



1 A bill to be entitled

2 An act relating to health care facilities; creating s.
3 400.244, F.S.; allowing nursing homes to convert beds to
4 alternative uses as specified; providing restrictions on
5 uses of funding under assisted-living Medicaid waivers;
6 providing procedures; providing for the applicability of
7 certain fire and life safety codes; providing
8 applicability of certain laws; requiring a nursing home to
9 submit to the Agency for Health Care Administration a
10 written request for permission to convert beds to
11 alternative uses; providing conditions for disapproving
12 such a request; providing for periodic review; providing
13 for retention of nursing home licensure for converted
14 beds; providing for reconversion of the beds; providing
15 applicability of licensure fees; requiring quarterly
16 reports to the agency relating to patient days; amending
17 s. 400.021, F.S.; redefining the term "resident care
18 plan," as used in part II of ch. 400, F.S.; amending s.
19 400.23, F.S.; providing that certain information from the
20 Agency for Health Care Administration must reflect the
21 most current agency actions; amending s. 400.211, F.S.;
22 revising inservice training requirements for persons
23 employed as nursing assistants in a nursing home facility;
24 amending s. 408.032, F.S.; revising the definition of
25 "tertiary health service" under the Health Facility and
26 Services Development Act; amending s. 408.034, F.S.;
27 requiring the nursing-home-bed-need methodology
28 established by the Agency for Health Care Administration
29 by rule to include a goal of maintaining a specified
30 district average occupancy rate; amending s. 408.036,



31 F.S., relating to health-care-related projects subject to
32 review for a certificate of need; removing shared services
33 contracts or projects from expedited review; revising
34 expedited review requirements for transfer of a
35 certificate of need and conversion of beds for mental
36 health services or general acute care; subjecting projects
37 relating to replacement of a nursing home and relocation
38 of nursing home beds to expedited review; removing the
39 exemption from review for establishment of certain
40 specialty hospitals and a satellite facility; revising
41 requirements for certain projects that are exempt from
42 review; exempting from review projects relating to
43 provision of percutaneous coronary intervention,
44 replacement of a statutory rural hospital, and conversion
45 of mental health services beds; amending s. 51, Ch. 2001-
46 45, Laws of Florida; specifying nonapplication of a
47 moratorium of certificates of need and authorizing
48 approval of certain certificates of need for certain
49 counties under certain circumstances; providing review
50 requirements and bed limitations; amending s. 408.038,
51 F.S.; increasing fees of the certificate-of-need program;
52 amending s. 408.039, F.S.; providing for approval of
53 recommended orders of the Division of Administrative
54 Hearings when the Agency for Health Care Administration
55 fails to take action on an application for a certificate
56 of need within a specified time period; providing for
57 payment of attorney's fees and costs when a hospital is
58 the losing party; providing for review of an application
59 for a certificate of need pending on the effective date of
60 the act; creating the Hospital Statutory and Regulatory



61 Reform Council; providing legislative intent; providing
 62 for membership and duties of the council; authorizing and
 63 establishing an additional regional perinatal intensive
 64 care center in Tampa; providing for construction of the
 65 act in pari materia with laws enacted during the 2003
 66 Regular Session of the Legislature; providing an effective
 67 date.

68
 69 Be It Enacted by the Legislature of the State of Florida:

70
 71 Section 1. Section 400.244, Florida Statutes, is created
 72 to read:

73 400.244 Alternative uses of nursing home beds; funding
 74 limitations; applicable codes and requirements; procedures;
 75 reconversion; quarterly reports.--

76 (1) It is the intent of the Legislature to allow nursing
 77 home facilities to use licensed nursing home facility beds for
 78 alternative uses other than nursing home care for extended
 79 periods of time exceeding 48 hours.

80 (2) A nursing home may use a contiguous portion of the
 81 nursing home facility to meet the needs of the elderly through
 82 the use of less restrictive and less institutional methods of
 83 long-term care, including, but not limited to, adult day care,
 84 assisted living, extended congregate care, or limited nursing
 85 services.

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



HB 0081A, Engrossed 1

2003

91 (4) Nursing home facility beds that are used in providing
92 alternative services may share common areas, services, and staff
93 with beds that are designated for nursing home care. Fire codes
94 and life safety codes applicable to nursing home facilities also
95 apply to beds used for alternative purposes under this section.
96 Any alternative use must meet other requirements specified by
97 law for that use.

98 (5) In order to take beds out of service for nursing home
99 care and use them to provide alternative services under this
100 section, a nursing home must submit a written request for
101 approval to the Agency for Health Care Administration in a
102 format specified by the agency. The agency shall approve the
103 request unless it determines that such action will adversely
104 affect access to nursing home care in the geographical area in
105 which the nursing home is located. The agency shall, in its
106 review, consider a district average occupancy of 94 percent or
107 greater at the time of the application as an indicator of an
108 adverse impact. The agency shall review the request for
109 alternative use at each annual license renewal.

110 (6) A nursing home facility that converts beds to an
111 alternative use under this section retains its license for all
112 of the nursing home facility beds and may return those beds to
113 nursing home operation upon 60 days' written notice to the
114 agency unless notice requirements are specified elsewhere in
115 law. The nursing home facility shall continue to pay all
116 licensure fees as required by s. 400.062 and applicable rules
117 but is not required to pay any other state licensure fee for the
118 alternative use.

119 (7) Within 45 days after the end of each calendar quarter,
120 each facility that has nursing home facility beds licensed under



HB 0081A, Engrossed 1

2003

121 this chapter shall report to the agency or its designee the
122 total number of patient days that occurred in each month of the
123 quarter and the number of such days that were Medicaid patient
124 days.

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

127 400.021 Definitions.--When used in this part, unless the
128 context otherwise requires, the term:

129 (17) "Resident care plan" means a written plan developed,
130 maintained, and reviewed not less than quarterly by a registered
131 nurse, with participation from other facility staff and the
132 resident or his or her designee or legal representative, which
133 includes a comprehensive assessment of the needs of an
134 individual resident; the type and frequency of services required
135 to provide the necessary care for the resident to attain or
136 maintain the highest practicable physical, mental, and
137 psychosocial well-being; a listing of services provided within
138 or outside the facility to meet those needs; and an explanation
139 of service goals. The resident care plan must be signed by the
140 director of nursing or another registered nurse employed by the
141 facility to whom institutional responsibilities have been
142 delegated and by the resident, the resident's designee, or the
143 resident's legal representative. The facility may not use an
144 agency or temporary registered nurse to satisfy the foregoing
145 requirement and must document the institutional responsibilities
146 that have been delegated to the registered nurse.

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

149 400.23 Rules; evaluation and deficiencies; licensure
150 status.--



151 (10) Agency records, reports, ranking systems, Internet
 152 information, and publications must reflect the most current
 153 agency actions.

154 Section 4. Subsection (4) of section 400.211, Florida
 155 Statutes, is amended to read:

156 400.211 Persons employed as nursing assistants;
 157 certification requirement.--

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

163 (a) Be sufficient to ensure the continuing competence of
 164 nursing assistants and must meet the standard specified in s.
 165 464.203(7), must be at least 18 hours per year, and may include
 166 hours accrued under s. 464.203(8);

167 (b) Include, at a minimum:

- 168 1. Techniques for assisting with eating and proper
 169 feeding;
- 170 2. Principles of adequate nutrition and hydration;
- 171 3. Techniques for assisting and responding to the
 172 cognitively impaired resident or the resident with difficult
 173 behaviors;
- 174 4. Techniques for caring for the resident at the end-of-
 175 life; and
- 176 5. Recognizing changes that place a resident at risk for
 177 pressure ulcers and falls; and

178 (c) Address areas of weakness as determined in nursing
 179 assistant performance reviews and may address the special needs
 180 of residents as determined by the nursing home facility staff.



181
182 Costs associated with this training may not be reimbursed from
183 additional Medicaid funding through interim rate adjustments.

184 Section 5. Subsection (17) of section 408.032, Florida
185 Statutes, is amended to read:

186 408.032 Definitions relating to Health Facility and
187 Services Development Act.--As used in ss. 408.031-408.045, the
188 term:

189 (17) "Tertiary health service" means a health service
190 which, due to its high level of intensity, complexity,
191 specialized or limited applicability, and cost, should be
192 limited to, and concentrated in, a limited number of hospitals
193 to ensure the quality, availability, and cost-effectiveness of
194 such service. Examples of such service include, but are not
195 limited to, organ transplantation, adult and pediatric open
196 heart surgery, specialty burn units, neonatal intensive care
197 units, comprehensive rehabilitation, and medical or surgical
198 services which are experimental or developmental in nature to
199 the extent that the provision of such services is not yet
200 contemplated within the commonly accepted course of diagnosis or
201 treatment for the condition addressed by a given service. The
202 agency shall establish by rule a list of all tertiary health
203 services.

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

206 408.034 Duties and responsibilities of agency; rules.--

207 (5) The agency shall establish by rule a nursing-home-bed-
208 need methodology that has a goal of maintaining a district
209 average occupancy rate of 94 percent and that reduces the
210 community nursing home bed need for the areas of the state where



HB 0081A, Engrossed 1

2003

211 the agency establishes pilot community diversion programs
212 through the Title XIX aging waiver program.

213 Section 7. Section 408.036, Florida Statutes, is amended
214 to read:

215 408.036 Projects subject to review; exemptions.--

216 (1) APPLICABILITY.--Unless exempt under subsection (3),
217 all health-care-related projects, as described in paragraphs
218 (a)-(h), are subject to review and must file an application for
219 a certificate of need with the agency. The agency is exclusively
220 responsible for determining whether a health-care-related
221 project is subject to review under ss. 408.031-408.045.

222 (a) The addition of beds by new construction or
223 alteration.

224 (b) The new construction or establishment of additional
225 health care facilities, including a replacement health care
226 facility when the proposed project site is not located on the
227 same site as the existing health care facility.

228 (c) The conversion from one type of health care facility
229 to another.

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

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

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

236 (g) An increase in the number of beds for acute care,
237 nursing home care beds, specialty burn units, neonatal intensive
238 care units, comprehensive rehabilitation, mental health
239 services, or hospital-based distinct part skilled nursing units,
240 or at a long-term care hospital.



HB 0081A, Engrossed 1

2003

241 (h) The establishment of tertiary health services.

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

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

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

247 (b)(e) A transfer of a certificate of need, except when an
248 existing hospital is acquired by a purchaser, in which case all
249 pending certificates of need filed by the existing hospital and
250 all approved certificates of need owned by that hospital would
251 be acquired by the purchaser.

252 (c)(d) A 50-percent increase in nursing home beds for a
253 facility incorporated and operating in this state for at least
254 60 years on or before July 1, 1988, which has a licensed nursing
255 home facility located on a campus providing a variety of
256 residential settings and supportive services. The increased
257 nursing home beds shall be for the exclusive use of the campus
258 residents. Any application on behalf of an applicant meeting
259 this requirement shall be subject to the base fee of \$5,000
260 provided in s. 408.038.

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

264 (e)(f) The conversion of mental health services beds
265 licensed under chapter 395 or hospital-based distinct part
266 skilled nursing unit beds to general acute care beds; the
267 conversion of mental health services beds between or among the
268 licensed bed categories defined as beds for mental health
269 services; or the conversion of general acute care beds to beds
270 for mental health services.



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

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

277 (f) Replacement of a nursing home within the same
278 district, provided the proposed project site is located within a
279 geographic area that contains at least 65 percent of the
280 facility's current residents and is within a 30-mile radius of
281 the replaced nursing home.

282 (g) Relocation of a portion of a nursing home's licensed
283 beds to a replacement facility within the same district,
284 provided the relocation is within a 30-mile radius of the
285 existing facility and the total number of nursing home beds in
286 the district does not increase.

287
288 The agency shall develop rules to implement the provisions for
289 expedited review, including time schedule, application content
290 which may be reduced from the full requirements of s.
291 408.037(1), and application processing.

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

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

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



HB 0081A, Engrossed 1

2003

300 (c) For the conversion of licensed acute care hospital
301 beds to Medicare and Medicaid certified skilled nursing beds in
302 a rural hospital, as defined in s. 395.602, so long as the
303 conversion of the beds does not involve the construction of new
304 facilities. The total number of skilled nursing beds, including
305 swing beds, may not exceed one-half of the total number of
306 licensed beds in the rural hospital as of July 1, 1993.
307 Certified skilled nursing beds designated under this paragraph,
308 excluding swing beds, shall be included in the community nursing
309 home bed inventory. A rural hospital which subsequently
310 decertifies any acute care beds exempted under this paragraph
311 shall notify the agency of the decertification, and the agency
312 shall adjust the community nursing home bed inventory
313 accordingly.

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

321 (e) For an increase in the bed capacity of a nursing
322 facility licensed for at least 50 beds as of January 1, 1994,
323 under part II of chapter 400 which is not part of a continuing
324 care facility if, after the increase, the total licensed bed
325 capacity of that facility is not more than 60 beds and if the
326 facility has been continuously licensed since 1950 and has
327 received a superior rating on each of its two most recent
328 licensure surveys.



HB 0081A, Engrossed 1

2003

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

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

335 (h) For the delicensure of beds, upon 30 days' written
336 notice to the agency. A request for exemption submitted under
337 this paragraph must identify the number, the category of beds,
338 and the name of the facility in which the beds to be delicensed
339 are located.

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

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

345 a. The applicant must certify it will not provide
346 therapeutic cardiac catheterization pursuant to the grant of the
347 exemption.

348 b. The applicant must certify it will meet and
349 continuously maintain the minimum licensure requirements adopted
350 by the agency governing such programs pursuant to subparagraph
351 2.

352 c. The applicant must certify it will provide a minimum of
353 2 percent of its services to charity and Medicaid patients.

354 2. The agency shall adopt licensure requirements by rule
355 which govern the operation of adult inpatient diagnostic cardiac
356 catheterization programs established pursuant to the exemption
357 provided in this paragraph. The rules shall ensure that such
358 programs:



359 a. Perform only adult inpatient diagnostic cardiac
360 catheterization services authorized by the exemption and will
361 not provide therapeutic cardiac catheterization or any other
362 services not authorized by the exemption.

363 b. Maintain sufficient appropriate equipment and health
364 personnel to ensure quality and safety.

365 c. Maintain appropriate times of operation and protocols
366 to ensure availability and appropriate referrals in the event of
367 emergencies.

368 d. Maintain appropriate program volumes to ensure quality
369 and safety.

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

372 3.a. The exemption provided by this paragraph shall not
373 apply unless the agency determines that the program is in
374 compliance with the requirements of subparagraph 1. and that the
375 program will, after beginning operation, continuously comply
376 with the rules adopted pursuant to subparagraph 2. The agency
377 shall monitor such programs to ensure compliance with the
378 requirements of subparagraph 2.

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

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

386 (III) If the exemption for a program expires pursuant to
387 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the
388 agency shall not grant an exemption pursuant to this paragraph



HB 0081A, Engrossed 1

2003

389 for an adult inpatient diagnostic cardiac catheterization
390 program located at the same hospital until 2 years following the
391 date of the determination by the agency that the program failed
392 to comply with the rules adopted pursuant to subparagraph 2.

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

399 1. The applicant must certify that it will meet and
400 continuously maintain the requirements adopted by the agency for
401 the provision of these services. These licensure requirements
402 are to be adopted by rule pursuant to ss. 120.536(1) and 120.54
403 and are to be consistent with the guidelines published by the
404 American College of Cardiology and the American Heart
405 Association for the provision of percutaneous coronary
406 interventions in hospitals without adult open heart services. At
407 a minimum, the rules shall require the following:

408 a. Cardiologists must be experienced interventionalists
409 who have performed a minimum of 75 interventions within the
410 previous 12 months.

411 b. The hospital must provide a minimum of 36 emergency
412 interventions annually in order to continue to provide the
413 service.

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

417 d. Nursing and technical staff must have demonstrated
418 experience in handling acutely ill patients requiring



HB 0081A, Engrossed 1

2003

419 intervention based on previous experience in dedicated
420 interventional laboratories or surgical centers.

421 e. Cardiac care nursing staff must be adept in hemodynamic
422 monitoring and intra-aortic balloon pump (IABP) management.

423 f. Formalized written transfer agreements must be
424 developed with a hospital with an adult open heart surgery
425 program, and written transport protocols must be in place to
426 ensure safe and efficient transfer of a patient within 60
427 minutes. Transfer and transport agreements must be reviewed and
428 tested, with appropriate documentation maintained at least every
429 3 months.

430 g. Hospitals implementing the service must first undertake
431 a training program of 3 to 6 months that includes establishing
432 standards, testing logistics, creating quality assessment and
433 error management practices, and formalizing patient selection
434 criteria.

435 2. The applicant must certify that it will utilize at all
436 times the patient selection criteria for the performance of
437 primary angioplasty at hospitals without adult open heart
438 surgery programs issued by the American College of Cardiology
439 and the American Heart Association. At a minimum, these criteria
440 would provide for the following:

441 a. Avoidance of interventions in hemodynamically stable
442 patients presenting with identified symptoms or medical
443 histories.

444 b. Transfer of patients presenting with a history of
445 coronary disease and clinical presentation of hemodynamic
446 instability.

447 3. The applicant must agree to submit a quarterly report
448 to the agency detailing patient characteristics, treatment, and



HB 0081A, Engrossed 1

2003

449 outcomes for all patients receiving emergency percutaneous
450 coronary interventions pursuant to this paragraph. This report
451 must be submitted within 15 days after the close of each
452 calendar quarter.

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

458 5. Failure of the hospital to continuously comply with the
459 requirements of sub-subparagraphs 1.c.-f. and subparagraphs 2.
460 and 3. will result in the immediate expiration of this
461 exemption.

462 6. Failure of the hospital to meet the volume requirements
463 of sub-subparagraphs 1.a.-b. within 18 months after the program
464 begins offering the service will result in the immediate
465 expiration of the exemption.

466 7. If the exemption for this service expires pursuant to
467 subparagraph 5. or subparagraph 6., the agency shall not grant
468 another exemption for this service to the same hospital for a
469 period of 2 years and then only upon a showing that the hospital
470 will remain in compliance with the requirements of this
471 paragraph through a demonstration of corrections to the
472 deficiencies that caused expiration of the exemption. Compliance
473 with the requirements of this paragraph includes compliance with
474 the rules adopted pursuant to this paragraph.

475 (k)(j) For mobile surgical facilities and related health
476 care services provided under contract with the Department of
477 Corrections or a private correctional facility operating
478 pursuant to chapter 957.



479 (1)~~(k)~~ For state veterans' nursing homes operated by or on
 480 behalf of the Florida Department of Veterans' Affairs in
 481 accordance with part II of chapter 296 for which at least 50
 482 percent of the construction cost is federally funded and for
 483 which the Federal Government pays a per diem rate not to exceed
 484 one-half of the cost of the veterans' care in such state nursing
 485 homes. These beds shall not be included in the nursing home bed
 486 inventory.

487 (m)~~(l)~~ For combination within one nursing home facility of
 488 the beds or services authorized by two or more certificates of
 489 need issued in the same planning subdistrict. An exemption
 490 granted under this paragraph shall extend the validity period of
 491 the certificates of need to be consolidated by the length of the
 492 period beginning upon submission of the exemption request and
 493 ending with issuance of the exemption. The longest validity
 494 period among the certificates shall be applicable to each of the
 495 combined certificates.

496 (n)~~(m)~~ For division into two or more nursing home
 497 facilities of beds or services authorized by one certificate of
 498 need issued in the same planning subdistrict. An exemption
 499 granted under this paragraph shall extend the validity period of
 500 the certificate of need to be divided by the length of the
 501 period beginning upon submission of the exemption request and
 502 ending with issuance of the exemption.

503 (o)~~(n)~~ For the addition of hospital beds licensed under
 504 chapter 395 for acute care, ~~mental health services,~~ or a
 505 hospital-based distinct part skilled nursing unit in a number
 506 that may not exceed 10 total beds or 10 percent of the licensed
 507 capacity of the bed category being expanded, whichever is
 508 greater; for the addition of medical rehabilitation beds



HB 0081A, Engrossed 1

2003

509 licensed under chapter 395 in a number that may not exceed eight
 510 total beds or 10 percent of capacity, whichever is greater; or
 511 for the addition of mental health services beds licensed under
 512 chapter 395 in a number that may not exceed 10 total beds or 10
 513 percent of the licensed capacity of the bed category being
 514 expanded, whichever is greater. Beds for specialty burn units
 515 or, neonatal intensive care units, ~~or comprehensive~~
 516 ~~rehabilitation,~~ or at a long-term care hospital, may not be
 517 increased under this paragraph.

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

521 a. Certify that the prior 12-month average occupancy rate
 522 for the category of licensed beds being expanded at the facility
 523 meets or exceeds 75 ~~80~~ percent or, for a hospital-based distinct
 524 part skilled nursing unit, the prior 12-month average occupancy
 525 rate meets or exceeds 96 percent or, for medical rehabilitation
 526 beds, the prior 12-month average occupancy rate meets or exceeds
 527 90 percent.

528 b. Certify that any beds of the same type authorized for
 529 the facility under this paragraph before the date of the current
 530 request for an exemption have been licensed and operational for
 531 at least 12 months.

532 2. The timeframes and monitoring process specified in s.
 533 408.040(2)(a)-(c) apply to any exemption issued under this
 534 paragraph.

535 3. The agency shall count beds authorized under this
 536 paragraph as approved beds in the published inventory of
 537 hospital beds until the beds are licensed.



HB 0081A, Engrossed 1

2003

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

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

549 1. In addition to any other documentation required by the
550 agency, a request for exemption submitted under this paragraph
551 must:

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

555 b. ~~Effective on July 1, 2001, certify that the facility~~
556 ~~has been designated as a Cold Seal nursing home under s.~~
557 ~~400.235.~~

558 ~~b.e.~~ Certify that the prior 12-month average occupancy
559 rate for the nursing home beds at the facility meets or exceeds
560 96 percent.

561 ~~c.d.~~ Certify that any beds authorized for the facility
562 under this paragraph before the date of the current request for
563 an exemption have been licensed and operational for at least 12
564 months.

565 2. The timeframes and monitoring process specified in s.
566 408.040(2)(a)-(c) apply to any exemption issued under this
567 paragraph.



HB 0081A, Engrossed 1

2003

568 3. The agency shall count beds authorized under this
569 paragraph as approved beds in the published inventory of nursing
570 home beds until the beds are licensed.

571 ~~(q) For establishment of a specialty hospital offering a~~
572 ~~range of medical service restricted to a defined age or gender~~
573 ~~group of the population or a restricted range of services~~
574 ~~appropriate to the diagnosis, care, and treatment of patients~~
575 ~~with specific categories of medical illnesses or disorders,~~
576 ~~through the transfer of beds and services from an existing~~
577 ~~hospital in the same county.~~

578 (r) For the conversion of hospital-based Medicare and
579 Medicaid certified skilled nursing beds to acute care beds, if
580 the conversion does not involve the construction of new
581 facilities.

582 (s) For the replacement of a statutory rural hospital, if
583 the proposed project site is located in the same district,
584 within 10 miles of the existing facility, and within the current
585 primary service area, defined as the least number of zip codes
586 comprising 75 percent of the hospital's inpatient admissions.
587 ~~For fiscal year 2001-2002 only, for transfer by a health care~~
588 ~~system of existing services and not more than 100 licensed and~~
589 ~~approved beds from a hospital in district 1, subdistrict 1, to~~
590 ~~another location within the same subdistrict in order to~~
591 ~~establish a satellite facility that will improve access to~~
592 ~~outpatient and inpatient care for residents of the district and~~
593 ~~subdistrict and that will use new medical technologies,~~
594 ~~including advanced diagnostics, computer assisted imaging, and~~
595 ~~telemedicine to improve care. This paragraph is repealed on July~~
596 ~~1, 2002.~~



597 (t) For the conversion of mental health services beds
598 between or among the licensed bed categories defined as beds for
599 mental health services. Beds converted under this paragraph must
600 be licensed and operational for at least 12 months before the
601 hospital may apply for additional conversion affecting beds of
602 the same type.

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

607 (v) For the addition of Level II or Level III neonatal
608 intensive care beds in a number not to exceed six beds or 10
609 percent of licensed capacity in that category, whichever is
610 greater, provided that the hospital certifies that the prior 12-
611 month average occupancy rate for the category of licensed
612 neonatal intensive care beds meets or exceeds 75 percent.

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

616 (x) For consolidation or combination of licensed nursing
617 homes or transfer of beds between licensed nursing homes within
618 the same planning subdistrict, by providers that operate
619 multiple nursing homes within that planning subdistrict,
620 provided there is no increase in the planning subdistrict total
621 of nursing home beds and the relocation does not exceed 30 miles
622 from the original location.

623 (4) A request for exemption under subsection (3) may be
624 made at any time and is not subject to the batching requirements
625 of this section. The request shall be supported by such
626 documentation as the agency requires by rule. The agency shall



HB 0081A, Engrossed 1

2003

627 assess a fee of \$250 for each request for exemption submitted
628 under subsection (3).

629 Section 8. Section 52 of chapter 2001-45, Laws of Florida,
630 is amended to read:

631 Section 52. (1) Notwithstanding the establishment of need
632 as provided for in chapter 408, Florida Statutes, no certificate
633 of need for additional community nursing home beds shall be
634 approved by the agency until July 1, 2006.

635 (2) The Legislature finds that the continued growth in the
636 Medicaid budget for nursing home care has constrained the
637 ability of the state to meet the needs of its elderly residents
638 through the use of less restrictive and less institutional
639 methods of long-term care. It is therefore the intent of the
640 Legislature to limit the increase in Medicaid nursing home
641 expenditures in order to provide funds to invest in long-term
642 care that is community-based and provides supportive services in
643 a manner that is both more cost-effective and more in keeping
644 with the wishes of the elderly residents of this state.

645 (3) This moratorium on certificates of need shall not
646 apply to sheltered nursing home beds in a continuing care
647 retirement community certified by the Department of Insurance
648 pursuant to chapter 651, Florida Statutes.

649 (4)(a) This moratorium on certificates of need shall not
650 apply, and a certificate of need for additional community
651 nursing home beds may be approved, for a county that meets the
652 following circumstances:

653 1. The county has no community nursing home beds.

654 2. The lack of community nursing home beds occurs because
655 all nursing home beds in the county that were licensed on July
656 1, 2001, have subsequently closed.



HB 0081A, Engrossed 1

2003

657 (b) The certificate-of-need review for such circumstances
658 shall be subject to the comparative review process consistent
659 with the provisions of s. 408.039, Florida Statutes, and the
660 number of beds may not exceed the number of beds lost by the
661 county after July 1, 2001.

662 Section 9. Section 408.038, Florida Statutes, is amended
663 to read:

664 408.038 Fees.--The agency shall assess fees on
665 certificate-of-need applications. Such fees shall be for the
666 purpose of funding the functions of the local health councils
667 and the activities of the agency and shall be allocated as
668 provided in s. 408.033. The fee shall be determined as follows:

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

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

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

676 408.039 Review process.--The review process for
677 certificates of need shall be as follows:

678 (5) ADMINISTRATIVE HEARINGS.--

679 (e) The agency shall issue its final order within 45 days
680 after receipt of the recommended order. If the agency fails to
681 take action within 45 days, the recommended order of the
682 Division of Administrative Hearings is deemed approved such
683 ~~time, or as otherwise agreed to by the applicant and the agency,~~
684 ~~the applicant may take appropriate legal action to compel the~~
685 ~~agency to act.~~ When making a determination on an application for



HB 0081A, Engrossed 1

2003

686 a certificate of need, the agency is specifically exempt from
687 the time limitations provided in s. 120.60(1).

688 (6) JUDICIAL REVIEW.--

689 (c) The court, in its discretion, may award reasonable
690 attorney's fees and costs to the prevailing party if the court
691 finds that there was a complete absence of a justiciable issue
692 of law or fact raised by the losing party. If the losing party
693 is a hospital, the court shall order it to pay the reasonable
694 attorney's fees and costs of the prevailing hospital party,
695 which shall include fees and costs incurred as a result of the
696 administrative hearing and the judicial appeal.

697 Section 11. This act does not preclude review and final
698 agency actions on any certificate of need application that was
699 filed with the Agency for Health Care Administration before the
700 effective date of this act.

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

703 (1) It is the intent of the Legislature to provide for the
704 protection of the public health and safety in the establishment,
705 construction, maintenance, and operation of hospitals. However,
706 the Legislature further intends that the police power of the
707 state be exercised toward that purpose only to the extent
708 necessary and that regulation remain current with the ever-
709 changing standard of care and not restrict the introduction and
710 use of new medical technologies and procedures.

711 (2) In order to achieve the purposes expressed in
712 subsection (1), it is necessary that the state establish a
713 mechanism for the ongoing review and updating of laws regulating
714 hospitals. The Hospital Statutory and Regulatory Reform Council
715 is created and located, for administrative purposes only, within



HB 0081A, Engrossed 1

2003

716 the Agency for Health Care Administration. The council shall
717 consist of no more than 15 members, including:

718 (a) Nine members appointed by the Florida Hospital
719 Association who represent acute care, teaching, specialty,
720 rural, government-owned, for-profit, and not-for-profit
721 hospitals.

722 (b) Two members appointed by the Governor who represent
723 patients.

724 (c) Two members appointed by the President of the Senate
725 who represent private businesses that provide health insurance
726 coverage for their employees, one of whom represents small
727 private businesses and one of whom represents large private
728 businesses. As used in this paragraph, the term "private
729 business" does not include an entity licensed under chapter 627,
730 Florida Statutes, or chapter 641, Florida Statutes, or otherwise
731 licensed or authorized to provide health insurance services,
732 either directly or indirectly, in this state.

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

735 (3) Council members shall be appointed to serve 2-year
736 terms and may be reappointed. A member shall serve until his or
737 her successor is appointed. The council shall annually elect
738 from among its members a chair and a vice chair. The council
739 shall meet at least twice a year and shall hold additional
740 meetings as it considers necessary. Members appointed by the
741 Florida Hospital Association may not receive compensation or
742 reimbursement of expenses for their services. Members appointed
743 by the Governor, the President of the Senate, or the Speaker of
744 the House of Representatives may be reimbursed for travel
745 expenses by the agency.



HB 0081A, Engrossed 1

2003

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

751 (5) The council, as its second priority, shall recommend
752 to the Secretary of Health and the Secretary of Health Care
753 Administration regulatory changes relating to hospital licensure
754 and regulation to assist the Department of Health and the Agency
755 for Health Care Administration in carrying out their duties and
756 to ensure that the intent of the Legislature as expressed in
757 this section is carried out.

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

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

763 (b) The statute or rule restricts the use of new medical
764 technologies or encourages the implementation of more cost-
765 effective medical procedures.

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

768 (d) The public is or can be effectively protected by other
769 means.

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

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

775 Section 13. Pursuant to s. 383.19(2), Florida Statutes,



HB 0081A, Engrossed 1

2003

776 there is hereby authorized and established an additional
777 regional perinatal intensive care center in Tampa. The
778 additional regional perinatal intensive care center shall be
779 operated in collaboration with an existing regional perinatal
780 intensive care center. Consistent with s. 383.15, Florida
781 Statutes, the additional regional perinatal intensive care
782 center shall not receive payments authorized under s. 409.9112,
783 Florida Statutes.

784 Section 14. If any law amended by this act was also
785 amended by a law enacted at the 2003 Regular Session of the
786 Legislature, such laws shall be construed as if they had been
787 enacted at the same session of the Legislature, and full effect
788 shall be given to each if possible.

789 Section 15. This act shall take effect July 1, 2003.