

By Senator Bennett

21-729-04

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

1 providing that replacing one nursing home
2 facility with another nursing home facility
3 within the same district and relocating one
4 nursing home's licensed beds to another
5 facility in the same district are projects
6 subject to expedited agency review of the
7 certificate-of-need application; providing that
8 adding 20 beds to a Gold Seal nursing home,
9 replacing a licensed nursing home on the same
10 site or within 3 miles of the present site, or
11 consolidating or transferring licensed nursing
12 home beds by providers operating multiple
13 nursing homes are exempt from
14 certificate-of-need review; amending s. 52, ch.
15 2001-45, Laws of Florida; providing that the
16 moratorium on approving certificates of need
17 for nursing homes does not apply in counties
18 meeting specified criteria; providing for
19 review of the specified criteria; providing an
20 effective date.

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

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

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

(1) It is the intent of the Legislature to allow nursing home facilities to use licensed nursing home facility

1 beds for alternative uses other than nursing home care for
2 extended periods of time exceeding 48 hours.

3 (2) A nursing home may use a contiguous portion of the
4 nursing home facility to meet the needs of the elderly through
5 the use of less restrictive and less institutional methods of
6 long-term care, including, but not limited to, adult day care,
7 assisted living, extended congregate care, or limited nursing
8 services.

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

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

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

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1 adverse impact. The agency shall review the request for
2 alternative use at each annual license renewal.

3 (6) A nursing home facility that converts beds to an
4 alternative use under this section retains its license for all
5 of the nursing home facility beds and may return those beds to
6 nursing home operation upon 60 days' written notice to the
7 agency unless notice requirements are specified elsewhere in
8 law. The nursing home facility shall continue to pay all
9 licensure fees as required by s. 400.062 and applicable rules
10 but is not required to pay any other state licensure fee for
11 the alternative service.

12 (7) Within 45 days after the end of each calendar
13 quarter, each facility that has nursing facility beds licensed
14 under this chapter shall report to the agency or its designee
15 the total number of patient days which occurred in each month
16 of the quarter and the number of such days which were Medicaid
17 patient days.

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

20 400.021 Definitions.--When used in this part, unless
21 the context otherwise requires, the term:

22 (17) "Resident care plan" means a written plan
23 developed, maintained, and reviewed not less than quarterly by
24 a registered nurse, with participation from other facility
25 staff and the resident or his or her designee or legal
26 representative, which includes a comprehensive assessment of
27 the needs of an individual resident; the type and frequency of
28 services required to provide the necessary care for the
29 resident to attain or maintain the highest practicable
30 physical, mental, and psychosocial well-being; a listing of
31 services provided within or outside the facility to meet those

1 needs; and an explanation of service goals. The resident care
2 plan must be signed by the director of nursing or another
3 registered nurse employed by the facility to whom
4 institutional responsibilities have been delegated and by the
5 resident, the resident's designee, or the resident's legal
6 representative. The facility may not use an agency or
7 temporary registered nurse to satisfy the signature
8 requirement and must document the institutional
9 responsibilities that have been delegated to the registered
10 nurse.

11 Section 3. Subsection (4) of section 400.211, Florida
12 Statutes, is amended to read:

13 400.211 Persons employed as nursing assistants;
14 certification requirement.--

15 (4) When employed by a nursing home facility for a
16 12-month period or longer, a nursing assistant, to maintain
17 certification, shall submit to a performance review every 12
18 months and must receive regular inservice education based on
19 the outcome of the ~~such~~ reviews. The inservice training must:

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

24 (b) Include, at a minimum:

25 1. Techniques for assisting with eating and proper
26 feeding;

27 2. Principles of adequate nutrition and hydration;

28 3. Techniques for assisting and responding to the
29 cognitively impaired resident or the resident with difficult
30 behaviors;

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1 4. Techniques for caring for the resident at the
2 end-of-life; and

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

5 (c) Address areas of weakness as determined in nursing
6 assistant performance reviews and may address the special
7 needs of residents as determined by the nursing home facility
8 staff.

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

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

14 400.23 Rules; evaluation and deficiencies; licensure
15 status.--

16 (10) Agency records, reports, ranking systems,
17 Internet information, and publications must reflect the most
18 current agency actions.

19 Section 5. Subsection (5) of section 408.034, Florida
20 Statutes, is amended to read:

21 408.034 Duties and responsibilities of agency;
22 rules.--

23 (5) The agency shall adopt a ~~establish by~~ rule for a
24 nursing-home-bed-need methodology that has a goal of
25 maintaining a district average occupancy rate of 94 percent
26 and that reduces the community nursing home bed need for the
27 areas of the state where the agency establishes pilot
28 community diversion programs through the Title XIX aging
29 waiver program.

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1 Section 6. Paragraphs (g) and (h) are added to
2 subsection (2) of section 408.036, Florida Statutes, and
3 subsection (3) of that section is amended to read:

4 408.036 Projects subject to review; exemptions.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 that the program failed to comply with the rules adopted under
2 ~~pursuant to~~ subparagraph 2.

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

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

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

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

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1 (n) For the addition of hospital beds licensed under
2 chapter 395 for acute care, mental health services, or a
3 hospital-based distinct part skilled nursing unit in a number
4 that may not exceed 10 total beds or 10 percent of the
5 licensed capacity of the bed category being expanded,
6 whichever is greater. Beds for specialty burn units, neonatal
7 intensive care units, or comprehensive rehabilitation, or at a
8 long-term care hospital, may not be increased under this
9 paragraph.

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

13 a. Certify that the prior 12-month average occupancy
14 rate for the category of licensed beds being expanded at the
15 facility meets or exceeds 80 percent or, for a hospital-based
16 distinct part skilled nursing unit, the prior 12-month average
17 occupancy rate meets or exceeds 96 percent.

18 b. Certify that any beds of the same type authorized
19 for the facility under this paragraph before the date of the
20 current request for an exemption have been licensed and
21 operational for at least 12 months.

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

25 3. The agency shall count beds authorized under this
26 paragraph as approved beds in the published inventory of
27 hospital beds until the beds are licensed.

28 (o) For the addition of acute care beds, as authorized
29 by rule consistent with s. 395.003(4), in a number that may
30 not exceed 10 total beds or 10 percent of licensed bed
31 capacity, whichever is greater, for temporary beds in a

1 hospital that has experienced high seasonal occupancy within
2 the prior 12-month period or in a hospital that must respond
3 to emergency circumstances.

4 (p) For the addition of nursing home beds licensed
5 under chapter 400 in a number not exceeding 10 total beds or
6 10 percent of the number of beds licensed in the facility
7 being expanded, whichever is greater, or for the addition of
8 nursing home beds licensed under chapter 400 at a facility
9 that has been designated as a Gold Seal nursing home under s.
10 400.235 in a number not exceeding 20 total beds or 10 percent
11 of the number of beds licensed in the facility being expanded,
12 whichever is greater.

13 1. In addition to any other documentation required by
14 the agency, a request for exemption submitted under this
15 paragraph must:

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

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

22 b.e. Certify that the prior 12-month average occupancy
23 rate for the nursing home beds at the facility meets or
24 exceeds 96 percent.

25 c.d. Certify that any beds authorized for the facility
26 under this paragraph before the date of the current request
27 for an exemption have been licensed and operational for at
28 least 12 months.

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

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

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

11 (r) For the conversion of hospital-based Medicare and
12 Medicaid certified skilled nursing beds to acute care beds, if
13 the conversion does not involve the construction of new
14 facilities.

15 (s)1. For an adult open-heart-surgery program to be
16 located in a new hospital provided the new hospital is being
17 established in the location of an existing hospital with an
18 adult open-heart-surgery program, the existing hospital and
19 the existing adult open-heart-surgery program are being
20 relocated to a replacement hospital, and the replacement
21 hospital will utilize a closed-staff model. A hospital is
22 exempt from the certificate-of-need review for the
23 establishment of an open-heart-surgery program if the
24 application for exemption submitted under this paragraph
25 complies with the following criteria:

26 a. The applicant must certify that it will meet and
27 continuously maintain the minimum Florida Administrative Code
28 and any future licensure requirements governing adult
29 open-heart programs adopted by the agency, including the most
30 current guidelines of the American College of Cardiology and
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1 American Heart Association Guidelines for Adult Open Heart
2 Programs.

3 b. The applicant must certify that it will maintain
4 sufficient appropriate equipment and health personnel to
5 ensure quality and safety.

6 c. The applicant must certify that it will maintain
7 appropriate times of operation and protocols to ensure
8 availability and appropriate referrals in the event of
9 emergencies.

10 d. The applicant is a newly licensed hospital in a
11 physical location previously owned and licensed to a hospital
12 performing more than 300 open-heart procedures each year,
13 including heart transplants.

14 e. The applicant must certify that it can perform more
15 than 300 diagnostic cardiac catheterization procedures per
16 year, combined inpatient and outpatient, by the end of the
17 third year of its operation.

18 f. The applicant's payor mix at a minimum reflects the
19 community average for Medicaid, charity care, and self-pay
20 patients or the applicant must certify that it will provide a
21 minimum of 5 percent of Medicaid, charity care, and self-pay
22 to open-heart-surgery patients.

23 g. If the applicant fails to meet the established
24 criteria for open-heart programs or fails to reach 300
25 surgeries per year by the end of its third year of operation,
26 it must show cause why its exemption should not be revoked.

27 h. In order to ensure continuity of available
28 services, the applicant of the newly licensed hospital may
29 apply for this certificate-of-need before taking possession of
30 the physical facilities. The effective date of the
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1 certificate-of-need will be concurrent with the effective date
2 of the newly issued hospital license.

3 2. By December 31, 2004, and annually thereafter, the
4 agency shall submit a report to the Legislature providing
5 information concerning the number of requests for exemption
6 received under this paragraph and the number of exemptions
7 granted or denied.

8 3. This paragraph is repealed effective January 1,
9 2008.

10 (t)1. For the provision of adult open-heart services
11 in a hospital located within the boundaries of Palm Beach,
12 Polk, Martin, St. Lucie, and Indian River Counties if the
13 following conditions are met: The exemption must be based upon
14 objective criteria and address and solve the twin problems of
15 geographic and temporal access. A hospital shall be exempt
16 from the certificate-of-need review for the establishment of
17 an open-heart-surgery program when the application for
18 exemption submitted under this paragraph complies with the
19 following criteria:

20 a. The applicant must certify that it will meet and
21 continuously maintain the minimum licensure requirements
22 adopted by the agency governing adult open-heart programs,
23 including the most current guidelines of the American College
24 of Cardiology and American Heart Association Guidelines for
25 Adult Open Heart Programs.

26 b. The applicant must certify that it will maintain
27 sufficient appropriate equipment and health personnel to
28 ensure quality and safety.

29 c. The applicant must certify that it will maintain
30 appropriate times of operation and protocols to ensure
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1 availability and appropriate referrals in the event of
2 emergencies.

3 d. The applicant can demonstrate that it is referring
4 300 or more patients per year from the hospital, including the
5 emergency room, for cardiac services at a hospital with
6 cardiac services, or that the average wait for transfer for 50
7 percent or more of the cardiac patients exceeds 4 hours.

8 e. The applicant is a general acute care hospital that
9 is in operation for 3 years or more.

10 f. The applicant is performing more than 300
11 diagnostic cardiac catheterization procedures per year,
12 combined inpatient and outpatient.

13 g. The applicant's payor mix at a minimum reflects the
14 community average for Medicaid, charity care, and self-pay
15 patients or the applicant must certify that it will provide a
16 minimum of 5 percent of Medicaid, charity care, and self-pay
17 to open-heart-surgery patients.

18 h. If the applicant fails to meet the established
19 criteria for open-heart programs or fails to reach 300
20 surgeries per year by the end of its third year of operation,
21 it must show cause why its exemption should not be revoked.

22 2. By December 31, 2004, and annually thereafter, the
23 Agency for Health Care Administration shall submit a report to
24 the Legislature providing information concerning the number of
25 requests for exemption received under this paragraph and the
26 number of exemptions granted or denied.

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

30 (v) For consolidation or combination of licensed
31 nursing homes or transfer of beds between licensed nursing

1 homes within the same planning subdistrict, by providers that
2 operate multiple nursing homes within that planning
3 subdistrict, if there is no increase in the total number of
4 nursing home beds within the planning subdistrict and the
5 relocation is not more than 30 miles from the original
6 location.

7 Section 7. Section 52 of chapter 2001-45, Laws of
8 Florida, is amended to read:

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

13 (2) The Legislature finds that the continued growth in
14 the Medicaid budget for nursing home care has constrained the
15 ability of the state to meet the needs of its elderly
16 residents through the use of less restrictive and less
17 institutional methods of long-term care. It is therefore the
18 intent of the Legislature to limit the increase in Medicaid
19 nursing home expenditures in order to provide funds to invest
20 in long-term care that is community-based and provides
21 supportive services in a manner that is both more
22 cost-effective and more in keeping with the wishes of the
23 elderly residents of this state.

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

28 (4)(a) This moratorium on the approval of certificates
29 of need does not apply, and a certificate of need for
30 additional community nursing home beds may be approved, for a
31 county that meets the following circumstances:

