

1 A bill to be entitled
2 An act relating to health care facilities;
3 creating s. 400.244, F.S.; allowing nursing
4 homes to convert beds to alternative uses as
5 specified; providing restrictions on uses of
6 funding under assisted-living Medicaid waivers;
7 providing procedures; providing for the
8 applicability of certain fire and life safety
9 codes; providing applicability of certain laws;
10 requiring a nursing home to submit to the
11 Agency for Health Care Administration a written
12 request for permission to convert beds to
13 alternative uses; providing conditions for
14 disapproving such a request; providing for
15 periodic review; providing for retention of
16 nursing home licensure for converted beds;
17 providing for reconversion of the beds;
18 providing applicability of licensure fees;
19 requiring a report to the agency; amending s.
20 400.021, F.S.; redefining the term "resident
21 care plan," as used in part I of ch. 400, F.S.;
22 amending s. 400.23, F.S.; providing that
23 certain information from the Agency for Health
24 Care Administration must reflect the most
25 current agency actions; amending s. 400.147,
26 F.S.; amending the definition of the term
27 "adverse incident"; requiring certain reports
28 to be filed; revising requirements for a
29 facility's report to the agency on adverse
30 incidents; providing guidelines for the
31 agency's report to a regulatory board that the

1 agency has a reasonable belief that there are
2 grounds for regulatory action; amending s.
3 400.211, F.S.; revising inservice training
4 requirements for persons employed as nursing
5 assistants in a nursing home facility; amending
6 s. 408.032, F.S.; revising the definition of
7 "tertiary health service" under the Health
8 Facility and Services Development Act; amending
9 s. 408.034, F.S.; requiring the
10 nursing-home-bed-need methodology established
11 by the Agency for Health Care Administration by
12 rule to include a goal of maintaining a
13 specified district average occupancy rate;
14 amending s. 408.036, F.S., relating to
15 health-care-related projects subject to review
16 for a certificate of need; removing certain
17 projects from and subjecting certain projects
18 to expedited review and revising requirements
19 for other projects subject to expedited review;
20 removing the exemption from review for certain
21 projects; revising requirements for certain
22 projects that are exempt from review; exempting
23 certain projects from review; amending s.
24 408.038, F.S.; increasing fees of the
25 certificate-of-need program; amending s.
26 408.039, F.S.; providing for approval of
27 recommended orders of the Division of
28 Administrative Hearings when the Agency for
29 Health Care Administration fails to take action
30 on an application for a certificate of need
31 within a specified time period; creating the

1 Hospital Statutory and Regulatory Reform
2 Council; providing for review of an application
3 for a certificate of need pending on the
4 effective date of the act; providing
5 legislative intent; providing for membership
6 and duties of the council; amending s. 409.904,
7 F.S.; postponing the effective date of changes
8 to standards for eligibility for certain
9 optional medical assistance, including coverage
10 under the medically needy program; providing
11 appropriations; providing for retroactive
12 application; providing effective dates.
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14 Be It Enacted by the Legislature of the State of Florida:
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16 Section 1. Section 400.244, Florida Statutes, is
17 created to read:

18 400.244 Alternative uses of nursing home beds; funding
19 limitations; applicable codes and requirements; procedures;
20 reconversion.--

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

25 (2) A nursing home may use a contiguous portion of the
26 nursing home facility to meet the needs of the elderly through
27 the use of less restrictive and less institutional methods of
28 long-term care, including, but not limited to, adult day care,
29 assisted living, extended congregate care, or limited nursing
30 services.
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1 (3) Funding under assisted-living Medicaid waivers for
2 nursing home facility beds that are used to provide extended
3 congregate care or limited nursing services under this section
4 may be provided only for residents who have resided in the
5 nursing home facility for a minimum of 90 consecutive days.

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

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

25 (6) A nursing home facility that converts beds to an
26 alternative use under this section retains its license for all
27 of the nursing home facility beds and may return those beds to
28 nursing home operation upon 60 days' written notice to the
29 agency unless notice requirements are specified elsewhere in
30 law. The nursing home facility shall continue to pay all
31 licensure fees as required by s. 400.062 and applicable rules

1 but is not required to pay any other state licensure fee for
2 the alternative service.

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

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

11 400.021 Definitions.--When used in this part, unless
12 the context otherwise requires, the term:

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

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1 responsibilities that have been delegated to the registered
2 nurse.

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

5 400.23 Rules; evaluation and deficiencies; licensure
6 status.--

7 (10) Agency records, reports, ranking systems,
8 Internet information, and publications must reflect the most
9 current agency actions.

10 Section 4. Subsections (5), (7), and (12) of section
11 400.147, Florida Statutes are amended to read:

12 400.147 Internal risk management and quality assurance
13 program.--

14 (5) For purposes of reporting to the agency under this
15 section, the term "adverse incident" means:

16 (a) An event over which facility personnel could
17 exercise control and which is associated in whole or in part
18 with the facility's intervention, rather than the condition
19 for which such intervention occurred, and which results in one
20 of the following:

- 21 1. Death;
- 22 2. Brain or spinal damage;
- 23 3. Permanent disfigurement;
- 24 4. Fracture or dislocation of bones or joints;
- 25 5. A limitation of neurological, physical, or sensory
26 function;
- 27 6. Any condition that required medical attention to
28 which the resident has not given his or her informed consent,
29 including failure to honor advanced directives; or
- 30 7. Any condition that required the transfer of the
31 resident, within or outside the facility, to a unit providing

1 a more acute level of care due to the adverse incident, rather
2 than the resident's condition prior to the adverse incident;

3 (b) Abuse, sexual abuse, neglect, or exploitation as
4 defined in s. 415.102;

5 (c) Abuse, neglect and harm as defined in s. 39.01;

6 (d) Resident elopement; or

7 (e) An event that is reported to law enforcement for
8 investigation.

9 (7) The facility shall initiate an investigation and
10 shall notify the agency within 1 business day after the risk
11 manager or his or her designee has received a report pursuant
12 to paragraph (1)(d). The notification must be made in writing
13 and be provided electronically, by facsimile device or
14 overnight mail delivery. The notification must include
15 information regarding the identity of the affected resident,
16 the type of adverse incident, the initiation of an
17 investigation by the facility, and whether the events causing
18 or resulting in the adverse incident represent a potential
19 risk to any other resident. The notification is confidential
20 as provided by law and is not discoverable or admissible in
21 any civil or administrative action, except in disciplinary
22 proceedings by the agency or the appropriate regulatory board.
23 The agency may investigate, as it deems appropriate, any such
24 incident and prescribe measures that must or may be taken in
25 response to the incident. The agency shall review each
26 incident and determine whether it potentially involved conduct
27 by the health care professional who is subject to disciplinary
28 action, in which case the provisions of s. 456.073 shall
29 apply.

30 (12) If the agency, through its receipt of the adverse
31 incident reports prescribed in subsection (7), or prescribed

1 in subsection (8), or through any investigation, has a
2 reasonable belief that conduct by a staff member or employee
3 of a facility is grounds for disciplinary action by the
4 appropriate regulatory board, the agency shall report this
5 fact to the regulatory board.

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

8 400.211 Persons employed as nursing assistants;
9 certification requirement.--

10 (4) When employed by a nursing home facility for a
11 12-month period or longer, a nursing assistant, to maintain
12 certification, shall submit to a performance review every 12
13 months and must receive regular inservice education based on
14 the outcome of such reviews. The inservice training must:

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

19 (b) Include, at a minimum:

20 1. Techniques for assisting with eating and proper
21 feeding;

22 2. Principles of adequate nutrition and hydration;

23 3. Techniques for assisting and responding to the
24 cognitively impaired resident or the resident with difficult
25 behaviors;

26 4. Techniques for caring for the resident at the
27 end-of-life; and

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

30 (c) Address areas of weakness as determined in nursing
31 assistant performance reviews and may address the special

1 needs of residents as determined by the nursing home facility
2 staff.

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

6 Section 6. Subsection (17) of section 408.032, Florida
7 Statutes, is amended to read:

8 408.032 Definitions relating to Health Facility and
9 Services Development Act.--As used in ss. 408.031-408.045, the
10 term:

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

26 Section 7. Subsection (5) of section 408.034, Florida
27 Statutes, is amended to read:

28 408.034 Duties and responsibilities of agency;
29 rules.--

30 (5) The agency shall establish by rule a
31 nursing-home-bed-need methodology that has a goal of

1 maintaining a district average occupancy rate of 94 percent
2 and that reduces the community nursing home bed need for the
3 areas of the state where the agency establishes pilot
4 community diversion programs through the Title XIX aging
5 waiver program.

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

8 408.036 Projects subject to review; exemptions.--

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

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

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

22 (c) The conversion from one type of health care
23 facility to another.

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

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

28 (f) The establishment of inpatient health services by
29 a health care facility, or a substantial change in such
30 services.

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

6 (h) The establishment of tertiary health services.

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

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

11 ~~(b) Shared services contracts or projects.~~

12 (b)(c) A transfer of a certificate of need, except
13 when an existing hospital is acquired by a purchaser, in which
14 case all pending certificates of need filed by the existing
15 hospital and all approved certificates of need owned by that
16 hospital would be acquired by the purchaser.

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

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

29 (e)(f) The conversion of mental health services beds
30 licensed under chapter 395 ~~or hospital-based distinct part~~
31 ~~conversion of skilled nursing unit beds~~ to general acute care

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

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

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

12 (f) Replacement of a nursing home within the same
13 district, provided the proposed project site is located within
14 a geographic area that contains at least 65 percent of the
15 facility's current residents and is within a 30-mile radius of
16 the replaced nursing home.

17 (g) Relocation of a portion of a nursing home's
18 licensed beds to a replacement facility within the same
19 district, provided the relocation is within a 30-mile radius
20 of the existing facility and the total number of nursing home
21 beds in the district does not increase.

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23 The agency shall develop rules to implement the provisions for
24 expedited review, including time schedule, application content
25 which may be reduced from the full requirements of s.
26 408.037(1), and application processing.

27 (3) EXEMPTIONS.--Upon request, the following projects
28 are subject to exemption from the provisions of subsection
29 (1):

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

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

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

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

28 (e) For an increase in the bed capacity of a nursing
29 facility licensed for at least 50 beds as of January 1, 1994,
30 under part II of chapter 400 which is not part of a continuing
31 care facility if, after the increase, the total licensed bed

1 capacity of that facility is not more than 60 beds and if the
2 facility has been continuously licensed since 1950 and has
3 received a superior rating on each of its two most recent
4 licensure surveys.

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

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

11 (h) For the delicensure of beds, upon 30 days' written
12 notice to the agency. A request for exemption submitted under
13 this paragraph must identify the number, the category of beds,
14 and the name of the facility in which the beds to be
15 delicensed are located.

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

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

21 a. The applicant must certify it will not provide
22 therapeutic cardiac catheterization pursuant to the grant of
23 the exemption.

24 b. The applicant must certify it will meet and
25 continuously maintain the minimum licensure requirements
26 adopted by the agency governing such programs pursuant to
27 subparagraph 2.

28 c. The applicant must certify it will provide a
29 minimum of 2 percent of its services to charity and Medicaid
30 patients.

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1 2. The agency shall adopt licensure requirements by
2 rule which govern the operation of adult inpatient diagnostic
3 cardiac catheterization programs established pursuant to the
4 exemption provided in this paragraph. The rules shall ensure
5 that such programs:

6 a. Perform only adult inpatient diagnostic cardiac
7 catheterization services authorized by the exemption and will
8 not provide therapeutic cardiac catheterization or any other
9 services not authorized by the exemption.

10 b. Maintain sufficient appropriate equipment and
11 health personnel to ensure quality and safety.

12 c. Maintain appropriate times of operation and
13 protocols to ensure availability and appropriate referrals in
14 the event of emergencies.

15 d. Maintain appropriate program volumes to ensure
16 quality and safety.

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

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

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

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

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

11 (j) For the provision of percutaneous coronary
12 intervention for patients presenting with emergency myocardial
13 infarctions in a hospital without an approved adult open heart
14 surgery program. In addition to any other documentation
15 required by the agency, a request for an exemption submitted
16 under this paragraph must comply with the following:

17 1. The applicant must certify that it will meet and
18 continuously maintain the requirements adopted by the agency
19 for the provision of these services. These licensure
20 requirements are to be adopted by rule pursuant to ss.
21 120.536(1) and 120.54 and are to be consistent with the
22 guidelines published by the American College of Cardiology and
23 the American Heart Association for the provision of
24 percutaneous coronary interventions in hospitals without adult
25 open heart services. At a minimum, the rules shall require the
26 following:

27 a. Cardiologists must be experienced
28 interventionalists who have performed a minimum of 75
29 interventions within the previous 12 months.

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1 b. The hospital must provide a minimum of 36 emergency
2 interventions annually in order to continue to provide the
3 service.

4 c. The hospital must offer sufficient physician,
5 nursing, and laboratory staff to provide the services 24 hours
6 a day, 7 days a week.

7 d. Nursing and technical staff must have demonstrated
8 experience in handling acutely ill patients requiring
9 intervention based on previous experience in dedicated
10 interventional laboratories or surgical centers.

11 e. Cardiac care nursing staff must be adept in
12 hemodynamic monitoring and Intra-aortic Balloon Pump (IABP)
13 management.

14 f. Formalized written transfer agreements must be
15 developed with a hospital with an adult open heart surgery
16 program, and written transport protocols must be in place to
17 ensure safe and efficient transfer of a patient within 60
18 minutes. Transfer and transport agreements must be reviewed
19 and tested, with appropriate documentation maintained at least
20 every 3 months.

21 g. Hospitals implementing the service must first
22 undertake a training program of 3 to 6 months which includes
23 establishing standards, testing logistics, creating quality
24 assessment and error management practices, and formalizing
25 patient selection criteria.

26 2. The applicant must certify that it will utilize at
27 all times the patient selection criteria for the performance
28 of primary angioplasty at hospitals without adult open heart
29 surgery programs issued by the American College of Cardiology
30 and the American Heart Association. At a minimum, these
31 criteria would provide for the following:

1 a. Avoidance of interventions in hemodynamically
2 stable patients presenting with identified symptoms or medical
3 histories.

4 b. Transfer of patients presenting with a history of
5 coronary disease and clinical presentation of hemodynamic
6 instability.

7 3. The applicant must agree to submit a quarterly
8 report to the agency detailing patient characteristics,
9 treatment, and outcomes for all patients receiving emergency
10 percutaneous coronary interventions pursuant to this
11 paragraph. This report must be submitted within 15 days after
12 the close of each calendar quarter.

13 4. The exemption provided by this paragraph shall not
14 apply unless the agency determines that the hospital has taken
15 all necessary steps to be in compliance with all requirements
16 of this paragraph, including the training program required
17 pursuant to sub-subparagraph 1.g.

18 5. Failure of the hospital to continuously comply with
19 the requirements of sub-subparagraphs 1.c.-f. and
20 subparagraphs 2. and 3. will result in the immediate
21 expiration of this exemption.

22 6. Failure of the hospital to meet the volume
23 requirements of sub-subparagraphs 1.a.-b. within 18 months
24 after the program begins offering the service will result in
25 the immediate expiration of the exemption.

26 7. If the exemption for this service expires pursuant
27 to subparagraph 5. or subparagraph 6., the agency shall not
28 grant another exemption for this service to the same hospital
29 for a period of 2 years and then only upon a showing that the
30 hospital will remain in compliance with the requirements of
31 this paragraph through a demonstration of corrections to the

1 deficiencies which caused expiration of the exemption.
2 Compliance with the requirements of this paragraph includes
3 compliance with the rules adopted pursuant to this paragraph.

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

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

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

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

1 ~~(o)(n)~~ For the addition of hospital beds licensed
2 under 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; for the addition of medical
7 rehabilitation beds licensed under chapter 395 in a number
8 that may not exceed eight total beds or 10 percent of
9 capacity, whichever is greater; or for the addition of mental
10 health services beds licensed under chapter 395 in a number
11 that may not exceed 10 total beds or 10 percent of the
12 licensed capacity of the bed category being expanded,
13 whichever is greater. Beds for specialty burn units or,
14 neonatal intensive care units, ~~or comprehensive~~
15 ~~rehabilitation~~, or at a long-term care hospital, may not be
16 increased under this paragraph.

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

20 a. Certify that the prior 12-month average occupancy
21 rate for the category of licensed beds being expanded at the
22 facility meets or exceeds 75 ~~80~~ percent or, for a
23 hospital-based distinct part skilled nursing unit, the prior
24 12-month average occupancy rate meets or exceeds 96 percent
25 or, for medical rehabilitation beds, the prior 12-month
26 average occupancy meets or exceeds 90 percent.

27 b. Certify that any beds of the same type authorized
28 for the facility under this paragraph before the date of the
29 current request for an exemption have been licensed and
30 operational for at least 12 months.

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

4 3. The agency shall count beds authorized under this
5 paragraph as approved beds in the published inventory of
6 hospital beds until the beds are licensed.

7 (p)~~(o)~~ For the addition of acute care beds, as
8 authorized by rule consistent with s. 395.003(4), in a number
9 that may not exceed 30 ~~10~~ total beds or 10 percent of licensed
10 bed capacity, whichever is greater, for temporary beds in a
11 hospital that has experienced high seasonal occupancy within
12 the prior 12-month period or in a hospital that must respond
13 to emergency circumstances.

14 (q)~~(p)~~ For the addition of nursing home beds licensed
15 under chapter 400 in a number not exceeding 10 total beds or
16 10 percent of the number of beds licensed in the facility
17 being expanded, whichever is greater.

18 1. In addition to any other documentation required by
19 the agency, a request for exemption submitted under this
20 paragraph must:

21 a. ~~Effective until June 30, 2001,~~ Certify that the
22 facility has not had any class I or class II deficiencies
23 within the 30 months preceding the request for addition.

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

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

30 e.d. Certify that any beds authorized for the facility
31 under this paragraph before the date of the current request

1 for an exemption have been licensed and operational for at
2 least 12 months.

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

6 3. The agency shall count beds authorized under this
7 paragraph as approved beds in the published inventory of
8 nursing home beds until the beds are licensed.

9 ~~(q) For establishment of a specialty hospital offering
10 a range of medical service restricted to a defined age or
11 gender group of the population or a restricted range of
12 services appropriate to the diagnosis, care, and treatment of
13 patients with specific categories of medical illnesses or
14 disorders, through the transfer of beds and services from an
15 existing hospital in the same county.~~

16 (r) For the conversion of hospital-based Medicare and
17 Medicaid certified skilled nursing beds to acute care beds, if
18 the conversion does not involve the construction of new
19 facilities.

20 (s) For the replacement of a statutory rural hospital
21 when the proposed project site is located in the same district
22 and within 10 miles of the existing facility and within the
23 current primary service area, defined as the least number of
24 zip codes comprising 75 percent of the hospital's inpatient
25 admissions.~~For fiscal year 2001-2002 only, for transfer by a
26 health care system of existing services and not more than 100
27 licensed and approved beds from a hospital in district 1,
28 subdistrict 1, to another location within the same subdistrict
29 in order to establish a satellite facility that will improve
30 access to outpatient and inpatient care for residents of the
31 district and subdistrict and that will use new medical~~

1 ~~technologies, including advanced diagnostics, computer~~
2 ~~assisted imaging, and telemedicine to improve care. This~~
3 ~~paragraph is repealed on July 1, 2002.~~

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

11 1. Conversion under this paragraph does not establish
12 a new licensed bed category at the hospital but applies only
13 to categories of beds licensed at that hospital.

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

18 (u) For the creation of at least a 10-bed Level II
19 neonatal intensive care unit upon demonstrating to the agency
20 that the applicant hospital had a minimum of 1,500 live births
21 during the previous 12 months.

22 (v) For the addition of Level II or Level III neonatal
23 intensive care beds in a number not to exceed six beds or 10
24 percent of licensed capacity in that category, whichever is
25 greater, provided that the hospital certifies that the prior
26 12-month average occupancy rate for the category of licensed
27 neonatal intensive care beds meets or exceeds 75 percent.

28 (w) For replacement of a licensed nursing home on the
29 same site, or within 3 miles of the same site, provided the
30 number of licensed beds does not increase.

31

1 (x) For consolidation or combination of licensed
2 nursing homes or transfer of beds between licensed nursing
3 homes within the same district, by providers that operate
4 multiple nursing homes within that district, provided there is
5 no increase in the district total of nursing home beds and the
6 relocation does not exceed 30 miles from the original
7 location.

8 (4) A request for exemption under subsection (3) may
9 be made at any time and is not subject to the batching
10 requirements of this section. The request shall be supported
11 by such documentation as the agency requires by rule. The
12 agency shall assess a fee of \$250 for each request for
13 exemption submitted under subsection (3).

14 Section 9. Section 408.038, Florida Statutes, is
15 amended to read:

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

22 (1) A minimum base fee of \$10,000~~\$5,000~~.

23 (2) In addition to the base fee of \$10,000~~\$5,000~~,
24 0.015 of each dollar of proposed expenditure, except that a
25 fee may not exceed \$50,000~~\$22,000~~.

26 Section 10. Paragraph (e) of subsection (5) and
27 paragraph (c) of subsection (6) of section 408.039, Florida
28 Statutes, are amended to read:

29 408.039 Review process.--The review process for
30 certificates of need shall be as follows:

31 (5) ADMINISTRATIVE HEARINGS.--

1 (e) The agency shall issue its final order within 45
2 days after receipt of the recommended order. If the agency
3 fails to take action within 45 days, the recommended order of
4 the Division of Administrative Hearings is deemed approved
5 ~~such time, or as otherwise agreed to by the applicant and the~~
6 ~~agency, the applicant may take appropriate legal action to~~
7 ~~compel the agency to act.~~ When making a determination on an
8 application for a certificate of need, the agency is
9 specifically exempt from the time limitations provided in s.
10 120.60(1).

11 (6) JUDICIAL REVIEW.--

12 (c) The court, in its discretion, may award reasonable
13 attorney's fees and costs to the prevailing party if the court
14 finds that there was a complete absence of a justiciable issue
15 of law or fact raised by the losing party. If the losing party
16 is a hospital, the court shall order it to pay the reasonable
17 attorney's fees and costs, which shall include fees and costs
18 incurred as a result of the administrative hearing and the
19 judicial appeal, of the prevailing hospital party.

20 Section 11. This act shall not preclude review and
21 final agency actions on any certificate of need application
22 that was filed with the Agency for Health Care Administration
23 before the effective date of this act.

24 Section 12. Hospital Statutory and Regulatory Reform
25 Council; legislative intent; creation; membership; duties.--

26 (1) It is the intent of the Legislature to provide for
27 the protection of the public health and safety in the
28 establishment, construction, maintenance, and operation of
29 hospitals. However, the Legislature further intends that the
30 police power of the state be exercised toward that purpose
31 only to the extent necessary and that regulation remain

1 current with the ever-changing standard of care and not
2 restrict the introduction and use of new medical technologies
3 and procedures.

4 (2) In order to achieve the purposes expressed in
5 subsection (1), it is necessary that the state establish a
6 mechanism for the ongoing review and updating of laws
7 regulating hospitals. The Hospital Statutory and Regulatory
8 Reform Council is created and located, for administrative
9 purposes only, within the Agency for Health Care
10 Administration. The council shall consist of no more than 15
11 members, including:

12 (a) Nine members appointed by the Florida Hospital
13 Association who represent acute care, teaching, specialty,
14 rural, government-owned, for-profit, and not-for-profit
15 hospitals.

16 (b) Two members appointed by the Governor who
17 represent patients.

18 (c) Two members appointed by the President of the
19 Senate who represent private businesses that provide health
20 insurance coverage for their employees, one of whom represents
21 small private businesses and one of whom represents large
22 private businesses. As used in this paragraph, the term
23 "private business" does not include an entity licensed under
24 chapter 627, Florida Statutes, or chapter 641, Florida
25 Statutes, or otherwise licensed or authorized to provide
26 health insurance services, either directly or indirectly, in
27 this state.

28 (d) Two members appointed by the Speaker of the House
29 of Representatives who represent physicians.

30 (3) Council members shall be appointed to serve 2-year
31 terms and may be reappointed. A member shall serve until his

1 or her successor is appointed. The council shall annually
2 elect from among its members a chair and a vice chair. The
3 council shall meet at least twice a year and shall hold
4 additional meetings as it considers necessary. Members
5 appointed by the Florida Hospital Association may not receive
6 compensation or reimbursement of expenses for their services.
7 Members appointed by the Governor, the President of the
8 Senate, or the Speaker of the House of Representatives may be
9 reimbursed for travel expenses by the agency.

10 (4) The council, as its first priority, shall review
11 chapters 395 and 408, Florida Statutes, and shall make
12 recommendations to the Legislature for the repeal of
13 regulatory provisions that are no longer necessary or that
14 fail to promote cost-efficient, high-quality medicine.

15 (5) The council, as its second priority, shall
16 recommend to the Secretary of Health and the Secretary of
17 Health Care Administration regulatory changes relating to
18 hospital licensure and regulation to assist the Department of
19 Health and the Agency for Health Care Administration in
20 carrying out their duties and to ensure that the intent of the
21 Legislature as expressed in this section is carried out.

22 (6) In determining whether a statute or rule is
23 appropriate or necessary, the council shall consider whether:

24 (a) The statute or rule is necessary to prevent
25 substantial harm, which is recognizable and not remote, to the
26 public health, safety, or welfare.

27 (b) The statute or rule restricts the use of new
28 medical technologies or encourages the implementation of more
29 cost-effective medical procedures.

30 (c) The statute or rule has an unreasonable effect on
31 job creation or job retention in the state.

1 (d) The public is or can be effectively protected by
2 other means.

3 (e) The overall cost-effectiveness and economic effect
4 of the proposed statute or rule, including the indirect costs
5 to consumers, will be favorable.

6 (f) A lower-cost regulatory alternative to the statute
7 or rule could be adopted.

8 Section 13. Effective May 1, 2003, subsection (2) of
9 section 409.904, Florida Statutes, is amended to read:

10 409.904 Optional payments for eligible persons.--The
11 agency may make payments for medical assistance and related
12 services on behalf of the following persons who are determined
13 to be eligible subject to the income, assets, and categorical
14 eligibility tests set forth in federal and state law. Payment
15 on behalf of these Medicaid eligible persons is subject to the
16 availability of moneys and any limitations established by the
17 General Appropriations Act or chapter 216.

18 (2) A caretaker relative or parent, a pregnant woman,
19 a child under age 19 who would otherwise qualify for Florida
20 Kidcare Medicaid, a child up to age 21 who would otherwise
21 qualify under s. 409.903(1), a person age 65 or over, or a
22 blind or disabled person, who would otherwise be eligible for
23 Florida Medicaid, except that the income or assets of such
24 family or person exceed established limitations. For a family
25 or person in one of these coverage groups, medical expenses
26 are deductible from income in accordance with federal
27 requirements in order to make a determination of eligibility.
28 Expenses used to meet spend-down liability are not
29 reimbursable by Medicaid. Effective July ~~May~~ 1, 2003, when
30 determining the eligibility of a pregnant woman, a child, or
31 an aged, blind, or disabled individual, \$270 shall be deducted

1 from the countable income of the filing unit. When determining
2 the eligibility of the parent or caretaker relative as defined
3 by Title XIX of the Social Security Act, the additional income
4 disregard of \$270 does not apply. A family or person eligible
5 under the coverage known as the "medically needy," is eligible
6 to receive the same services as other Medicaid recipients,
7 with the exception of services in skilled nursing facilities
8 and intermediate care facilities for the developmentally
9 disabled.

10 Section 14. The non-recurring sums of \$8,265,777 from
11 the General Revenue Fund, \$2,505,224 from the Grants and
12 Donations Trust Fund, and \$11,727,287 from the Medical Care
13 Trust Fund are appropriated to the Agency for Health Care
14 Administration to implement section 14 of this act during the
15 2002-2003 fiscal year. This section takes effect May 1, 2003.

16 Section 15. Except as otherwise expressly provided,
17 this act shall take July 1, 2003, but if it becomes a law
18 after May 1, 2003, sections 14 and 15 of this act shall
19 operate retroactively to that date.
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