

By the Committee on Health, Aging, and Long-Term Care; and
Senator Bennett

317-2520-04

1 A bill to be entitled
2 An act relating to health care facilities;
3 creating s. 400.0712, F.S.; authorizing the
4 Agency for Health Care Administration to issue
5 inactive licenses to nursing homes for all or a
6 portion of their beds under certain
7 circumstances; providing requirements for
8 application for and issuance of such licenses;
9 providing rulemaking authority; amending s.
10 400.071, F.S.; deleting a provision relating to
11 issuance of inactive licenses, to conform;
12 amending s. 400.021, F.S.; redefining the term
13 "resident care plan," as used in part II of ch.
14 400, F.S.; amending s. 400.23, F.S.; providing
15 that certain information from the agency must
16 be promptly updated to reflect the most current
17 agency actions; amending s. 400.211, F.S.;
18 revising inservice training requirements for
19 persons employed as nursing assistants in a
20 nursing home facility; amending s. 408.034,
21 F.S.; requiring the nursing-home-bed-need
22 methodology established by the agency by rule
23 to include a goal of maintaining a specified
24 subdistrict average occupancy rate; amending s.
25 408.036, F.S., relating to health-care-related
26 projects subject to review for a certificate of
27 need; subjecting certain projects relating to
28 replacement of a nursing home and relocation of
29 nursing home beds to expedited review; revising
30 requirements for certain projects relating to
31 the addition of nursing home beds which are

1 exempt from review; exempting from review
2 certain projects relating to replacement of a
3 licensed nursing home bed on the same site or
4 nearby and consolidation or combination of
5 licensed nursing homes or transfer of beds
6 between licensed nursing homes within the same
7 planning subdistrict; providing rulemaking
8 authority; providing for assessment of
9 exemption-request fees; amending s. 52, ch.
10 2001-45, Laws of Florida; specifying
11 nonapplication of a moratorium on certificates
12 of need and authorizing approval of certain
13 certificates of need for certain counties under
14 certain circumstances; providing review
15 requirements and bed limitations; amending s.
16 651.118, F.S.; revising provisions relating to
17 use of sheltered nursing home beds at a
18 continuing care facility by persons who are not
19 residents of the continuing care facility;
20 providing an effective date.

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22 Be It Enacted by the Legislature of the State of Florida:
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24 Section 1. Section 400.0712, Florida Statutes, is
25 created to read:

26 400.0712 Application for inactive license.--

27 (1) As specified in this section, the agency may issue
28 an inactive license to a nursing home facility for all or a
29 portion of its beds. Any request by a licensee that a nursing
30 home or portion of a nursing home become inactive must be
31 submitted to the agency in the format specified by the agency.

1 The facility may not initiate any suspension of services,
2 notify residents, or initiate facility closure before
3 receiving approval from the agency; and a facility that
4 violates this provision shall not be issued an inactive
5 license. Upon agency approval of an inactive license, the
6 nursing home shall notify residents of any necessary discharge
7 or transfer as provided in s. 400.0255.

8 (2) The agency may issue an inactive license to a
9 nursing home that chooses to use an unoccupied contiguous
10 portion of the facility for an alternative use to meet the
11 needs of elderly persons through the use of less restrictive,
12 less institutional services.

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

16 (b) A request to extend the inactive license must be
17 submitted to the agency in the format specified by the agency
18 and is not effective unless approved by the agency in writing.

19 (c) Nursing homes that receive an inactive license to
20 provide alternative services shall not receive preference for
21 participation in the Assisted Living for the Elderly Medicaid
22 waiver.

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

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

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

4 (c) Reactivation of an inactive license requires that
5 the applicant pay all licensure fees and the facility be
6 inspected by the agency to confirm compliance with this part
7 and applicable rules.

8 (4) The agency shall adopt rules pursuant to ss.
9 120.536(1) and 120.54 as necessary to implement this section.

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

12 400.071 Application for license.--

13 ~~(10) The agency may issue an inactive license to a~~
14 ~~nursing home that will be temporarily unable to provide~~
15 ~~services but that is reasonably expected to resume services.~~
16 ~~Such designation may be made for a period not to exceed 12~~
17 ~~months but may be renewed by the agency for up to 6 additional~~
18 ~~months. Any request by a licensee that a nursing home become~~
19 ~~inactive must be submitted to the agency and approved by the~~
20 ~~agency prior to initiating any suspension of service or~~
21 ~~notifying residents. Upon agency approval, the nursing home~~
22 ~~shall notify residents of any necessary discharge or transfer~~
23 ~~as provided in s. 400.0255.~~

24 (10)~~(11)~~ As a condition of licensure, each facility
25 must establish and submit with its application a plan for
26 quality assurance and for conducting risk management.

27 (11)~~(12)~~ The applicant must provide the agency with
28 proof of a legal right to occupy the property before a license
29 may be issued. Proof may include, but is not limited to,
30 copies of warranty deeds, lease or rental agreements,
31 contracts for deeds, or quitclaim deeds.

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

3 400.021 Definitions.--When used in this part, unless
4 the context otherwise requires, the term:

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

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

27 400.23 Rules; evaluation and deficiencies; licensure
28 status.--

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

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

3 400.211 Persons employed as nursing assistants;
4 certification requirement.--

5 (4) When employed by a nursing home facility for a
6 12-month period or longer, a nursing assistant, to maintain
7 certification, shall submit to a performance review every 12
8 months and must receive regular inservice education based on
9 the outcome of such reviews. The inservice training must:

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

14 (b) Include, at a minimum:

15 1. Techniques for assisting with eating and proper
16 feeding;

17 2. Principles of adequate nutrition and hydration;

18 3. Techniques for assisting and responding to the
19 cognitively impaired resident or the resident with difficult
20 behaviors;

21 4. Techniques for caring for the resident at the
22 end-of-life; and

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

25 (c) Address areas of weakness as determined in nursing
26 assistant performance reviews and may address the special
27 needs of residents as determined by the nursing home facility
28 staff.

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

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

3 408.034 Duties and responsibilities of agency;
4 rules.--

5 (5) The agency shall establish by rule a
6 nursing-home-bed-need methodology that has a goal of
7 maintaining a subdistrict average occupancy rate of 94 percent
8 and that reduces the community nursing home bed need for the
9 areas of the state where the agency establishes pilot
10 community diversion programs through the Title XIX aging
11 waiver program.

12 Section 7. Paragraphs (g) and (h) are added to
13 subsection (2) of section 408.036, Florida Statutes, paragraph
14 (p) of subsection (3) is amended, paragraphs (u) and (v) are
15 added to subsection (3) of that section, and subsection (4) of
16 that section is reenacted to read:

17 408.036 Projects subject to review; exemptions.--

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

21 (g) Replacement of a nursing home within the same
22 district, provided the proposed project site is located within
23 a geographic area that contains at least 65 percent of the
24 facility's current residents and is within a 30-mile radius of
25 the replaced nursing home.

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

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1 The agency shall develop rules to implement the provisions for
2 expedited review, including time schedule, application content
3 which may be reduced from the full requirements of s.
4 408.037(1), and application processing.

5 (3) EXEMPTIONS.--Upon request, the following projects
6 are subject to exemption from the provisions of subsection
7 (1):

8 (p) For the addition of nursing home beds licensed
9 under chapter 400 in a number not exceeding 10 total beds or
10 10 percent of the number of beds licensed in the facility
11 being expanded, whichever is greater, or for the addition of
12 nursing home beds licensed under chapter 400 at a facility
13 that has been designated as a Gold Seal nursing home under s.
14 400.235 in a number not exceeding 20 total beds or 10 percent
15 of the number of beds licensed in the facility being expanded,
16 whichever is greater.

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

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

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

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

29 c.d. Certify that any beds authorized for the facility
30 under this paragraph before the date of the current request
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1 for an exemption have been licensed and operational for at
2 least 12 months.

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

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

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

12 (v) For consolidation or combination of licensed
13 nursing homes or transfer of beds between licensed nursing
14 homes within the same planning subdistrict, by providers that
15 operate multiple nursing homes within that planning
16 subdistrict, provided there is no increase in the planning
17 subdistrict total of nursing home beds and the relocation does
18 not exceed 30 miles from the original location.

19 (4) A request for exemption under subsection (3) may
20 be made at any time and is not subject to the batching
21 requirements of this section. The request shall be supported
22 by such documentation as the agency requires by rule. The
23 agency shall assess a fee of \$250 for each request for
24 exemption submitted under subsection (3).

25 Section 8. Section 52 of chapter 2001-45, Laws of
26 Florida, as amended by section 1693 of chapter 2003-261, Laws
27 of Florida, is amended to read:

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

1 (2) The Legislature finds that the continued growth in
2 the Medicaid budget for nursing home care has constrained the
3 ability of the state to meet the needs of its elderly
4 residents through the use of less restrictive and less
5 institutional methods of long-term care. It is therefore the
6 intent of the Legislature to limit the increase in Medicaid
7 nursing home expenditures in order to provide funds to invest
8 in long-term care that is community-based and provides
9 supportive services in a manner that is both more
10 cost-effective and more in keeping with the wishes of the
11 elderly residents of this state.

12 (3) This moratorium on certificates of need shall not
13 apply to sheltered nursing home beds in a continuing care
14 retirement community certified by the former Department of
15 Insurance or by the Office of Insurance Regulation pursuant to
16 chapter 651, Florida Statutes.

17 (4)(a) The moratorium on certificates of need does not
18 apply and a certificate of need for additional community
19 nursing home beds may be approved for a county that meets the
20 following circumstances:

- 21 1. The county has no community nursing home beds; and
22 2. The lack of community nursing home beds occurs
23 because all nursing home beds in the county which were
24 licensed on July 1, 2001, have subsequently closed.

25 (b) The certificate-of-need review for such
26 circumstances shall be subject to the comparative review
27 process consistent with the provisions of section 408.039,
28 Florida Statutes, and the number of beds may not exceed the
29 number of beds lost by the county after July 1, 2001.

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

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

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

14 (b) Certify that the prior 12-month average occupancy
15 rate for the nursing home beds at the facility meets or
16 exceeds 94 percent and the facility has not had any class I or
17 class II deficiencies since its initial licensure.

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

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24 This subsection shall be repealed upon the expiration of the
25 moratorium established in subsection (1).

26 Section 9. Subsection (7) of section 651.118, Florida
27 Statutes, is amended to read:

28 651.118 Agency for Health Care Administration;
29 certificates of need; sheltered beds; community beds.--

30 (7) Notwithstanding the provisions of subsection (2),
31 at the discretion of the continuing care provider, sheltered

1 nursing home beds may be used for persons who are not
2 residents of the continuing care facility and who are not
3 parties to a continuing care contract for a period of up to 5
4 years after the date of issuance of the initial nursing home
5 license. A provider whose 5-year period has expired or is
6 expiring may request the Agency for Health Care Administration
7 for an extension, not to exceed 30 percent of the total
8 sheltered nursing home beds, if the utilization by residents
9 of the nursing home facility in the sheltered beds will not
10 generate sufficient income to cover nursing home facility
11 expenses, as evidenced by one of the following:

12 (a) The nursing home facility has a net loss for the
13 most recent fiscal year as determined under generally accepted
14 accounting principles, excluding the effects of extraordinary
15 or unusual items, as demonstrated in the most recently audited
16 financial statement; or

17 (b) The nursing home facility would have had a pro
18 forma loss for the most recent fiscal year, excluding the
19 effects of extraordinary or unusual items, if revenues were
20 reduced by the amount of revenues from persons in sheltered
21 beds who were not residents, as reported on by a certified
22 public accountant.

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24 The agency shall be authorized to grant an extension to the
25 provider based on the evidence required in this subsection.
26 The agency may request a continuing care facility to use up to
27 25 percent of the patient days generated by new admissions of
28 nonresidents during the extension period to serve Medicaid
29 recipients for those beds authorized for extended use if there
30 is a demonstrated need in the respective service area and if
31 funds are available. A provider who obtains an extension is

1 prohibited from applying for additional sheltered beds under
2 the provision of subsection (2), unless additional residential
3 units are built or the provider can demonstrate need by
4 continuing care facility residents to the Agency for Health
5 Care Administration. The 5-year limit does not apply to up to
6 five sheltered beds designated for inpatient hospice care as
7 part of a contractual arrangement with a hospice licensed
8 under part VI of chapter 400. A continuing care facility that
9 uses such beds after the 5-year period shall report such use
10 to the Agency for Health Care Administration. For purposes of
11 this subsection, "resident" means a person who, upon admission
12 to the continuing care facility, initially resides in a part
13 of the continuing care facility not licensed under part II of
14 chapter 400.

15 Section 10. This act shall take effect upon becoming a
16 law.

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18 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
19 COMMITTEE SUBSTITUTE FOR
20 Senate Bill 1062

21 The Committee Substitute does not create a new section of law
22 for alternative use of nursing homes but creates instead a new
23 section of law for the issuance of an inactive license for a
nursing home and repeals the current provision.

24 A new exception to the moratorium on certificates of need is
25 created for the addition of beds in a nursing home in a county
of fewer than 50,000 residents.

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