

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. 400.9905,  
21          F.S.; providing that certain entities providing  
22          oncology or radiation therapy services are  
23          exempt from the licensure requirements of part  
24          XIII of ch. 400, F.S.; providing legislative  
25          intent with respect to such exemption;  
26          providing for retroactive application; amending  
27          s. 400.441, F.S.; requiring facilities to  
28          conduct a minimum number of resident elopement  
29          prevention and response drills annually;  
30          amending s. 408.034, F.S.; requiring the  
31          nursing-home-bed-need methodology established

1 by the agency by rule to include a goal of  
2 maintaining a specified subdistrict average  
3 occupancy rate; amending s. 408.036, F.S.,  
4 relating to health-care-related projects  
5 subject to review for a certificate of need;  
6 subjecting certain projects relating to  
7 replacement of a nursing home and relocation of  
8 nursing home beds to expedited review; revising  
9 requirements for certain projects relating to  
10 the addition of nursing home beds which are  
11 exempt from review; exempting from review  
12 certain projects relating to replacement of a  
13 licensed nursing home bed on the same site or  
14 nearby and consolidation or combination of  
15 licensed nursing homes or transfer of beds  
16 between licensed nursing homes within the same  
17 planning subdistrict; providing rulemaking  
18 authority; providing for assessment of  
19 exemption-request fees; amending s. 52, ch.  
20 2001-45, Laws of Florida; specifying  
21 nonapplication of a moratorium on certificates  
22 of need and authorizing approval of certain  
23 certificates of need for certain counties under  
24 certain circumstances; providing review  
25 requirements and bed limitations; amending s.  
26 651.118, F.S.; revising provisions relating to  
27 use of sheltered nursing home beds at a  
28 continuing care facility by persons who are not  
29 residents of the continuing care facility;  
30 amending s. 395.003, F.S.; requiring a report  
31 by the Agency for Health Care Administration

1 regarding the licensure of emergency  
2 departments located off the premises of  
3 hospitals; prohibiting the issuance of licenses  
4 for such departments before July 1, 2005;  
5 amending s. 430.701, F.S.; providing  
6 legislative intent relating to the Department  
7 of Elderly Affairs approving service providers;  
8 amending s. 400.601, F.S.; redefining the term  
9 "hospice" as used in part VI of ch. 400, F.S.;  
10 amending s. 400.9935, F.S.; providing for  
11 posting of signs in health care facilities  
12 relating to rewards for information concerning  
13 certain crimes; providing for inspections by an  
14 employee of the Division of Insurance Fraud;  
15 amending s. 400.9905, F.S.; redefining the term  
16 "clinic"; amending s. 400.991, F.S.; changing  
17 the date by which an initial application for a  
18 health care clinic license must be filed with  
19 the Agency for Health Care Administration;  
20 making conforming changes to the requirement  
21 that qualified applicants receive a temporary  
22 license; providing for retroactive application;  
23 providing an effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27 Section 1. Section 400.0712, Florida Statutes, is  
28 created to read:

29 400.0712 Application for inactive license.--  
30 (1) As specified in this section, the agency may issue  
31 an inactive license to a nursing home facility for all or a

1 portion of its beds. Any request by a licensee that a nursing  
2 home or portion of a nursing home become inactive must be  
3 submitted to the agency in the format specified by the agency.  
4 The facility may not initiate any suspension of services,  
5 notify residents, or initiate facility closure before  
6 receiving approval from the agency; and a facility that  
7 violates this provision shall not be issued an inactive  
8 license. Upon agency approval of an inactive license, the  
9 nursing home shall notify residents of any necessary discharge  
10 or transfer as provided in s. 400.0255.

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

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

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

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

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

29 (a) An inactive license issued under this subsection  
30 may be issued for a period not to exceed 12 months and may be  
31

1 renewed by the agency for an additional 6 months upon  
 2 demonstration of progress toward reopening.

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

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

10 (4) The agency shall adopt rules pursuant to ss.  
 11 120.536(1) and 120.54 as necessary to implement this section.

12 Section 2. Subsections (10), (11), and (12) of section  
 13 400.071, Florida Statutes, are amended to read:

14 400.071 Application for license.--

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

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

29 ~~(11)~~(12) The applicant must provide the agency with  
 30 proof of a legal right to occupy the property before a license  
 31 may be issued. Proof may include, but is not limited to,

1 | copies of warranty deeds, lease or rental agreements,  
2 | contracts for deeds, or quitclaim deeds.

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

5 |             400.021 Definitions.--When used in this part, unless  
6 | the context otherwise requires, the term:

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

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

29 |             400.23 Rules; evaluation and deficiencies; licensure  
30 | status.--

31 |

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

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

6            400.211 Persons employed as nursing assistants;  
 7 certification requirement.--

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

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

17            (b) Include, at a minimum:

- 18            1. Techniques for assisting with eating and proper  
 19 feeding;
- 20            2. Principles of adequate nutrition and hydration;
- 21            3. Techniques for assisting and responding to the  
 22 cognitively impaired resident or the resident with difficult  
 23 behaviors;
- 24            4. Techniques for caring for the resident at the  
 25 end-of-life; and
- 26            5. Recognizing changes that place a resident at risk  
 27 for pressure ulcers and falls; and

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

1  
2 Costs associated with this training may not be reimbursed from  
3 additional Medicaid funding through interim rate adjustments.

4 Section 6. Paragraph (h) is added to subsection (3) of  
5 section 400.9905, Florida Statutes, to read:

6 400.9905 Definitions.--

7 (3) "Clinic" means an entity at which health care  
8 services are provided to individuals and which tenders charges  
9 for reimbursement for such services. For purposes of this  
10 part, the term does not include and the licensure requirements  
11 of this part do not apply to:

12 (h) Entities that provide oncology or radiation  
13 therapy services by physicians licensed under chapter 458 or  
14 459.

15 Section 7. The amendment made by this act to section  
16 400.9905(3), Florida Statutes, is intended to clarify the  
17 legislative intent of this provision as it existed at the time  
18 the provision initially took effect as section 456.0375(1)(b),  
19 Florida Statutes, and section 400.9905(3)(h), Florida  
20 Statutes, as created by this act, shall operate retroactively  
21 to October 1, 2001.

22 Section 8. Paragraph (a) of subsection (1) of section  
23 400.441, Florida Statutes, is amended to read:

24 400.441 Rules establishing standards.--

25 (1) It is the intent of the Legislature that rules  
26 published and enforced pursuant to this section shall include  
27 criteria by which a reasonable and consistent quality of  
28 resident care and quality of life may be ensured and the  
29 results of such resident care may be demonstrated. Such rules  
30 shall also ensure a safe and sanitary environment that is  
31 residential and noninstitutional in design or nature. It is



1 further intended that reasonable efforts be made to  
2 accommodate the needs and preferences of residents to enhance  
3 the quality of life in a facility. In order to provide safe  
4 and sanitary facilities and the highest quality of resident  
5 care accommodating the needs and preferences of residents, the  
6 department, in consultation with the agency, the Department of  
7 Children and Family Services, and the Department of Health,  
8 shall adopt rules, policies, and procedures to administer this  
9 part, which must include reasonable and fair minimum standards  
10 in relation to:

11 (a) The requirements for and maintenance of  
12 facilities, not in conflict with the provisions of chapter  
13 553, relating to plumbing, heating, cooling, lighting,  
14 ventilation, living space, and other housing conditions, which  
15 will ensure the health, safety, and comfort of residents and  
16 protection from fire hazard, including adequate provisions for  
17 fire alarm and other fire protection suitable to the size of  
18 the structure. Uniform firesafety standards shall be  
19 established and enforced by the State Fire Marshal in  
20 cooperation with the agency, the department, and the  
21 Department of Health.

22 1. Evacuation capability determination.--

23 a. The provisions of the National Fire Protection  
24 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used  
25 for determining the ability of the residents, with or without  
26 staff assistance, to relocate from or within a licensed  
27 facility to a point of safety as provided in the fire codes  
28 adopted herein. An evacuation capability evaluation for  
29 initial licensure shall be conducted within 6 months after the  
30 date of licensure. For existing licensed facilities that are  
31 not equipped with an automatic fire sprinkler system, the

1 administrator shall evaluate the evacuation capability of  
2 residents at least annually. The evacuation capability  
3 evaluation for each facility not equipped with an automatic  
4 fire sprinkler system shall be validated, without liability,  
5 by the State Fire Marshal, by the local fire marshal, or by  
6 the local authority having jurisdiction over firesafety,  
7 before the license renewal date. If the State Fire Marshal,  
8 local fire marshal, or local authority having jurisdiction  
9 over firesafety has reason to believe that the evacuation  
10 capability of a facility as reported by the administrator may  
11 have changed, it may, with assistance from the facility  
12 administrator, reevaluate the evacuation capability through  
13 timed exiting drills. Translation of timed fire exiting drills  
14 to evacuation capability may be determined:

15 (I) Three minutes or less: prompt.

16 (II) More than 3 minutes, but not more than 13  
17 minutes: slow.

18 (III) More than 13 minutes: impractical.

19 b. The Office of the State Fire Marshal shall provide  
20 or cause the provision of training and education on the proper  
21 application of Chapter 5, NFPA 101A, 1995 edition, to its  
22 employees, to staff of the Agency for Health Care  
23 Administration who are responsible for regulating facilities  
24 under this part, and to local governmental inspectors. The  
25 Office of the State Fire Marshal shall provide or cause the  
26 provision of this training within its existing budget, but may  
27 charge a fee for this training to offset its costs. The  
28 initial training must be delivered within 6 months after July  
29 1, 1995, and as needed thereafter.

30 c. The Office of the State Fire Marshal, in  
31 cooperation with provider associations, shall provide or cause

1 the provision of a training program designed to inform  
2 facility operators on how to properly review bid documents  
3 relating to the installation of automatic fire sprinklers.  
4 The Office of the State Fire Marshal shall provide or cause  
5 the provision of this training within its existing budget, but  
6 may charge a fee for this training to offset its costs. The  
7 initial training must be delivered within 6 months after July  
8 1, 1995, and as needed thereafter.

9 d. The administrator of a licensed facility shall sign  
10 an affidavit verifying the number of residents occupying the  
11 facility at the time of the evacuation capability evaluation.

12 2. Firesafety requirements.--

13 a. Except for the special applications provided  
14 herein, effective January 1, 1996, the provisions of the  
15 National Fire Protection Association, Life Safety Code, NFPA  
16 101, 1994 edition, Chapter 22 for new facilities and Chapter  
17 23 for existing facilities shall be the uniform fire code  
18 applied by the State Fire Marshal for assisted living  
19 facilities, pursuant to s. 633.022.

20 b. Any new facility, regardless of size, that applies  
21 for a license on or after January 1, 1996, must be equipped  
22 with an automatic fire sprinkler system. The exceptions as  
23 provided in section 22-2.3.5.1, NFPA 101, 1994 edition, as  
24 adopted herein, apply to any new facility housing eight or  
25 fewer residents. On July 1, 1995, local governmental entities  
26 responsible for the issuance of permits for construction shall  
27 inform, without liability, any facility whose permit for  
28 construction is obtained prior to January 1, 1996, of this  
29 automatic fire sprinkler requirement. As used in this part,  
30 the term "a new facility" does not mean an existing facility  
31 that has undergone change of ownership.

1           c. Notwithstanding any provision of s. 633.022 or of  
2 the National Fire Protection Association, NFPA 101A, Chapter  
3 5, 1995 edition, to the contrary, any existing facility  
4 housing eight or fewer residents is not required to install an  
5 automatic fire sprinkler system, nor to comply with any other  
6 requirement in Chapter 23, NFPA 101, 1994 edition, that  
7 exceeds the firesafety requirements of NFPA 101, 1988 edition,  
8 that applies to this size facility, unless the facility has  
9 been classified as impractical to evacuate. Any existing  
10 facility housing eight or fewer residents that is classified  
11 as impractical to evacuate must install an automatic fire  
12 sprinkler system within the timeframes granted in this  
13 section.

14           d. Any existing facility that is required to install  
15 an automatic fire sprinkler system under this paragraph need  
16 not meet other firesafety requirements of Chapter 23, NFPA  
17 101, 1994 edition, which exceed the provisions of NFPA 101,  
18 1988 edition. The mandate contained in this paragraph which  
19 requires certain facilities to install an automatic fire  
20 sprinkler system supersedes any other requirement.

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

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

26           g. A local government may charge fees only in an  
27 amount not to exceed the actual expenses incurred by local  
28 government relating to the installation and maintenance of an  
29 automatic fire sprinkler system in an existing and properly  
30 licensed assisted living facility structure as of January 1,  
31 1996.

1           h. If a licensed facility undergoes major  
2 reconstruction or addition to an existing building on or after  
3 January 1, 1996, the entire building must be equipped with an  
4 automatic fire sprinkler system. Major reconstruction of a  
5 building means repair or restoration that costs in excess of  
6 50 percent of the value of the building as reported on the tax  
7 rolls, excluding land, before reconstruction. Multiple  
8 reconstruction projects within a 5-year period the total costs  
9 of which exceed 50 percent of the initial value of the  
10 building at the time the first reconstruction project was  
11 permitted are to be considered as major reconstruction.  
12 Application for a permit for an automatic fire sprinkler  
13 system is required upon application for a permit for a  
14 reconstruction project that creates costs that go over the  
15 50-percent threshold.

16           i. Any facility licensed before January 1, 1996, that  
17 is required to install an automatic fire sprinkler system  
18 shall ensure that the installation is completed within the  
19 following timeframes based upon evacuation capability of the  
20 facility as determined under subparagraph 1.:

- 21           (I) Impractical evacuation capability, 24 months.  
22           (II) Slow evacuation capability, 48 months.  
23           (III) Prompt evacuation capability, 60 months.

24  
25 The beginning date from which the deadline for the automatic  
26 fire sprinkler installation requirement must be calculated is  
27 upon receipt of written notice from the local fire official  
28 that an automatic fire sprinkler system must be installed. The  
29 local fire official shall send a copy of the document  
30 indicating the requirement of a fire sprinkler system to the  
31 Agency for Health Care Administration.

1           j. It is recognized that the installation of an  
2 automatic fire sprinkler system may create financial hardship  
3 for some facilities. The appropriate local fire official  
4 shall, without liability, grant two 1-year extensions to the  
5 timeframes for installation established herein, if an  
6 automatic fire sprinkler installation cost estimate and proof  
7 of denial from two financial institutions for a construction  
8 loan to install the automatic fire sprinkler system are  
9 submitted. However, for any facility with a class I or class  
10 II, or a history of uncorrected class III, firesafety  
11 deficiencies, an extension must not be granted. The local  
12 fire official shall send a copy of the document granting the  
13 time extension to the Agency for Health Care Administration.

14           k. A facility owner whose facility is required to be  
15 equipped with an automatic fire sprinkler system under Chapter  
16 23, NFPA 101, 1994 edition, as adopted herein, must disclose  
17 to any potential buyer of the facility that an installation of  
18 an automatic fire sprinkler requirement exists. The sale of  
19 the facility does not alter the timeframe for the installation  
20 of the automatic fire sprinkler system.

21           l. Existing facilities required to install an  
22 automatic fire sprinkler system as a result of  
23 construction-type restrictions in Chapter 23, NFPA 101, 1994  
24 edition, as adopted herein, or evacuation capability  
25 requirements shall be notified by the local fire official in  
26 writing of the automatic fire sprinkler requirement, as well  
27 as the appropriate date for final compliance as provided in  
28 this subparagraph. The local fire official shall send a copy  
29 of the document to the Agency for Health Care Administration.

30           m. Except in cases of life-threatening fire hazards,  
31 if an existing facility experiences a change in the evacuation

1 capability, or if the local authority having jurisdiction  
2 identifies a construction-type restriction, such that an  
3 automatic fire sprinkler system is required, it shall be  
4 afforded time for installation as provided in this  
5 subparagraph.

6 3. Resident elopement requirements.--Facilities are  
7 required to conduct a minimum of two resident elopement  
8 prevention and response drills per year. All administrators  
9 and direct care staff must participate in the drills that  
10 shall include a review of procedures to address resident  
11 elopement. Facilities shall document the implementation of the  
12 drills and ensure that the drills are conducted in a manner  
13 consistent with the facility's resident elopement policies and  
14 procedures.

15  
16 Facilities that are fully sprinkled and in compliance with  
17 other firesafety standards are not required to conduct more  
18 than one of the required fire drills between the hours of 11  
19 p.m. and 7 a.m., per year. In lieu of the remaining drills,  
20 staff responsible for residents during such hours may be  
21 required to participate in a mock drill that includes a review  
22 of evacuation procedures. Such standards must be included or  
23 referenced in the rules adopted by the State Fire Marshal.  
24 Pursuant to s. 633.022(1)(b), the State Fire Marshal is the  
25 final administrative authority for firesafety standards  
26 established and enforced pursuant to this section. All  
27 licensed facilities must have an annual fire inspection  
28 conducted by the local fire marshal or authority having  
29 jurisdiction.

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

1           408.034 Duties and responsibilities of agency;  
2 rules.--

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

10           Section 10. Paragraphs (g) and (h) are added to  
11 subsection (2) of section 408.036, Florida Statutes, paragraph  
12 (p) of subsection (3) is amended, paragraphs (u) and (v) are  
13 added to subsection (3) of that section, and subsection (4) of  
14 that section is reenacted to read:

15           408.036 Projects subject to review; exemptions.--

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

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

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

29  
30 The agency shall develop rules to implement the provisions for  
31 expedited review, including time schedule, application content



1 | which may be reduced from the full requirements of s.  
2 | 408.037(1), and application processing.

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

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

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

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

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

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

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

31 |

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

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

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

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

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

23           Section 11. Section 52 of chapter 2001-45, Laws of  
24 Florida, as amended by section 1693 of chapter 2003-261, Laws  
25 of Florida, is amended to read:

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

30           (2) The Legislature finds that the continued growth in  
31 the Medicaid budget for nursing home care has constrained the

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

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

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

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

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

28  
29 This subsection shall be repealed upon the expiration of the  
30 moratorium established in subsection (1).

31

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

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

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

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

21  
 22 This subsection shall be repealed upon the expiration of the  
 23 moratorium established in subsection (1).

24       Section 12. Subsection (7) of section 651.118, Florida  
 25 Statutes, is amended to read:

26           651.118 Agency for Health Care Administration;  
 27 certificates of need; sheltered beds; community beds.--

28           (7) Notwithstanding the provisions of subsection (2),  
 29 at the discretion of the continuing care provider, sheltered  
 30 nursing home beds may be used for persons who are not  
 31 residents of the continuing care facility and who are not

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

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

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

21  
22 The agency shall be authorized to grant an extension to the  
23 provider based on the evidence required in this subsection.  
24 The agency may request a continuing care facility to use up to  
25 25 percent of the patient days generated by new admissions of  
26 nonresidents during the extension period to serve Medicaid  
27 recipients for those beds authorized for extended use if there  
28 is a demonstrated need in the respective service area and if  
29 funds are available. A provider who obtains an extension is  
30 prohibited from applying for additional sheltered beds under  
31 the provision of subsection (2), unless additional residential

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

13 Section 13. Subsection (1) of section 395.003, Florida  
 14 Statutes, is amended to read:

15 395.003 Licensure; issuance, renewal, denial,  
 16 modification, suspension, and revocation.--

17 (1)(a) ~~A No~~ person may not ~~shall~~ establish, conduct,  
 18 or maintain a hospital, ambulatory surgical center, or mobile  
 19 surgical facility in this state without first obtaining a  
 20 license under this part.

21 (b)1. It is unlawful for a any person to use or  
 22 advertise to the public, in any way or by any medium  
 23 whatsoever, any facility as a "hospital," "ambulatory surgical  
 24 center," or "mobile surgical facility" unless such facility  
 25 has first secured a license under the provisions of this part.

26 2. ~~Nothing in~~ This part does not apply ~~applies~~ to  
 27 veterinary hospitals or to commercial business establishments  
 28 using the word "hospital," "ambulatory surgical center," or  
 29 "mobile surgical facility" as a part of a trade name if no  
 30 treatment of human beings is performed on the premises of such  
 31 establishments.

1           3. By December 31, 2004, the agency shall submit a  
2 report to the President of the Senate and the Speaker of the  
3 House of Representatives recommending whether it is in the  
4 public interest to allow a hospital to license or operate an  
5 emergency department located off the premises of the hospital.  
6 If the agency finds it to be in the public interest, the  
7 report shall also recommend licensure criteria for such  
8 medical facilities, including criteria related to quality of  
9 care and, if deemed necessary, the elimination of the  
10 possibility of confusion related to the service capabilities  
11 of such facility in comparison to the service capabilities of  
12 an emergency department located on the premises of the  
13 hospital. Until July 1, 2005, additional emergency departments  
14 located off the premises of licensed hospitals may not be  
15 authorized by the agency.

16           Section 14. Section 430.701, Florida Statutes, is  
17 amended to read:

18           430.701 Legislative findings and intent.--

19           (1) The Legislature finds that state expenditures for  
20 long-term care services continue to increase at a rapid rate  
21 and that Florida faces increasing pressure in its efforts to  
22 meet the long-term care needs of the public. It is the intent  
23 of the Legislature that the Department of Elderly Affairs, in  
24 consultation with the Agency for Health Care Administration,  
25 implement long-term care community diversion pilot projects to  
26 test the effectiveness of managed care and outcome-based  
27 reimbursement principles when applied to long-term care.

28           (2) Until such time as the agency receives a federal  
29 waiver placing a cap on the number of providers in each  
30 geographic area, the Legislature intends that the department  
31 not approve any additional providers in planning and service

1 areas that are currently served by three or more providers,  
 2 and not approve more than three providers in areas that are  
 3 currently not served by any providers or are served by fewer  
 4 than 3 providers. These restrictions do not prevent the  
 5 department from approving a provider to expand service to  
 6 additional counties within a planning and service area for  
 7 which the provider is already approved to serve.

8 Section 15. Subsection (3) of section 400.601, Florida  
 9 Statutes, is amended to read:

10 400.601 Definitions.--As used in this part, the term:

11 (3) "Hospice" means a centrally administered  
 12 corporation not for profit, as defined in chapter 617, and  
 13 qualified as an exempt corporation under s. 501(c)(3) of the  
 14 Internal Revenue Code, providing a continuum of palliative and  
 15 supportive care for the terminally ill patient and his or her  
 16 family.

17 Section 16. Subsection (13) is added to section  
 18 400.9935, Florida Statutes, to read:

19 400.9935 Clinic responsibilities.--

20 (13) The clinic, including hospitals and walk-in  
 21 clinics, shall display a sign in a conspicuous location within  
 22 the clinic readily visible to all patients indicating that  
 23 pursuant to s. 626.9892, the Department of Financial Services  
 24 may pay rewards of up to \$25,000 to persons providing  
 25 information leading to the arrest and conviction of persons  
 26 committing crimes investigated by the Division of Insurance  
 27 Fraud arising from violations of s. 440.105, s. 624.15, s.  
 28 626.9541, s. 626.989, or s. 817.234. An authorized employee of  
 29 the Division of Insurance Fraud may make unannounced  
 30 inspections of clinics licensed pursuant to this part as are  
 31 necessary to determine that the clinic is in compliance with



1 this subsection. A licensed clinic shall allow full and  
 2 complete access to the premises to such authorized employee of  
 3 the division who makes an inspection to determine compliance  
 4 with this subsection.

5 Section 17. Present paragraphs (f) and (g) of  
 6 subsection (3) of section 400.9905, Florida Statutes, are  
 7 redesignated as paragraphs (g) and (h) respectively, and a new  
 8 paragraph (f) is added to that subsection, to read:

9 400.9905 Definitions.--

10 (3) "Clinic" means an entity at which health care  
 11 services are provided to individuals and which tenders charges  
 12 for reimbursement for such services. For purposes of this  
 13 part, the term does not include and the licensure requirements  
 14 of this part do not apply to:

15 (f) A sole proprietorship, group practice,  
 16 partnership, or corporation that provides health care services  
 17 by physicians covered by s. 627.419, that is directly  
 18 supervised by one or more of such physicians, and that is  
 19 wholly owned by one or more of those physicians or by a  
 20 physician and the spouse, parent, child, or sibling of that  
 21 physician.

22 Section 18. Subsections (2) and (3) of section  
 23 400.991, Florida Statutes, are amended to read:

24 400.991 License requirements; background screenings;  
 25 prohibitions.--

26 (2) The initial clinic license application shall be  
 27 filed with the agency by all clinics, as defined in s.  
 28 400.9905, on or before July 1 ~~March 1~~, 2004. A clinic license  
 29 must be renewed biennially.

30 (3) Applicants that submit an application on or before  
 31 July 1 ~~March 1~~, 2004, which meets all requirements for initial

1 licensure as specified in this section shall receive a  
2 temporary license until the completion of an initial  
3 inspection verifying that the applicant meets all requirements  
4 in rules authorized by s. 400.9925. However, a clinic engaged  
5 in magnetic resonance imaging services may not receive a  
6 temporary license unless it presents evidence satisfactory to  
7 the agency that such clinic is making a good faith effort and  
8 substantial progress in seeking accreditation required under  
9 s. 400.9935.

10           Section 19. This act shall take effect upon becoming a  
11 law and section 18 shall apply retroactively to March 1, 2004.

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