

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Murman offered the following:

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3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Section 400.0712, Florida Statutes, is created
6 to read:

7 400.0712 Application for inactive license.--

8 (1) As specified in this section, the agency may issue an
9 inactive license to a nursing home facility for all or a portion
10 of its beds. Any request by a licensee that a nursing home or
11 portion of a nursing home become inactive must be submitted to
12 the agency in the approved format. The facility may not initiate
13 any suspension of services, notify residents, or initiate
14 facility closure before receiving approval from the agency; and
15 a facility that violates this provision shall not be issued an
16 inactive license. Upon agency approval of an inactive license,

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17 the nursing home shall notify residents of any necessary
18 discharge or transfer as provided in s. 400.0255.

19 (2) The agency may issue an inactive license to a nursing
20 home that chooses to use an unoccupied contiguous portion of the
21 facility for an alternative use to meet the needs of elderly
22 persons through the use of less restrictive, less institutional
23 services.

24 (a) An inactive license issued under this subsection may
25 be granted for a period not to exceed 12 months but may be
26 renewed annually by the agency for 12 months.

27 (b) A request to extend the inactive license must be
28 submitted to the agency in the approved format and approved by
29 the agency in writing.

30 (c) Nursing homes that receive an inactive license to
31 provide alternative services shall not receive preference for
32 participation in the Assisted Living for the Elderly Medicaid
33 waiver.

34 (3) The agency may issue an inactive license to a nursing
35 home that will be temporarily unable to provide services but is
36 reasonably expected to resume services.

37 (a) An inactive license issued under this subsection may
38 be issued for a period not to exceed 12 months and may be
39 renewed by the agency for an additional 6 months upon
40 demonstration of progress toward reopening.

41 (b) All licensure fees must be current and paid in full,
42 and may be prorated as provided by agency rule, before the
43 inactive license is issued.

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44 (c) Reactivation of an inactive license requires that the
45 applicant pay all licensure fees and be inspected by the agency
46 to confirm that all of the requirements of this part and
47 applicable rules are met.

48 (4) The agency shall adopt rules pursuant to ss.
49 120.536(1) and 120.54 necessary to implement this section.

50 Section 2. Subsections (10), (11), and (12) of section
51 400.071, Florida Statutes, are amended to read:

52 400.071 Application for license.--

53 ~~(10) The agency may issue an inactive license to a nursing~~
54 ~~home that will be temporarily unable to provide services but~~
55 ~~that is reasonably expected to resume services. Such designation~~
56 ~~may be made for a period not to exceed 12 months but may be~~
57 ~~renewed by the agency for up to 6 additional months. Any request~~
58 ~~by a licensee that a nursing home become inactive must be~~
59 ~~submitted to the agency and approved by the agency prior to~~
60 ~~initiating any suspension of service or notifying residents.~~
61 ~~Upon agency approval, the nursing home shall notify residents of~~
62 ~~any necessary discharge or transfer as provided in s. 400.0255.~~

63 ~~(10)-(11)~~ As a condition of licensure, each facility must
64 establish and submit with its application a plan for quality
65 assurance and for conducting risk management.

66 ~~(11)-(12)~~ The applicant must provide the agency with proof
67 of a legal right to occupy the property before a license may be
68 issued. Proof may include, but is not limited to, copies of
69 warranty deeds, lease or rental agreements, contracts for deeds,
70 or quitclaim deeds.

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71 Section 3. Subsection (17) of section 400.021, Florida
72 Statutes, is amended to read:

73 400.021 Definitions.--When used in this part, unless the
74 context otherwise requires, the term:

75 (17) "Resident care plan" means a written plan developed,
76 maintained, and reviewed not less than quarterly by a registered
77 nurse, with participation from other facility staff and the
78 resident or his or her designee or legal representative, which
79 includes a comprehensive assessment of the needs of an
80 individual resident; the type and frequency of services required
81 to provide the necessary care for the resident to attain or
82 maintain the highest practicable physical, mental, and
83 psychosocial well-being; a listing of services provided within
84 or outside the facility to meet those needs; and an explanation
85 of service goals. The resident care plan must be signed by the
86 director of nursing or another registered nurse employed by the
87 facility to whom institutional responsibilities have been
88 delegated and by the resident, the resident's designee, or the
89 resident's legal representative. The facility may not use an
90 agency or temporary registered nurse to satisfy the foregoing
91 requirement and must document the institutional responsibilities
92 that have been delegated to the registered nurse.

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

95 400.23 Rules; evaluation and deficiencies; licensure
96 status.--

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97 (10) Agency records, reports, ranking systems, Internet
98 information, and publications must be promptly updated to
99 reflect the most current agency actions.

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

102 400.211 Persons employed as nursing assistants;
103 certification requirement.--

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

109 (a) Be sufficient to ensure the continuing competence of
110 nursing assistants and must meet the standard specified in s.
111 464.203(7), must be at least 18 hours per year, and may include
112 hours accrued under s. 464.203(8);

113 (b) Include, at a minimum:

114 1. Techniques for assisting with eating and proper
115 feeding;

116 2. Principles of adequate nutrition and hydration;

117 3. Techniques for assisting and responding to the
118 cognitively impaired resident or the resident with difficult
119 behaviors;

120 4. Techniques for caring for the resident at the end-of-
121 life; and

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

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124 (c) Address areas of weakness as determined in nursing
125 assistant performance reviews and may address the special needs
126 of residents as determined by the nursing home facility staff.
127

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

130 Section 6. Subsection (5) of section 400.235, Florida
131 Statutes, is amended to read:

132 400.235 Nursing home quality and licensure status; Gold
133 Seal Program.--

134 (5) Facilities must meet the following additional criteria
135 for recognition as a Gold Seal Program facility:

136 (a) Had no class I or class II deficiencies within the 30
137 months preceding application for the program.

138 (b) Evidence financial soundness and stability according
139 to standards adopted by the agency in administrative rule. Such
140 standards must include, but not be limited to, criteria for the
141 use of financial statements that are prepared in accordance with
142 generally accepted accounting principles and that are reviewed
143 or audited by certified public accountants. A nursing home that
144 is part of the same corporate entity as a continuing care
145 facility licensed under chapter 651 which meets the minimum
146 liquid reserve requirements specified in s. 651.035 and is
147 accredited by a recognized accrediting organization under s.
148 651.028 and rules of the Office of Insurance Regulation
149 satisfies this requirement as long as the accreditation is not
150 provisional. Facilities operated by a federal or state agency

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151 are deemed to be financially stable for purposes of applying for
152 the Gold Seal.

153 (c) Participate in a consumer satisfaction process, and
154 demonstrate that information is elicited from residents, family
155 members, and guardians about satisfaction with the nursing
156 facility, its environment, the services and care provided, the
157 staff's skills and interactions with residents, attention to
158 resident's needs, and the facility's efforts to act on
159 information gathered from the consumer satisfaction measures.

160 (d) Evidence the involvement of families and members of
161 the community in the facility on a regular basis.

162 (e) Have a stable workforce, as described in s. 400.141,
163 as evidenced by a relatively low rate of turnover among
164 certified nursing assistants and licensed nurses within the 30
165 months preceding application for the Gold Seal Program, and
166 demonstrate a continuing effort to maintain a stable workforce
167 and to reduce turnover of licensed nurses and certified nursing
168 assistants.

169 (f) Evidence an outstanding record regarding the number
170 and types of substantiated complaints reported to the State
171 Long-Term Care Ombudsman Council within the 30 months preceding
172 application for the program.

173 (g) Provide targeted inservice training provided to meet
174 training needs identified by internal or external quality
175 assurance efforts.

176
177 A facility assigned a conditional licensure status may not
178 qualify for consideration for the Gold Seal Program until after

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179 | it has operated for 30 months with no class I or class II
180 | deficiencies and has completed a regularly scheduled relicensure
181 | survey.

182 | Section 7. Paragraph (a) of subsection (1) of section
183 | 400.441, Florida Statutes, is amended to read:

184 | 400.441 Rules establishing standards.--

185 | (1) It is the intent of the Legislature that rules
186 | published and enforced pursuant to this section shall include
187 | criteria by which a reasonable and consistent quality of
188 | resident care and quality of life may be ensured and the results
189 | of such resident care may be demonstrated. Such rules shall also
190 | ensure a safe and sanitary environment that is residential and
191 | noninstitutional in design or nature. It is further intended
192 | that reasonable efforts be made to accommodate the needs and
193 | preferences of residents to enhance the quality of life in a
194 | facility. In order to provide safe and sanitary facilities and
195 | the highest quality of resident care accommodating the needs and
196 | preferences of residents, the department, in consultation with
197 | the agency, the Department of Children and Family Services, and
198 | the Department of Health, shall adopt rules, policies, and
199 | procedures to administer this part, which must include
200 | reasonable and fair minimum standards in relation to:

201 | (a) The requirements for and maintenance of facilities,
202 | not in conflict with the provisions of chapter 553, relating to
203 | plumbing, heating, cooling, lighting, ventilation, living space,
204 | and other housing conditions, which will ensure the health,
205 | safety, and comfort of residents and protection from fire
206 | hazard, including adequate provisions for fire alarm and other

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207 fire protection suitable to the size of the structure. Uniform
208 firesafety standards shall be established and enforced by the
209 State Fire Marshal in cooperation with the agency, the
210 department, and the Department of Health.

211 1. Evacuation capability determination.--

212 a. The provisions of the National Fire Protection
213 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
214 for determining the ability of the residents, with or without
215 staff assistance, to relocate from or within a licensed facility
216 to a point of safety as provided in the fire codes adopted
217 herein. An evacuation capability evaluation for initial
218 licensure shall be conducted within 6 months after the date of
219 licensure. For existing licensed facilities that are not
220 equipped with an automatic fire sprinkler system, the
221 administrator shall evaluate the evacuation capability of
222 residents at least annually. The evacuation capability
223 evaluation for each facility not equipped with an automatic fire
224 sprinkler system shall be validated, without liability, by the
225 State Fire Marshal, by the local fire marshal, or by the local
226 authority having jurisdiction over firesafety, before the
227 license renewal date. If the State Fire Marshal, local fire
228 marshal, or local authority having jurisdiction over firesafety
229 has reason to believe that the evacuation capability of a
230 facility as reported by the administrator may have changed, it
231 may, with assistance from the facility administrator, reevaluate
232 the evacuation capability through timed exiting drills.
233 Translation of timed fire exiting drills to evacuation
234 capability may be determined:

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235 (I) Three minutes or less: prompt.

236 (II) More than 3 minutes, but not more than 13 minutes:
237 slow.

238 (III) More than 13 minutes: impractical.

239 b. The Office of the State Fire Marshal shall provide or
240 cause the provision of training and education on the proper
241 application of Chapter 5, NFPA 101A, 1995 edition, to its
242 employees, to staff of the Agency for Health Care Administration
243 who are responsible for regulating facilities under this part,
244 and to local governmental inspectors. The Office of the State
245 Fire Marshal shall provide or cause the provision of this
246 training within its existing budget, but may charge a fee for
247 this training to offset its costs. The initial training must be
248 delivered within 6 months after July 1, 1995, and as needed
249 thereafter.

250 c. The Office of the State Fire Marshal, in cooperation
251 with provider associations, shall provide or cause the provision
252 of a training program designed to inform facility operators on
253 how to properly review bid documents relating to the
254 installation of automatic fire sprinklers. The Office of the
255 State Fire Marshal shall provide or cause the provision of this
256 training within its existing budget, but may charge a fee for
257 this training to offset its costs. The initial training must be
258 delivered within 6 months after July 1, 1995, and as needed
259 thereafter.

260 d. The administrator of a licensed facility shall sign an
261 affidavit verifying the number of residents occupying the
262 facility at the time of the evacuation capability evaluation.

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263 2. Firesafety requirements.--

264 a. Except for the special applications provided herein,
265 effective January 1, 1996, the provisions of the National Fire
266 Protection Association, Life Safety Code, NFPA 101, 1994
267 edition, Chapter 22 for new facilities and Chapter 23 for
268 existing facilities shall be the uniform fire code applied by
269 the State Fire Marshal for assisted living facilities, pursuant
270 to s. 633.022.

271 b. Any new facility, regardless of size, that applies for
272 a license on or after January 1, 1996, must be equipped with an
273 automatic fire sprinkler system. The exceptions as provided in
274 section 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein,
275 apply to any new facility housing eight or fewer residents. On
276 July 1, 1995, local governmental entities responsible for the
277 issuance of permits for construction shall inform, without
278 liability, any facility whose permit for construction is
279 obtained prior to January 1, 1996, of this automatic fire
280 sprinkler requirement. As used in this part, the term "a new
281 facility" does not mean an existing facility that has undergone
282 change of ownership.

283 c. Notwithstanding any provision of s. 633.022 or of the
284 National Fire Protection Association, NFPA 101A, Chapter 5, 1995
285 edition, to the contrary, any existing facility housing eight or
286 fewer residents is not required to install an automatic fire
287 sprinkler system, nor to comply with any other requirement in
288 Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety
289 requirements of NFPA 101, 1988 edition, that applies to this
290 size facility, unless the facility has been classified as

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291 impractical to evacuate. Any existing facility housing eight or
292 fewer residents that is classified as impractical to evacuate
293 must install an automatic fire sprinkler system within the
294 timeframes granted in this section.

295 d. Any existing facility that is required to install an
296 automatic fire sprinkler system under this paragraph need not
297 meet other firesafety requirements of Chapter 23, NFPA 101, 1994
298 edition, which exceed the provisions of NFPA 101, 1988 edition.
299 The mandate contained in this paragraph which requires certain
300 facilities to install an automatic fire sprinkler system
301 supersedes any other requirement.

302 e. This paragraph does not supersede the exceptions
303 granted in NFPA 101, 1988 edition or 1994 edition.

304 f. This paragraph does not exempt facilities from other
305 firesafety provisions adopted under s. 633.022 and local
306 building code requirements in effect before July 1, 1995.

307 g. A local government may charge fees only in an amount
308 not to exceed the actual expenses incurred by local government
309 relating to the installation and maintenance of an automatic
310 fire sprinkler system in an existing and properly licensed
311 assisted living facility structure as of January 1, 1996.

312 h. If a licensed facility undergoes major reconstruction
313 or addition to an existing building on or after January 1, 1996,
314 the entire building must be equipped with an automatic fire
315 sprinkler system. Major reconstruction of a building means
316 repair or restoration that costs in excess of 50 percent of the
317 value of the building as reported on the tax rolls, excluding
318 land, before reconstruction. Multiple reconstruction projects

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319 within a 5-year period the total costs of which exceed 50
320 percent of the initial value of the building at the time the
321 first reconstruction project was permitted are to be considered
322 as major reconstruction. Application for a permit for an
323 automatic fire sprinkler system is required upon application for
324 a permit for a reconstruction project that creates costs that go
325 over the 50-percent threshold.

326 i. Any facility licensed before January 1, 1996, that is
327 required to install an automatic fire sprinkler system shall
328 ensure that the installation is completed within the following
329 timeframes based upon evacuation capability of the facility as
330 determined under subparagraph 1.:

331 (I) Impractical evacuation capability, 24 months.

332 (II) Slow evacuation capability, 48 months.

333 (III) Prompt evacuation capability, 60 months.

334
335 The beginning date from which the deadline for the automatic
336 fire sprinkler installation requirement must be calculated is
337 upon receipt of written notice from the local fire official that
338 an automatic fire sprinkler system must be installed. The local
339 fire official shall send a copy of the document indicating the
340 requirement of a fire sprinkler system to the Agency for Health
341 Care Administration.

342 j. It is recognized that the installation of an automatic
343 fire sprinkler system may create financial hardship for some
344 facilities. The appropriate local fire official shall, without
345 liability, grant two 1-year extensions to the timeframes for
346 installation established herein, if an automatic fire sprinkler

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347 installation cost estimate and proof of denial from two
348 financial institutions for a construction loan to install the
349 automatic fire sprinkler system are submitted. However, for any
350 facility with a class I or class II, or a history of uncorrected
351 class III, firesafety deficiencies, an extension must not be
352 granted. The local fire official shall send a copy of the
353 document granting the time extension to the Agency for Health
354 Care Administration.

355 k. A facility owner whose facility is required to be
356 equipped with an automatic fire sprinkler system under Chapter
357 23, NFPA 101, 1994 edition, as adopted herein, must disclose to
358 any potential buyer of the facility that an installation of an
359 automatic fire sprinkler requirement exists. The sale of the
360 facility does not alter the timeframe for the installation of
361 the automatic fire sprinkler system.

362 l. Existing facilities required to install an automatic
363 fire sprinkler system as a result of construction-type
364 restrictions in Chapter 23, NFPA 101, 1994 edition, as adopted
365 herein, or evacuation capability requirements shall be notified
366 by the local fire official in writing of the automatic fire
367 sprinkler requirement, as well as the appropriate date for final
368 compliance as provided in this subparagraph. The local fire
369 official shall send a copy of the document to the Agency for
370 Health Care Administration.

371 m. Except in cases of life-threatening fire hazards, if an
372 existing facility experiences a change in the evacuation
373 capability, or if the local authority having jurisdiction
374 identifies a construction-type restriction, such that an

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375 automatic fire sprinkler system is required, it shall be
376 afforded time for installation as provided in this subparagraph.

377
378 Facilities that are fully sprinkled and in compliance with other
379 firesafety standards are not required to conduct more than one
380 of the required fire drills between the hours of 11 p.m. and 7
381 a.m., per year. In lieu of the remaining drills, staff
382 responsible for residents during such hours may be required to
383 participate in a mock drill that includes a review of evacuation
384 procedures. Such standards must be included or referenced in the
385 rules adopted by the State Fire Marshal. Pursuant to s.
386 633.022(1)(b), the State Fire Marshal is the final
387 administrative authority for firesafety standards established
388 and enforced pursuant to this section. All licensed facilities
389 must have an annual fire inspection conducted by the local fire
390 marshal or authority having jurisdiction.

391 3. Resident elopement requirements.--Facilities are
392 required to conduct a minimum of two resident elopement
393 prevention and response drills per year. All administrators and
394 direct care staff must participate in the drills which shall
395 include a review of procedures to address resident elopement.
396 Facilities must document the implementation of the drills and
397 ensure that the drills are conducted in a manner consistent with
398 the facility's resident elopement policies and procedures.

399 Section 8. Subsection (13) of section 400.619, Florida
400 Statutes, is amended to read:

401 400.619 Licensure application and renewal.--

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402 (13) All moneys collected under this section must be
403 deposited into the Department of Elderly Affairs Administrative
404 Trust Fund ~~and used to offset the expenses of departmental~~
405 ~~training and education for adult family care home providers.~~

406 Section 9. Subsection (5) of section 408.034, Florida
407 Statutes, is amended to read:

408 408.034 Duties and responsibilities of agency; rules.--

409 (5) The agency shall establish by rule a nursing-home-bed-
410 need methodology that has a goal of maintaining a subdistrict
411 average occupancy rate of 94 percent and that reduces the
412 community nursing home bed need for the areas of the state where
413 the agency establishes pilot community diversion programs
414 through the Title XIX aging waiver program.

415 Section 10. Paragraphs (g) and (h) are added to subsection
416 (2) of section 408.036, Florida Statutes, paragraph (p) of
417 subsection (3) is amended, paragraphs (u) and (v) are added to
418 subsection (3) of said section, and subsection (4) is reenacted
419 to read:

420 408.036 Projects subject to review; exemptions.--

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

424 (g) Replacement of a nursing home within the same
425 district, provided the proposed project site is located within a
426 geographic area that contains at least 65 percent of the
427 facility's current residents and is within a 30-mile radius of
428 the replaced nursing home.

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429 (h) Relocation of a portion of a nursing home's licensed
430 beds to a facility within the same district, provided the
431 relocation is within a 30-mile radius of the existing facility
432 and the total number of nursing home beds in the district does
433 not increase.

434
435 The agency shall develop rules to implement the provisions for
436 expedited review, including time schedule, application content
437 which may be reduced from the full requirements of s.
438 408.037(1), and application processing.

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

441 (p) For the addition of nursing home beds licensed under
442 chapter 400 in a number not exceeding 10 total beds or 10
443 percent of the number of beds licensed in the facility being
444 expanded, whichever is greater, or for the addition of nursing
445 home beds licensed under chapter 400 at a facility that has been
446 designated as a Gold Seal nursing home under s. 400.235 in a
447 number not exceeding 20 total beds or 10 percent of the number
448 of beds licensed in the facility being expanded, whichever is
449 greater.

450 1. In addition to any other documentation required by the
451 agency, a request for exemption submitted under this paragraph
452 must:

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

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456 ~~b. Effective on July 1, 2001, certify that the facility~~
457 ~~has been designated as a Gold Seal nursing home under s.~~
458 ~~400.235.~~

459 ~~b.e.~~ Certify that the prior 12-month average occupancy
460 rate for the nursing home beds at the facility meets or exceeds
461 96 percent.

462 ~~c.d.~~ Certify that any beds authorized for the facility
463 under this paragraph before the date of the current request for
464 an exemption have been licensed and operational for at least 12
465 months.

466 2. The timeframes and monitoring process specified in s.
467 408.040(2)(a)-(c) apply to any exemption issued under this
468 paragraph.

469 3. The agency shall count beds authorized under this
470 paragraph as approved beds in the published inventory of nursing
471 home beds until the beds are licensed.

472 (u) For replacement of a licensed nursing home on the same
473 site, or within 3 miles of the same site, provided the number of
474 licensed beds does not increase.

475 (v) For consolidation or combination of licensed nursing
476 homes or transfer of beds between licensed nursing homes within
477 the same planning subdistrict, by providers that operate
478 multiple nursing homes within that planning subdistrict,
479 provided there is no increase in the planning subdistrict total
480 of nursing home beds and the relocation does not exceed 30 miles
481 from the original location.

482 (4) A request for exemption under subsection (3) may be
483 made at any time and is not subject to the batching requirements

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484 of this section. The request shall be supported by such
485 documentation as the agency requires by rule. The agency shall
486 assess a fee of \$250 for each request for exemption submitted
487 under subsection (3).

488 Section 11. Section 430.701, Florida Statutes, is amended
489 to read:

490 430.701 Legislative findings and intent.--

491 (1) The Legislature finds that state expenditures for
492 long-term care services continue to increase at a rapid rate and
493 that Florida faces increasing pressure in its efforts to meet
494 the long-term care needs of the public. It is the intent of the
495 Legislature that the Department of Elderly Affairs, in
496 consultation with the Agency for Health Care Administration,
497 implement long-term care community diversion pilot projects to
498 test the effectiveness of managed care and outcome-based
499 reimbursement principles when applied to long-term care.

500 (2) The agency may seek federal approval in advance of its
501 formal waiver application to limit the diversion provider
502 network by freezing enrollment of providers at current levels
503 when an area already has three or more providers or, in an
504 expansion area, when enrollment reaches a level of three
505 providers. This subsection does not prevent the department from
506 approving a provider to expand service to additional counties
507 within a planning and service area for which the provider is
508 already approved to serve.

509 Section 12. Section 52 of chapter 2001-45, Laws of
510 Florida, as amended by section 1693 of chapter 2003-261, Laws of
511 Florida, is amended to read:

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

516 (2) The Legislature finds that the continued growth in the
517 Medicaid budget for nursing home care has constrained the
518 ability of the state to meet the needs of its elderly residents
519 through the use of less restrictive and less institutional
520 methods of long-term care. It is therefore the intent of the
521 Legislature to limit the increase in Medicaid nursing home
522 expenditures in order to provide funds to invest in long-term
523 care that is community-based and provides supportive services in
524 a manner that is both more cost-effective and more in keeping
525 with the wishes of the elderly residents of this state.

526 (3) This moratorium on certificates of need shall not
527 apply to sheltered nursing home beds in a continuing care
528 retirement community certified by the former Department of
529 Insurance or by the Office of Insurance Regulation pursuant to
530 chapter 651, Florida Statutes.

531 (4) (a) The moratorium on certificates of need does not
532 apply and a certificate of need for additional community nursing
533 home beds may be approved for a county that meets the following
534 circumstances:

- 535 1. The county has no community nursing home beds; and
536 2. The lack of community nursing home beds occurs because
537 all nursing home beds in the county that were licensed on July
538 1, 2001, have subsequently closed.

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

544
545 This subsection shall be repealed upon the expiration of the
546 moratorium established in subsection (1).

547 (5) The moratorium on certificates of need does not apply
548 for the addition of nursing home beds licensed under chapter
549 400, Florida Statutes, to a nursing home located in a county
550 having up to 50,000 residents, in a number not exceeding 10
551 total beds or 10 percent of the number of beds licensed in the
552 facility being expanded, whichever is greater. In addition to
553 any other documentation required by the agency, a request
554 submitted under this subsection must:

555 (a) Certify that the facility has not had any class I or
556 class II deficiencies within the 30 months preceding the request
557 for addition.

558 (b) Certify that the prior 12-month average occupancy rate
559 for the nursing home beds at the facility meets or exceeds 94
560 percent.

561 (c) For a facility that has been licensed for less than 24
562 months, certify that the prior 6-month average occupancy rate
563 for the nursing home beds at the facility meets or exceeds 94
564 percent and that the facility has not had any class I or class
565 II deficiencies since its initial licensure.

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567 | This subsection shall be repealed upon the expiration of the
568 | moratorium established in subsection (1).

569 | Section 13. Subsection (7) of section 651.118, Florida
570 | Statutes, is amended to read:

571 | 651.118 Agency for Health Care Administration;
572 | certificates of need; sheltered beds; community beds.--

573 | (7) Notwithstanding the provisions of subsection (2), at
574 | the discretion of the continuing care provider, sheltered
575 | nursing home beds may be used for persons who are not residents
576 | of the continuing care facility and who are not parties to a
577 | continuing care contract for a period of up to 5 years after the
578 | date of issuance of the initial nursing home license. A provider
579 | whose 5-year period has expired or is expiring may request the
580 | Agency for Health Care Administration for an extension, not to
581 | exceed 30 percent of the total sheltered nursing home beds, if
582 | the utilization by residents of the nursing home facility in the
583 | sheltered beds will not generate sufficient income to cover
584 | nursing home facility expenses, as evidenced by one of the
585 | following:

586 | (a) The nursing home facility has a net loss for the most
587 | recent fiscal year as determined under generally accepted
588 | accounting principles, excluding the effects of extraordinary or
589 | unusual items, as demonstrated in the most recently audited
590 | financial statement; or

591 | (b) The nursing home facility would have had a pro forma
592 | loss for the most recent fiscal year, excluding the effects of
593 | extraordinary or unusual items, if revenues were reduced by the

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594 amount of revenues from persons in sheltered beds who were not
595 residents, as reported on by a certified public accountant.

596

597 The agency shall be authorized to grant an extension to the
598 provider based on the evidence required in this subsection. The
599 agency may request a continuing care facility to use up to 25
600 percent of the patient days generated by new admissions of
601 nonresidents during the extension period to serve Medicaid
602 recipients for those beds authorized for extended use if there
603 is a demonstrated need in the respective service area and if
604 funds are available. A provider who obtains an extension is
605 prohibited from applying for additional sheltered beds under the
606 provision of subsection (2), unless additional residential units
607 are built or the provider can demonstrate need by continuing
608 care facility residents to the Agency for Health Care
609 Administration. The 5-year limit does not apply to up to five
610 sheltered beds designated for inpatient hospice care as part of
611 a contractual arrangement with a hospice licensed under part VI
612 of chapter 400. A continuing care facility that uses such beds
613 after the 5-year period shall report such use to the Agency for
614 Health Care Administration. For purposes of this subsection,
615 "resident" means a person who, upon admission to the continuing
616 care facility, initially resides in a part of the continuing
617 care facility not licensed under part II of chapter 400.

618 Section 14. Subsections (3) and (4) of section 400.9905,
619 Florida Statutes, are renumbered as subsections (4) and (5),
620 respectively, and amended, and new subsections (3), (6), and (7)
621 are added to said section, to read:

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622 400.9905 Definitions.--

623 (3) "Chief financial officer" means an individual who has
624 a bachelor's degree from an accredited university in accounting
625 or finance, or a related field, and who is the person
626 responsible for the preparation of a clinic's billing.

627 (4)~~(3)~~ "Clinic" means an entity at which health care
628 services are provided to individuals and which tenders charges
629 for reimbursement for such services, including a mobile clinic
630 and a portable equipment provider. For purposes of this part,
631 the term does not include and the licensure requirements of this
632 part do not apply to:

633 (a) Entities licensed or registered by the state under
634 chapter 395; or entities licensed or registered by the state and
635 providing only health care services within the scope of services
636 authorized under their respective licenses granted under s.
637 383.30-383.335, chapter 390, chapter 394, ~~chapter 395,~~ chapter
638 397, this chapter except part XIII, chapter 463, chapter 465,
639 chapter 466, chapter 478, part I of chapter 483 ~~chapter 480,~~
640 chapter 484, or chapter 651; end-stage renal disease providers
641 authorized under 42 C.F.R. part 405, subpart U; or providers
642 certified under 42 C.F.R. part 485, subpart B or subpart H, or
643 any entity that provides neonatal or pediatric hospital-based
644 healthcare services by licensed practitioners solely within a
645 hospital licensed under chapter 395.

646 (b) Entities that own, directly or indirectly, entities
647 licensed or registered by the state pursuant to chapter 395; or
648 entities that own, directly or indirectly, entities licensed or
649 registered by the state and providing only health care services

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650 within the scope of services authorized pursuant to their
651 respective licenses granted under s. 383.30-383.335, chapter
652 390, chapter 394, chapter 395, chapter 397, this chapter except
653 part XIII, chapter 463, chapter 465, chapter 466, chapter 478,
654 part I of chapter 483 ~~chapter 480~~, chapter 484, ~~or~~ chapter 651,
655 end-stage renal disease providers authorized under 42 C.F.R.
656 part 405, subpart U, or providers certified under 42 C.F.R. part
657 485, subpart B or subpart H, or any entity that provides
658 neonatal or pediatric hospital-based healthcare services by
659 licensed practitioners solely within a hospital licensed under
660 chapter 395.

661 (c) Entities that are owned, directly or indirectly, by an
662 entity licensed or registered by the state pursuant to chapter
663 395; or entities that are owned, directly or indirectly, by an
664 entity licensed or registered by the state and providing only
665 health care services within the scope of services authorized
666 pursuant to their respective licenses granted under s. 383.30-
667 383.335, chapter 390, chapter 394, ~~chapter 395~~, chapter 397,
668 this chapter except part XIII, chapter 463, chapter 465, chapter
669 466, chapter 478, part I of chapter 483 ~~chapter 480~~, chapter
670 484, or chapter 651; end-stage renal disease providers
671 authorized under 42 C.F.R. part 405, subpart U; or providers
672 certified under 42 C.F.R. part 485, subpart B or subpart H, or
673 any entity that provides neonatal or pediatric hospital-based
674 healthcare services by licensed practitioners solely within a
675 hospital under chapter 395.

676 (d) Entities that are under common ownership, directly or
677 indirectly, with an entity licensed or registered by the state

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678 pursuant to chapter 395; or entities that are under common
679 ownership, directly or indirectly, with an entity licensed or
680 registered by the state and providing only health care services
681 within the scope of services authorized pursuant to their
682 respective licenses granted under s. 383.30-383.335, chapter
683 390, chapter 394, ~~chapter 395~~, chapter 397, this chapter except
684 part XIII, chapter 463, chapter 465, chapter 466, chapter 478,
685 part I of chapter ~~483~~ 480, chapter 484, ~~or~~ chapter 651; end-
686 stage renal disease providers authorized under 42 C.F.R. part
687 405, subpart U; or providers certified under 42 C.F.R. part 485,
688 subpart B or subpart H or any entity that provides neonatal or
689 pediatric hospital-based healthcare services by licensed
690 practitioners solely within a hospital licensed under chapter
691 395.

692 (e) An entity that is exempt from federal taxation under
693 26 U.S.C. s. 501(c)(3) or s. 501(c)(4) and any community college
694 or university clinic, and any entity owned or operated by
695 federal or state government, including agencies, subdivisions,
696 or municipalities thereof.

697 (f) A sole proprietorship, group practice, partnership, or
698 corporation that provides health care services by physicians
699 covered by s. 627.419, that is directly supervised by one or
700 more of such physicians, and that is wholly owned by one or more
701 of those physicians or by a physician and the spouse, child, or
702 sibling of that physician.

703 (g) ~~(f)~~ A sole proprietorship, group practice, partnership,
704 or corporation that provides health care services by licensed
705 health care practitioners under chapter 457, chapter 458,

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706 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,
707 chapter 466, chapter 467, chapter 480, chapter 484, chapter 486,
708 chapter 490, chapter 491, or part I, part III, part X, part
709 XIII, or part XIV of chapter 468, or s. 464.012, which are
710 wholly owned by one or more a licensed health care practitioners
711 ~~practitioner~~, or the licensed health care practitioners set
712 forth in this paragraph ~~practitioner~~ and the spouse, parent, ~~or~~
713 child, or sibling of a licensed health care practitioner, so
714 long as one of the owners who is a licensed health care
715 practitioner is supervising the business activities ~~services~~
716 ~~performed therein~~ and is legally responsible for the entity's
717 compliance with all federal and state laws. However, a health
718 care practitioner may not supervise services beyond the scope of
719 the practitioner's license, except that, for the purposes of
720 this part, a clinic owned by a licensee in s. 456.053(3)(b) that
721 provides only services authorized pursuant to s. 456.053(3)(b)
722 may be supervised by a licensee specified in s. 456.053(3)(b).

723 (h) ~~(g)~~ Clinical facilities affiliated with an accredited
724 medical school at which training is provided for medical
725 students, residents, or fellows.

726 (i) Entities that provide only oncology or radiation
727 therapy services by physicians licensed under chapter 458 or
728 chapter 459.

729 (5) ~~(4)~~ "Medical director" means a physician who is
730 employed or under contract with a clinic and who maintains a
731 full and unencumbered physician license in accordance with
732 chapter 458, chapter 459, chapter 460, or chapter 461. However,
733 if the clinic does not provide services pursuant to the

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734 respective physician practices acts listed in this subsection,
735 it is limited to providing health care services pursuant to
736 chapter 457, chapter 484, chapter 486, chapter 490, or chapter
737 491 or part I, part III, part X, part XIII, or part XIV of
738 chapter 468, the clinic may appoint a Florida-licensed health
739 care practitioner who does not provide services pursuant to the
740 respective physician practices acts listed in this subsection
741 licensed under that chapter to serve as a clinic director who is
742 responsible for the clinic's activities. A health care
743 practitioner may not serve as the clinic director if the
744 services provided at the clinic are beyond the scope of that
745 practitioner's license, except that a licensee specified in s.
746 456.053(3) (b) who provides only services authorized pursuant to
747 s. 456.053(3) (b) may serve as clinic director of an entity
748 providing services as specified in s. 456.053(3) (b).

749 (6) "Mobile clinic" means a movable or detached self-
750 contained health care unit within or from which direct health
751 care services are provided to individuals and which otherwise
752 meets the definition of a clinic in subsection (4).

753 (7) "Portable equipment provider" means an entity that
754 contracts with or employs persons to provide portable equipment
755 to multiple locations performing treatment or diagnostic testing
756 of individuals, that bills third-party payors for those
757 services, and that otherwise meets the definition of a clinic in
758 subsection (4).

759 Section 15. The creation of s. 400.9905(4) (i), Florida
760 Statutes, by this act is intended to clarify the legislative
761 intent of this provision as it existed at the time the

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762 provisions initially took effect as ss. 456.0375(1)(b) and
763 400.9905(4)(i), Florida Statutes, as created by this act, shall
764 operate retroactively to October 1, 2001. Nothing in this
765 section shall be construed as amending, modifying, limiting, or
766 otherwise affecting in any way the legislative intent, scope,
767 terms, prohibition, or requirements of s. 456.053, Florida
768 Statutes.

769 Section 16. Effective upon this act becoming a law and
770 applicable retroactively to March 1, 2004, subsections (1), (2),
771 and (3) and paragraphs (a) and (b) of subsection (7) of section
772 400.991, Florida Statutes, are amended to read:

773 400.991 License requirements; background screenings;
774 prohibitions.--

775 (1)(a) Each clinic, as defined in s. 400.9905, must be
776 licensed and shall at all times maintain a valid license with
777 the agency. Each clinic location shall be licensed separately
778 regardless of whether the clinic is operated under the same
779 business name or management as another clinic.

780 (b) Each mobile clinic must obtain a separate health care
781 clinic license and ~~clinics~~ must provide to the agency, at least
782 quarterly, ~~its~~ ~~their~~ projected street location ~~locations~~ to
783 enable the agency to locate and inspect such ~~clinic~~ ~~clinics~~. A
784 portable equipment provider must obtain a health care clinic
785 license for a single administrative office and is not required
786 to submit quarterly projected street locations.

787 (2) The initial clinic license application shall be filed
788 with the agency by all clinics, as defined in s. 400.9905, on or

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789 before July ~~March~~ 1, 2004. A clinic license must be renewed
790 biennially.

791 (3) Applicants that submit an application on or before
792 July ~~March~~ 1, 2004, which meets all requirements for initial
793 licensure as specified in this section shall receive a temporary
794 license until the completion of an initial inspection verifying
795 that the applicant meets all requirements in rules authorized in
796 s. 400.9925. However, a clinic engaged in magnetic resonance
797 imaging services may not receive a temporary license unless it
798 presents evidence satisfactory to the agency that such clinic is
799 making a good faith effort and substantial progress in seeking
800 accreditation required under s. 400.9935.

801 (7) Each applicant for licensure shall comply with the
802 following requirements:

803 (a) As used in this subsection, the term "applicant" means
804 individuals owning or controlling, directly or indirectly, 5
805 percent or more of an interest in a clinic; the medical or
806 clinic director, or a similarly titled person who is responsible
807 for the day-to-day operation of the licensed clinic; the
808 financial officer or similarly titled individual who is
809 responsible for the financial operation of the clinic; and
810 licensed health care practitioners ~~medical providers~~ at the
811 clinic.

812 (b) Upon receipt of a completed, signed, and dated
813 application, the agency shall require background screening of
814 the applicant, in accordance with the level 2 standards for
815 screening set forth in chapter 435. Proof of compliance with the
816 level 2 background screening requirements of chapter 435 which

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817 has been submitted within the previous 5 years in compliance
818 with any other health care licensure requirements of this state
819 is acceptable in fulfillment of this paragraph. Applicants who
820 own less than 10 percent of a health care clinic are not
821 required to submit fingerprints under this section.

822 Section 17. Paragraph (g) of subsection (1), subsection
823 (9), and paragraph (b) of subsection (11) of section 400.9935,
824 Florida Statutes, are amended to read:

825 400.9935 Clinic responsibilities.--

826 (1) Each clinic shall appoint a medical director or clinic
827 director who shall agree in writing to accept legal
828 responsibility for the following activities on behalf of the
829 clinic. The medical director or the clinic director shall:

830 (g) Conduct systematic reviews of clinic billings to
831 ensure that the billings are not fraudulent or unlawful. Upon
832 discovery of an unlawful charge, the medical director or clinic
833 director shall take immediate corrective action. If the clinic
834 performs only the technical component of magnetic resonance
835 imaging, static radiographs, computed tomography, or positron
836 emission tomography and provides the professional interpretation
837 of such services, in a fixed facility that is accredited by the
838 Joint Commission on Accreditation of Healthcare Organizations or
839 the Accreditation Association for Ambulatory Health Care and the
840 American College of Radiology, and if, in the preceding quarter,
841 the percentage of scans performed by that clinic that were
842 billed to a personal injury protection insurance carrier was
843 less than 15 percent, the chief financial officer of the clinic
844 may, in a written acknowledgment provided to the agency, assume

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845 the responsibility for the conduct of the systematic reviews of
846 clinic billings to ensure that the billings are not fraudulent
847 or unlawful.

848 (9) Any person or entity providing health care services
849 which is not a clinic, as defined under s. 400.9905, may
850 voluntarily apply for a certificate of exemption from licensure
851 under its exempt status with the agency on a form that sets
852 forth its name or names and addresses, a statement of the
853 reasons why it cannot be defined as a clinic, and other
854 information deemed necessary by the agency. An exemption is not
855 transferable. The agency may charge an applicant for a
856 certificate of exemption in an amount equal to \$100 or the
857 actual cost of processing the certificate, whichever is less.

858 (11)

859 (b) The agency may deny ~~disallow~~ the application or revoke
860 the license of any entity formed for the purpose of avoiding
861 compliance with the accreditation provisions of this subsection
862 and whose principals were previously principals of an entity
863 that was unable to meet the accreditation requirements within
864 the specified timeframes. The agency may adopt rules as to the
865 accreditation of magnetic resonance imaging clinics.

866 Section 18. Subsections (1) and (3) of section 400.995,
867 Florida Statutes, are amended, and a new subsection (10) is
868 added to said section, to read:

869 400.995 Agency administrative penalties.--

870 (1) The agency may deny the application for a license
871 renewal, revoke or suspend the license, and impose
872 administrative fines ~~penalties against clinics~~ of up to \$5,000

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873 | per violation for violations of the requirements of this part or
874 | rules of the agency. In determining if a penalty is to be
875 | imposed and in fixing the amount of the fine, the agency shall
876 | consider the following factors:

877 | (a) The gravity of the violation, including the
878 | probability that death or serious physical or emotional harm to
879 | a patient will result or has resulted, the severity of the
880 | action or potential harm, and the extent to which the provisions
881 | of the applicable laws or rules were violated.

882 | (b) Actions taken by the owner, medical director, or
883 | clinic director to correct violations.

884 | (c) Any previous violations.

885 | (d) The financial benefit to the clinic of committing or
886 | continuing the violation.

887 | (3) Any action taken to correct a violation shall be
888 | documented in writing by the owner, medical director, or clinic
889 | director of the clinic and verified through followup visits by
890 | agency personnel. The agency may impose a fine and, in the case
891 | of an owner-operated clinic, revoke or deny a clinic's license
892 | when a clinic medical director or clinic director knowingly
893 | ~~fraudulently~~ misrepresents actions taken to correct a violation.

894 | (10) If the agency issues a notice of intent to deny a
895 | license application after a temporary license has been issued
896 | pursuant to s. 400.991(3), the temporary license shall expire on
897 | the date of the notice and may not be extended during any
898 | proceeding for administrative or judicial review pursuant to
899 | chapter 120.

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900 Section 19. The Agency for Health Care Administration is
901 directed to make refunds to applicants that submitted their
902 health care clinic licensure fees and applications but were
903 subsequently exempted from licensure by this act as follows:

904 (1) Seventy-five percent of the application fee if the
905 temporary license has not been issued;

906 (2) Fifty percent of the application fee if the temporary
907 license has been issued but the inspection has not been
908 completed; or

909 (3) No refund if the inspection has been completed.

910 Section 20. Any person or entity defined as a clinic under
911 s. 400.9905, Florida Statutes, shall not be in violation of part
912 XIII of chapter 400, Florida Statutes, due to failure to apply
913 for a clinic license by March 1, 2004, as previously required by
914 s. 400.991, Florida Statutes. Payment to any such person or
915 entity by an insurer or other person liable for payment to such
916 person or entity may not be denied on the grounds that the
917 person or entity failed to apply for or obtain a clinic license
918 before March 1, 2004.

919 Section 21. This act shall take effect upon becoming a
920 law.

921
922 ===== T I T L E A M E N D M E N T =====

923 Remove the entire title and insert:

924 A bill to be entitled
925 An act relating to health care facilities; creating s. 400.0712,
926 F.S.; authorizing the Agency for Health Care Administration to
927 issue inactive licenses to nursing homes for all or a portion of

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928 their beds under certain circumstances; providing requirements
929 for application for and issuance of such licenses; providing
930 rulemaking authority; amending s. 400.071, F.S.; deleting a
931 provision relating to issuance of inactive licenses, to conform;
932 amending s. 400.021, F.S.; redefining the term "resident care
933 plan," as used in part II of ch. 400, F.S.; amending s. 400.23,
934 F.S.; providing that certain information from the agency must be
935 promptly updated to reflect the most current agency actions;
936 amending s. 400.211, F.S.; revising inservice training
937 requirements for persons employed as nursing assistants in a
938 nursing home facility; amending s. 400.235, F.S.; providing for
939 financial stability for Gold Seal for certain nursing
940 facilities; amending s. 400.441, F.S.; requiring facilities to
941 conduct resident elopement prevention and response drills;
942 providing documentation thereof; amending s. 400.619, F.S.;
943 removing the requirement that certain moneys deposited into the
944 Department of Elderly Affairs Administrative Trust Fund be used
945 to offset the expenses of departmental training and education
946 for adult family-care home providers; amending s. 408.034, F.S.;
947 requiring the nursing-home-bed-need methodology established by
948 the agency by rule to include a goal of maintaining a specified
949 subdistrict average occupancy rate; amending s. 408.036, F.S.,
950 relating to health-care-related projects subject to review for a
951 certificate of need; subjecting certain projects relating to
952 replacement of a nursing home and relocation of nursing home
953 beds to expedited review; revising requirements for certain
954 projects relating to the addition of nursing home beds which are
955 exempt from review; exempting from review certain projects

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956 relating to replacement of a licensed nursing home bed on the
957 same site or nearby and consolidation or combination of licensed
958 nursing homes or transfer of beds between licensed nursing homes
959 within the same planning subdistrict; providing rulemaking
960 authority; providing for assessment of exemption-request fees;
961 amending s. 430.701, F.S.; authorizing the agency to seek
962 federal approval prior to seeking a certain waiver relating to
963 the long-term care diversion provider network; amending s. 52,
964 ch. 2001-45, Laws of Florida; specifying nonapplication of a
965 moratorium on certificates of need and authorizing approval of
966 certain certificates of need for certain counties; specifying
967 nonapplication of the moratorium for the addition of nursing
968 home beds in certain counties; providing requirements and
969 limitations; providing for repeal upon expiration of the
970 moratorium; amending s. 651.118, F.S.; revising provisions
971 relating to use of sheltered nursing home beds at a continuing
972 care facility by persons who are not residents of the continuing
973 care facility; amending s. 400.9905, F.S.; revising and
974 providing definitions; amending s. 400.991, F.S.; revising
975 health care clinic licensing requirements; requiring separate
976 licenses for each mobile clinic; providing licensing
977 requirements for portable equipment providers; providing for
978 retroactive effect; amending s. 400.9935, F.S.; providing that a
979 chief financial officer may assume responsibility for clinic
980 billings under certain circumstances; providing that an
981 exemption is not transferable; authorizing a fee for a
982 certificate of exemption; allowing the agency to deny or revoke
983 a license; amending s. 400.995, F.S.; allowing the agency to

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984 deny the renewal of a license or to revoke or suspend a license;
985 prohibiting extension of a temporary license under certain
986 circumstances; requiring the Agency for Health Care
987 Administration to refund certain application fees; providing
988 exceptions for certain late filed applications; providing an
989 effective date.

990