actions; amending s. 400.141, F.S.; amending
26 the description of the information required to
27 be kept in a nursing home resident's medical
28 record; amending s. 400.211, F.S.; revising
29 inservice training requirements for persons
30 employed as nursing assistants in a nursing
31 home facility; amending s. 408.034, F.S.;

1 specifying the district average occupancy rate
2 in the agency's rulemaking authority for
3 nursing-home-bed-need methodology; amending s.
4 408.036, F.S.; providing for additional
5 projects that are subject to expedited review;
6 establishing the agency's rulemaking authority
7 to implement provisions for expedited review;
8 deleting obsolete dates; providing for
9 additional projects that are exempt from
10 review; amending s. 408.037, F.S.; providing
11 that an audited financial statement of the
12 parent company may be used to fulfill an
13 application for a certificate of need;
14 providing an effective date.

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

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18 Section 1. Section 400.244, Florida Statutes, is
19 created to read:

20 400.244 Alternative uses of nursing home beds; funding
21 limitations; applicable codes and requirements; procedures;
22 reconversion.--

23 (1) It is the intent of the Legislature to allow
24 nursing home facilities to use licensed nursing home facility
25 beds for alternative uses other than nursing home care for
26 extended periods of time exceeding 48 hours.

27 (2) A nursing home may use a contiguous portion of the
28 nursing home facility to meet the needs of the elderly through
29 the use of less restrictive and less institutional methods of
30 long-term care, including, but not limited to, adult day care,
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1 assisted living, extended congregate care, or limited nursing
2 services.

3 (3) Funding under assisted-living Medicaid waivers for
4 nursing home facility beds that are used to provide extended
5 congregate care or limited nursing services under this section
6 may be provided only for residents who have resided in the
7 nursing home facility for a minimum of 90 consecutive days.

8 (4) Nursing home facility beds that are used in
9 providing alternative services may share common areas,
10 services, and staff with beds that are designated for nursing
11 home care. Fire codes and life safety codes applicable to
12 nursing home facilities also apply to beds used for
13 alternative purposes under this section. Any alternative use
14 must meet other requirements specified by law for that use.

15 (5) In order to take beds out of service for nursing
16 home care and use them to provide alternative services under
17 this section, a nursing home must submit a written request for
18 approval to the Agency for Health Care Administration in a
19 format specified by the agency. The agency shall approve the
20 request unless it determines that such action will adversely
21 affect access to nursing home care in the geographical area in
22 which the nursing home is located. The agency shall, in its
23 review, consider a district average occupancy of 94 percent or
24 greater at the time of the application as an indicator of an
25 adverse impact. The agency shall review the request for
26 alternative use at each annual license renewal.

27 (6) A nursing home facility that converts beds to an
28 alternative use under this section retains its license for all
29 of the nursing home facility beds and may return those beds to
30 nursing home operation upon 60 days' written notice to the
31 agency unless notice requirements are specified elsewhere in

1 law. The nursing home facility shall continue to pay all
2 licensure fees as required by s. 400.062 and applicable rules
3 but is not required to pay any other state licensure fee for
4 the alternative service.

5 (7) Within 45 days after the end of each calendar
6 quarter, each facility that has nursing facility beds licensed
7 under chapter 400 shall report to the agency or its designee
8 the total number of patient days which occurred in each month
9 of the quarter and the number of such days which were Medicaid
10 patient days.

11 Section 2. Subsection (17) of section 400.021, Florida
12 Statutes, is amended to read:

13 400.021 Definitions.--When used in this part, unless
14 the context otherwise requires, the term:

15 (17) "Resident care plan" means a written plan
16 developed, maintained, and reviewed not less than quarterly by
17 a registered nurse, with participation from other facility
18 staff and the resident or his or her designee or legal
19 representative, which includes a comprehensive assessment of
20 the needs of an individual resident; the type and frequency of
21 services required to provide the necessary care for the
22 resident to attain or maintain the highest practicable
23 physical, mental, and psychosocial well-being; a listing of
24 services provided within or outside the facility to meet those
25 needs; and an explanation of service goals. The resident care
26 plan must be signed by the director of nursing or another
27 registered nurse employed by the facility to whom
28 institutional responsibilities have been delegated and by the
29 resident, the resident's designee, or the resident's legal
30 representative.

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1 Section 3. Subsection (10) is added to section 400.23,
2 Florida Statutes, to read:

3 400.23 Rules; evaluation and deficiencies; licensure
4 status.--

5 (10) Agency records, reports, ranking systems,
6 Internet information, and publications must reflect final
7 agency actions.

8 Section 4. Subsection (21) of section 400.141, Florida
9 Statutes, is amended to read:

10 400.141 Administration and management of nursing home
11 facilities.--Every licensed facility shall comply with all
12 applicable standards and rules of the agency and shall:

13 (21) Maintain in the medical record for each resident
14 a daily chart of certified nursing assistant services provided
15 to the resident. The certified nursing assistant who is caring
16 for the resident must complete this record by the end of his
17 or her shift. This record must indicate assistance with
18 activities of daily living, assistance with eating, and
19 assistance with drinking, and must record ~~each offering of~~
20 nutrition and hydration for those residents whose plan of care
21 or assessment indicates a risk for malnutrition or
22 dehydration.

23 Section 5. Subsection (4) of section 400.211, Florida
24 Statutes, is amended to read:

25 400.211 Persons employed as nursing assistants;
26 certification requirement.--

27 (4) When employed by a nursing home facility for a
28 12-month period or longer, a nursing assistant, to maintain
29 certification, shall submit to a performance review every 12
30 months and must receive regular inservice education based on
31 the outcome of such reviews. The inservice training must:

1 (a) Be sufficient to ensure the continuing competence
2 of nursing assistants and must meet the standard specified in
3 s. 464.203(7), ~~must be at least 18 hours per year, and may~~
4 ~~include hours accrued under s. 464.203(8);~~

5 (b) Include, at a minimum:

6 1. Techniques for assisting with eating and proper
7 feeding;

8 2. Principles of adequate nutrition and hydration;

9 3. Techniques for assisting and responding to the
10 cognitively impaired resident or the resident with difficult
11 behaviors;

12 4. Techniques for caring for the resident at the
13 end-of-life; and

14 5. Recognizing changes that place a resident at risk
15 for pressure ulcers and falls; and

16 (c) Address areas of weakness as determined in nursing
17 assistant performance reviews and may address the special
18 needs of residents as determined by the nursing home facility
19 staff.

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21 Costs associated with this training may not be reimbursed from
22 additional Medicaid funding through interim rate adjustments.

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

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

27 (5) The agency shall establish by rule a
28 nursing-home-bed-need methodology that has a goal of
29 maintaining a district average occupancy rate of 94 percent
30 and that reduces the community nursing home bed need for the
31 areas of the state where the agency establishes pilot

1 community diversion programs through the Title XIX aging
2 waiver program.

3 Section 7. Subsections (2) and (3) of section 408.036,
4 Florida Statutes, are amended to read:

5 408.036 Projects subject to review; exemptions.--

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

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

10 (b) Shared services contracts or projects.

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

12 (d) A 50-percent increase in nursing home beds for a
13 facility incorporated and operating in this state for at least
14 60 years on or before July 1, 1988, which has a licensed
15 nursing home facility located on a campus providing a variety
16 of residential settings and supportive services. The
17 increased nursing home beds shall be for the exclusive use of
18 the campus residents. Any application on behalf of an
19 applicant meeting this requirement shall be subject to the
20 base fee of \$5,000 provided in s. 408.038.

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

24 (f) The conversion of mental health services beds
25 licensed under chapter 395 or hospital-based distinct part
26 skilled nursing unit beds to general acute care beds; the
27 conversion of mental health services beds between or among the
28 licensed bed categories defined as beds for mental health
29 services; or the conversion of general acute care beds to beds
30 for mental health services.

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

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

8 (g) Replacement of a nursing home within the same
9 district provided the proposed project site is located within
10 a geographic area that contains at least 65 percent of the
11 facilities current residents and is within a 30-mile radius of
12 the replaced nursing home.

13 (h) Relocation of a portion of a nursing home's
14 licensed beds to a replacement facility within the same
15 district provided the relocation is within a 30-mile radius of
16 the existing facility and the total number of nursing home
17 beds in the district does not increase.

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

23 (3) EXEMPTIONS.--Upon request, the following projects
24 are subject to exemption from the provisions of subsection
25 (1):

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

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

1 (c) For the conversion of licensed acute care hospital
2 beds to Medicare and Medicaid certified skilled nursing beds
3 in a rural hospital, as defined in s. 395.602, so long as the
4 conversion of the beds does not involve the construction of
5 new facilities. The total number of skilled nursing beds,
6 including swing beds, may not exceed one-half of the total
7 number of licensed beds in the rural hospital as of July 1,
8 1993. Certified skilled nursing beds designated under this
9 paragraph, excluding swing beds, shall be included in the
10 community nursing home bed inventory. A rural hospital which
11 subsequently decertifies any acute care beds exempted under
12 this paragraph shall notify the agency of the decertification,
13 and the agency shall adjust the community nursing home bed
14 inventory accordingly.

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

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

30 (f) For an inmate health care facility built by or for
31 the exclusive use of the Department of Corrections as provided

1 in chapter 945. This exemption expires when such facility is
2 converted to other uses.

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

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

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

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

15 a. The applicant must certify it will not provide
16 therapeutic cardiac catheterization pursuant to the grant of
17 the exemption.

18 b. The applicant must certify it will meet and
19 continuously maintain the minimum licensure requirements
20 adopted by the agency governing such programs pursuant to
21 subparagraph 2.

22 c. The applicant must certify it will provide a
23 minimum of 2 percent of its services to charity and Medicaid
24 patients.

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

30 a. Perform only adult inpatient diagnostic cardiac
31 catheterization services authorized by the exemption and will

1 not provide therapeutic cardiac catheterization or any other
2 services not authorized by the exemption.

3 b. Maintain sufficient appropriate equipment and
4 health personnel to ensure quality and safety.

5 c. Maintain appropriate times of operation and
6 protocols to ensure availability and appropriate referrals in
7 the event of emergencies.

8 d. Maintain appropriate program volumes to ensure
9 quality and safety.

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

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

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

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

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

1 failed to comply with the rules adopted pursuant to
2 subparagraph 2.

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

7 (k) For state veterans' nursing homes operated by or
8 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.

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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 that has experienced high seasonal occupancy within
2 the prior 12-month period or in a hospital that must respond
3 to emergency 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. ~~Effective until June 30, 2001,~~ Certify that the
12 facility has not had any class I or class II deficiencies
13 within the 30 months preceding the request for addition.

14 ~~b. Effective on July 1, 2001, certify that the~~
15 ~~facility has been designated as a Gold Seal nursing home under~~
16 ~~s. 400.235.~~

17 b.c. Certify that the prior 12-month average occupancy
18 rate for the nursing home beds at the facility meets or
19 exceeds 96 percent.

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

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

27 3. The agency shall count beds authorized under this
28 paragraph as approved beds in the published inventory of
29 nursing home beds until the beds are licensed.

30 (q) For establishment of a specialty hospital offering
31 a range of medical service restricted to a defined age or

1 gender group of the population or a restricted range of
2 services appropriate to the diagnosis, care, and treatment of
3 patients with specific categories of medical illnesses or
4 disorders, through the transfer of beds and services from an
5 existing hospital in the same county.

6 (r) For the conversion of hospital-based Medicare and
7 Medicaid certified skilled nursing beds to acute care beds, if
8 the conversion does not involve the construction of new
9 facilities.

10 (s) For fiscal year 2001-2002 only, for transfer by a
11 health care system of existing services and not more than 100
12 licensed and approved beds from a hospital in district 1,
13 subdistrict 1, to another location within the same subdistrict
14 in order to establish a satellite facility that will improve
15 access to outpatient and inpatient care for residents of the
16 district and subdistrict and that will use new medical
17 technologies, including advanced diagnostics, computer
18 assisted imaging, and telemedicine to improve care. This
19 paragraph is repealed on July 1, 2002.

20 (t) For replacement of a licensed nursing home on the
21 same site, or within 3 miles of the same site, provided the
22 number of licensed beds does not increase.

23 (u) For consolidation or combination of licensed
24 nursing homes or transfer of beds between licensed nursing
25 homes within the same district, by providers that operate
26 multiple nursing homes within that district, provided there is
27 no increase in the district total of nursing home beds and the
28 relocation does not exceed 30 miles from the original
29 location.

30 Section 8. Paragraph (c) of subsection (1) of section
31 408.037, Florida Statutes, is amended to read:

1 408.037 Application content.--

2 (1) An application for a certificate of need must
3 contain:

4 (c) An audited financial statement of the applicant,
5 or an audited financial statement of the parent company if the
6 applicant is included in a parent company's consolidated audit
7 which details each entity separately. In an application
8 submitted by an existing health care facility, health
9 maintenance organization, or hospice, financial condition
10 documentation must include, but need not be limited to, a
11 balance sheet and a profit-and-loss statement of the 2
12 previous fiscal years' operation.

13 Section 9. This act shall take effect July 1, 2003.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS for Senate Bill 1252

- 4 The Committee Substitute requires written notice to return
5 nursing home beds converted to alternative use back to nursing
6 home operation.
7 Allows the resident care plan to be signed by another
8 registered nurse employed by the facility to whom
9 institutional responsibilities have been delegated.
10 Provides that Agency records, reports, ranking systems,
11 internet information, and publications must reflect final
12 Agency actions.
13 Removes the requirement that "each offering of" nutrition be
14 recorded in the nursing home resident's medical record.
15 Provides that nursing assistant inservice training must meet
16 the standards specified in s. 464.203 (7), Florida Statutes.
17 Requires the Agency, by rule, to establish a
18 nursing-home-bed-need methodology that has a goal of
19 maintaining a district average occupancy rate of 94 percent.
20 Provides two additional projects for expedited review: 1)
21 replacement of a nursing home within the same district at a
22 site containing at least 65 percent of the facility's current
23 residents and within a 30-mile radius of the replaced nursing
24 home, and 2) relocation of a portion of a nursing home's
25 licensed beds to a replacement facility within the same
26 district within a 30 mile radius of the existing facility and
27 the total number of nursing home beds in the district does not
28 increase.
29 Provides two additional exemptions from expedited review: 1)
30 replacement of a licensed nursing home on the same site, or
31 within 3 miles of the same site, provided that the number of
licensed beds does not increase; and 2) consolidation or
combination of licensed nursing homes or transfer of beds
between licensed nursing homes within the same district, by
providers that operate multiple nursing homes within the same
district, as long as there is no increase in the district
total of nursing home beds and the relocation does not exceed
30 miles from the original location.
Provides that an audited financial statement of the parent
company may be used to fulfill the requirement of an audited
financial statement of the applicant for a
certificate-of-need, provided that the applicant is included
in the parent company's consolidated audit that details each
entity separately.
Removes obsolete dates for an exemption to expedited review
related to the addition of ten total nursing home beds or ten
percent of the number of beds being expanded.