

1
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. 400.235,
21 F.S.; providing for financial stability for
22 Gold Seal for certain nursing facilities;
23 amending s. 400.441, F.S.; requiring facilities
24 to conduct resident elopement prevention and
25 response drills; providing documentation
26 thereof; amending s. 400.619, F.S.; removing
27 the requirement that certain moneys deposited
28 into the Department of Elderly Affairs
29 Administrative Trust Fund be used to offset the
30 expenses of departmental training and education
31 for adult family-care home providers; amending

1 s. 408.034, F.S.; requiring the
2 nursing-home-bed-need methodology established
3 by the agency by rule to include a goal of
4 maintaining a specified subdistrict average
5 occupancy rate; amending s. 408.036, F.S.,
6 relating to health-care-related projects
7 subject to review for a certificate of need;
8 subjecting certain projects relating to
9 replacement of a nursing home and relocation of
10 nursing home beds to expedited review; revising
11 requirements for certain projects relating to
12 the addition of nursing home beds which are
13 exempt from review; exempting from review
14 certain projects relating to replacement of a
15 licensed nursing home bed on the same site or
16 nearby and consolidation or combination of
17 licensed nursing homes or transfer of beds
18 between licensed nursing homes within the same
19 planning subdistrict; providing rulemaking
20 authority; providing for assessment of
21 exemption-request fees; amending s. 430.701,
22 F.S.; authorizing the agency to seek federal
23 approval prior to seeking a certain waiver
24 relating to the long-term care diversion
25 provider network; amending s. 52, ch. 2001-45,
26 Laws of Florida; specifying nonapplication of a
27 moratorium on certificates of need and
28 authorizing approval of certain certificates of
29 need for certain counties; specifying
30 nonapplication of the moratorium for the
31 addition of nursing home beds in certain

1 | counties; providing requirements and
2 | limitations; providing for repeal upon
3 | expiration of the moratorium; amending s.
4 | 651.118, F.S.; revising provisions relating to
5 | use of sheltered nursing home beds at a
6 | continuing care facility by persons who are not
7 | residents of the continuing care facility;
8 | amending s. 400.9905, F.S.; revising and
9 | providing definitions; amending s. 400.991,
10 | F.S.; revising health care clinic licensing
11 | requirements; requiring separate licenses for
12 | each mobile clinic; providing licensing
13 | requirements for portable equipment providers;
14 | providing for retroactive effect; amending s.
15 | 400.9935, F.S.; providing that a chief
16 | financial officer may assume responsibility for
17 | clinic billings under certain circumstances;
18 | providing that an exemption is not
19 | transferable; authorizing a fee for a
20 | certificate of exemption; allowing the agency
21 | to deny or revoke a license; amending s.
22 | 400.995, F.S.; allowing the agency to deny the
23 | renewal of a license or to revoke or suspend a
24 | license; prohibiting extension of a temporary
25 | license under certain circumstances; requiring
26 | the Agency for Health Care Administration to
27 | refund certain application fees; providing
28 | exceptions for certain late filed applications;
29 | providing an effective date.

30

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

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

3 400.0712 Application for inactive license.--

4 (1) As specified in this section, the agency may issue
5 an inactive license to a nursing home facility for all or a
6 portion of its beds. Any request by a licensee that a nursing
7 home or portion of a nursing home become inactive must be
8 submitted to the agency in the approved format. The facility
9 may not initiate any suspension of services, notify residents,
10 or initiate facility closure before receiving approval from
11 the agency; and a facility that violates this provision shall
12 not be issued an inactive license. Upon agency approval of an
13 inactive license, the nursing home shall notify residents of
14 any necessary discharge or transfer as provided in s.
15 400.0255.

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

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

24 (b) A request to extend the inactive license must be
25 submitted to the agency in the approved format and approved by
26 the agency in writing.

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

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

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

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

11 (c) Reactivation of an inactive license requires that
12 the applicant pay all licensure fees and be inspected by the
13 agency to confirm that all of the requirements of this part
14 and applicable rules are met.

15 (4) The agency shall adopt rules pursuant to ss.
16 120.536(1) and 120.54 necessary to implement this section.

17 Section 2. Subsections (10), (11), and (12) of section
18 400.071, Florida Statutes, are amended to read:

19 400.071 Application for license.--

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

1 ~~(10)(11)~~ As a condition of licensure, each facility
2 must establish and submit with its application a plan for
3 quality assurance and for conducting risk management.

4 ~~(11)(12)~~ The applicant must provide the agency with
5 proof of a legal right to occupy the property before a license
6 may be issued. Proof may include, but is not limited to,
7 copies of warranty deeds, lease or rental agreements,
8 contracts for deeds, or quitclaim deeds.

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

11 400.021 Definitions.--When used in this part, unless
12 the context otherwise requires, the term:

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

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1 | responsibilities that have been delegated to the registered
2 | nurse.

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

5 | 400.23 Rules; evaluation and deficiencies; licensure
6 | status.--

7 | (10) Agency records, reports, ranking systems,
8 | Internet information, and publications must be promptly
9 | updated to reflect the most current agency actions.

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

12 | 400.211 Persons employed as nursing assistants;
13 | certification requirement.--

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

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

23 | (b) Include, at a minimum:

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

26 | 2. Principles of adequate nutrition and hydration;

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

30 | 4. Techniques for caring for the resident at the
31 | end-of-life; and

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

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

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

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

12 400.235 Nursing home quality and licensure status;
13 Gold Seal Program.--

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

16 (a) Had no class I or class II deficiencies within the
17 30 months preceding application for the program.

18 (b) Evidence financial soundness and stability
19 according to standards adopted by the agency in administrative
20 rule. Such standards must include, but not be limited to,
21 criteria for the use of financial statements that are prepared
22 in accordance with generally accepted accounting principles
23 and that are reviewed or audited by certified public
24 accountants. A nursing home that is part of the same corporate
25 entity as a continuing care facility licensed under chapter
26 651 which meets the minimum liquid reserve requirements
27 specified in s. 651.035 and is accredited by a recognized
28 accrediting organization under s. 651.028 and rules of the
29 Office of Insurance Regulation satisfies this requirement as
30 long as the accreditation is not provisional. Facilities

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1 operated by a federal or state agency are deemed to be
2 financially stable for purposes of applying for the Gold Seal.

3 (c) Participate in a consumer satisfaction process,
4 and demonstrate that information is elicited from residents,
5 family members, and guardians about satisfaction with the
6 nursing facility, its environment, the services and care
7 provided, the staff's skills and interactions with residents,
8 attention to resident's needs, and the facility's efforts to
9 act on information gathered from the consumer satisfaction
10 measures.

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

13 (e) Have a stable workforce, as described in s.
14 400.141, as evidenced by a relatively low rate of turnover
15 among certified nursing assistants and licensed nurses within
16 the 30 months preceding application for the Gold Seal Program,
17 and demonstrate a continuing effort to maintain a stable
18 workforce and to reduce turnover of licensed nurses and
19 certified nursing assistants.

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

24 (g) Provide targeted inservice training provided to
25 meet training needs identified by internal or external quality
26 assurance efforts.

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28 A facility assigned a conditional licensure status may not
29 qualify for consideration for the Gold Seal Program until
30 after it has operated for 30 months with no class I or class
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1 | II deficiencies and has completed a regularly scheduled
2 | relicensure survey.

3 | Section 7. Paragraph (a) of subsection (1) of section
4 | 400.441, Florida Statutes, is amended to read:

5 | 400.441 Rules establishing standards.--

6 | (1) It is the intent of the Legislature that rules
7 | published and enforced pursuant to this section shall include
8 | criteria by which a reasonable and consistent quality of
9 | resident care and quality of life may be ensured and the
10 | results of such resident care may be demonstrated. Such rules
11 | shall also ensure a safe and sanitary environment that is
12 | residential and noninstitutional in design or nature. It is
13 | further intended that reasonable efforts be made to
14 | accommodate the needs and preferences of residents to enhance
15 | the quality of life in a facility. In order to provide safe
16 | and sanitary facilities and the highest quality of resident
17 | care accommodating the needs and preferences of residents, the
18 | department, in consultation with the agency, the Department of
19 | Children and Family Services, and the Department of Health,
20 | shall adopt rules, policies, and procedures to administer this
21 | part, which must include reasonable and fair minimum standards
22 | in relation to:

23 | (a) The requirements for and maintenance of
24 | facilities, not in conflict with the provisions of chapter
25 | 553, relating to plumbing, heating, cooling, lighting,
26 | ventilation, living space, and other housing conditions, which
27 | will ensure the health, safety, and comfort of residents and
28 | protection from fire hazard, including adequate provisions for
29 | fire alarm and other fire protection suitable to the size of
30 | the structure. Uniform firesafety standards shall be
31 | established and enforced by the State Fire Marshal in

1 cooperation with the agency, the department, and the
2 Department of Health.

3 1. Evacuation capability determination.--

4 a. The provisions of the National Fire Protection
5 Association, NFPA 101A, Chapter 5, 1995 edition, shall be used
6 for determining the ability of the residents, with or without
7 staff assistance, to relocate from or within a licensed
8 facility to a point of safety as provided in the fire codes
9 adopted herein. An evacuation capability evaluation for
10 initial licensure shall be conducted within 6 months after the
11 date of licensure. For existing licensed facilities that are
12 not equipped with an automatic fire sprinkler system, the
13 administrator shall evaluate the evacuation capability of
14 residents at least annually. The evacuation capability
15 evaluation for each facility not equipped with an automatic
16 fire sprinkler system shall be validated, without liability,
17 by the State Fire Marshal, by the local fire marshal, or by
18 the local authority having jurisdiction over firesafety,
19 before the license renewal date. If the State Fire Marshal,
20 local fire marshal, or local authority having jurisdiction
21 over firesafety has reason to believe that the evacuation
22 capability of a facility as reported by the administrator may
23 have changed, it may, with assistance from the facility
24 administrator, reevaluate the evacuation capability through
25 timed exiting drills. Translation of timed fire exiting drills
26 to evacuation capability may be determined:

27 (I) Three minutes or less: prompt.

28 (II) More than 3 minutes, but not more than 13
29 minutes: slow.

30 (III) More than 13 minutes: impractical.

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1 b. The Office of the State Fire Marshal shall provide
2 or cause the provision of training and education on the proper
3 application of Chapter 5, NFPA 101A, 1995 edition, to its
4 employees, to staff of the Agency for Health Care
5 Administration who are responsible for regulating facilities
6 under this part, and to local governmental inspectors. The
7 Office of the State Fire Marshal shall provide or cause the
8 provision of this training within its existing budget, but may
9 charge a fee for this training to offset its costs. The
10 initial training must be delivered within 6 months after July
11 1, 1995, and as needed thereafter.

12 c. The Office of the State Fire Marshal, in
13 cooperation with provider associations, shall provide or cause
14 the provision of a training program designed to inform
15 facility operators on how to properly review bid documents
16 relating to the installation of automatic fire sprinklers. The
17 Office of the State Fire Marshal shall provide or cause the
18 provision of this training within its existing budget, but may
19 charge a fee for this training to offset its costs. The
20 initial training must be delivered within 6 months after July
21 1, 1995, and as needed thereafter.

22 d. The administrator of a licensed facility shall sign
23 an affidavit verifying the number of residents occupying the
24 facility at the time of the evacuation capability evaluation.

25 2. Firesafety requirements.--

26 a. Except for the special applications provided
27 herein, effective January 1, 1996, the provisions of the
28 National Fire Protection Association, Life Safety Code, NFPA
29 101, 1994 edition, Chapter 22 for new facilities and Chapter
30 23 for existing facilities shall be the uniform fire code
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1 applied by the State Fire Marshal for assisted living
2 facilities, pursuant to s. 633.022.

3 b. Any new facility, regardless of size, that applies
4 for a license on or after January 1, 1996, must be equipped
5 with an automatic fire sprinkler system. The exceptions as
6 provided in section 22-2.3.5.1, NFPA 101, 1994 edition, as
7 adopted herein, apply to any new facility housing eight or
8 fewer residents. On July 1, 1995, local governmental entities
9 responsible for the issuance of permits for construction shall
10 inform, without liability, any facility whose permit for
11 construction is obtained prior to January 1, 1996, of this
12 automatic fire sprinkler requirement. As used in this part,
13 the term "a new facility" does not mean an existing facility
14 that has undergone change of ownership.

15 c. Notwithstanding any provision of s. 633.022 or of
16 the National Fire Protection Association, NFPA 101A, Chapter
17 5, 1995 edition, to the contrary, any existing facility
18 housing eight or fewer residents is not required to install an
19 automatic fire sprinkler system, nor to comply with any other
20 requirement in Chapter 23, NFPA 101, 1994 edition, that
21 exceeds the firesafety requirements of NFPA 101, 1988 edition,
22 that applies to this size facility, unless the facility has
23 been classified as impractical to evacuate. Any existing
24 facility housing eight or fewer residents that is classified
25 as impractical to evacuate must install an automatic fire
26 sprinkler system within the timeframes granted in this
27 section.

28 d. Any existing facility that is required to install
29 an automatic fire sprinkler system under this paragraph need
30 not meet other firesafety requirements of Chapter 23, NFPA
31 101, 1994 edition, which exceed the provisions of NFPA 101,

1 1988 edition. The mandate contained in this paragraph which
2 requires certain facilities to install an automatic fire
3 sprinkler system supersedes any other requirement.

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

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

9 g. A local government may charge fees only in an
10 amount not to exceed the actual expenses incurred by local
11 government relating to the installation and maintenance of an
12 automatic fire sprinkler system in an existing and properly
13 licensed assisted living facility structure as of January 1,
14 1996.

15 h. If a licensed facility undergoes major
16 reconstruction or addition to an existing building on or after
17 January 1, 1996, the entire building must be equipped with an
18 automatic fire sprinkler system. Major reconstruction of a
19 building means repair or restoration that costs in excess of
20 50 percent of the value of the building as reported on the tax
21 rolls, excluding land, before reconstruction. Multiple
22 reconstruction projects within a 5-year period the total costs
23 of which exceed 50 percent of the initial value of the
24 building at the time the first reconstruction project was
25 permitted are to be considered as major reconstruction.
26 Application for a permit for an automatic fire sprinkler
27 system is required upon application for a permit for a
28 reconstruction project that creates costs that go over the
29 50-percent threshold.

30 i. Any facility licensed before January 1, 1996, that
31 is required to install an automatic fire sprinkler system

1 shall ensure that the installation is completed within the
2 following timeframes based upon evacuation capability of the
3 facility as determined under subparagraph 1.:

4 (I) Impractical evacuation capability, 24 months.

5 (II) Slow evacuation capability, 48 months.

6 (III) Prompt evacuation capability, 60 months.

7
8 The beginning date from which the deadline for the automatic
9 fire sprinkler installation requirement must be calculated is
10 upon receipt of written notice from the local fire official
11 that an automatic fire sprinkler system must be installed. The
12 local fire official shall send a copy of the document
13 indicating the requirement of a fire sprinkler system to the
14 Agency for Health Care Administration.

15 j. It is recognized that the installation of an
16 automatic fire sprinkler system may create financial hardship
17 for some facilities. The appropriate local fire official
18 shall, without liability, grant two 1-year extensions to the
19 timeframes for installation established herein, if an
20 automatic fire sprinkler installation cost estimate and proof
21 of denial from two financial institutions for a construction
22 loan to install the automatic fire sprinkler system are
23 submitted. However, for any facility with a class I or class
24 II, or a history of uncorrected class III, firesafety
25 deficiencies, an extension must not be granted. The local fire
26 official shall send a copy of the document granting the time
27 extension to the Agency for Health Care Administration.

28 k. A facility owner whose facility is required to be
29 equipped with an automatic fire sprinkler system under Chapter
30 23, NFPA 101, 1994 edition, as adopted herein, must disclose
31 to any potential buyer of the facility that an installation of

1 an automatic fire sprinkler requirement exists. The sale of
2 the facility does not alter the timeframe for the installation
3 of the automatic fire sprinkler system.

4 1. Existing facilities required to install an
5 automatic fire sprinkler system as a result of
6 construction-type restrictions in Chapter 23, NFPA 101, 1994
7 edition, as adopted herein, or evacuation capability
8 requirements shall be notified by the local fire official in
9 writing of the automatic fire sprinkler requirement, as well
10 as the appropriate date for final compliance as provided in
11 this subparagraph. The local fire official shall send a copy
12 of the document to the Agency for Health Care Administration.

13 m. Except in cases of life-threatening fire hazards,
14 if an existing facility experiences a change in the evacuation
15 capability, or if the local authority having jurisdiction
16 identifies a construction-type restriction, such that an
17 automatic fire sprinkler system is required, it shall be
18 afforded time for installation as provided in this
19 subparagraph.

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

1 licensed facilities must have an annual fire inspection
2 conducted by the local fire marshal or authority having
3 jurisdiction.

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

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

15 400.619 Licensure application and renewal.--

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

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

23 408.034 Duties and responsibilities of agency;
24 rules.--

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

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

6 408.036 Projects subject to review; exemptions.--

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

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

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

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21 The agency shall develop rules to implement the provisions for
22 expedited review, including time schedule, application content
23 which may be reduced from the full requirements of s.
24 408.037(1), and application processing.

25 (3) EXEMPTIONS.--Upon request, the following projects
26 are subject to exemption from the provisions of subsection
27 (1):

28 (p) For the addition of nursing home beds licensed
29 under chapter 400 in a number not exceeding 10 total beds or
30 10 percent of the number of beds licensed in the facility
31 being expanded, whichever is greater, or for the addition of

1 nursing home beds licensed under chapter 400 at a facility
2 that has been designated as a Gold Seal nursing home under s.
3 400.235 in a number not exceeding 20 total beds or 10 percent
4 of the number of beds licensed in the facility being expanded,
5 whichever is greater.

6 1. In addition to any other documentation required by
7 the agency, a request for exemption submitted under this
8 paragraph must:

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

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

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

18 ~~c.d.~~ Certify that any beds authorized for the facility
19 under this paragraph before the date of the current request
20 for an exemption have been licensed and operational for at
21 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 nursing home beds until the beds are licensed.

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

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1 (v) For consolidation or combination of licensed
2 nursing homes or transfer of beds between licensed nursing
3 homes within the same planning subdistrict, by providers that
4 operate multiple nursing homes within that planning
5 subdistrict, provided there is no increase in the planning
6 subdistrict total of nursing home beds and the relocation does
7 not exceed 30 miles from the original location.

8 (4) A request for exemption under subsection (3) may
9 be made at any time and is not subject to the batching
10 requirements of this section. The request shall be supported
11 by such documentation as the agency requires by rule. The
12 agency shall assess a fee of \$250 for each request for
13 exemption submitted under subsection (3).

14 Section 11. Section 430.701, Florida Statutes, is
15 amended to read:

16 430.701 Legislative findings and intent.--

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

26 (2) The agency may seek federal approval in advance of
27 its formal waiver application to limit the diversion provider
28 network by freezing enrollment of providers at current levels
29 when an area already has three or more providers or, in an
30 expansion area, when enrollment reaches a level of three
31 providers. This subsection does not prevent the department

1 from approving a provider to expand service to additional
2 counties within a planning and service area for which the
3 provider is already approved to serve.

4 Section 12. Section 52 of chapter 2001-45, Laws of
5 Florida, as amended by section 1693 of chapter 2003-261, Laws
6 of Florida, is amended to read:

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

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

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

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

31 1. The county has no community nursing home beds; and

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

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

9
10 This subsection shall be repealed upon the expiration of the
11 moratorium established in subsection (1).

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

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

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

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

31

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

3 Section 13. Subsection (7) of section 651.118, Florida
4 Statutes, is amended to read:

5 651.118 Agency for Health Care Administration;
6 certificates of need; sheltered beds; community beds.--

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

20 (a) The nursing home facility has a net loss for the
21 most recent fiscal year as determined under generally accepted
22 accounting principles, excluding the effects of extraordinary
23 or unusual items, as demonstrated in the most recently audited
24 financial statement; or

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

31

1 The agency shall be authorized to grant an extension to the
2 provider based on the evidence required in this subsection.
3 The agency may request a continuing care facility to use up to
4 25 percent of the patient days generated by new admissions of
5 nonresidents during the extension period to serve Medicaid
6 recipients for those beds authorized for extended use if there
7 is a demonstrated need in the respective service area and if
8 funds are available. A provider who obtains an extension is
9 prohibited from applying for additional sheltered beds under
10 the provision of subsection (2), unless additional residential
11 units are built or the provider can demonstrate need by
12 continuing care facility residents to the Agency for Health
13 Care Administration. The 5-year limit does not apply to up to
14 five sheltered beds designated for inpatient hospice care as
15 part of a contractual arrangement with a hospice licensed
16 under part VI of chapter 400. A continuing care facility that
17 uses such beds after the 5-year period shall report such use
18 to the Agency for Health Care Administration. For purposes of
19 this subsection, "resident" means a person who, upon admission
20 to the continuing care facility, initially resides in a part
21 of the continuing care facility not licensed under part II of
22 chapter 400.

23 Section 14. Subsections (3) and (4) of section
24 400.9905, Florida Statutes, are renumbered as subsections (4)
25 and (5), respectively, and amended, and new subsections (3),
26 (6), and (7) are added to said section, to read:

27 400.9905 Definitions.--

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

1 ~~(4)(3)~~ "Clinic" means an entity at which health care
2 services are provided to individuals and which tenders charges
3 for reimbursement for such services, including a mobile clinic
4 and a portable equipment provider. For purposes of this part,
5 the term does not include and the licensure requirements of
6 this part do not apply to:

7 (a) Entities licensed or registered by the state under
8 chapter 395; or entities licensed or registered by the state
9 and providing only health care services within the scope of
10 services authorized under their respective licenses granted
11 under s. 383.30-383.335, chapter 390, chapter 394, ~~chapter~~
12 ~~395~~, chapter 397, this chapter except part XIII, chapter 463,
13 chapter 465, chapter 466, chapter 478, part I of chapter 483
14 ~~chapter 480~~, chapter 484, or chapter 651; end-stage renal
15 disease providers authorized under 42 C.F.R. part 405, subpart
16 U; or providers certified under 42 C.F.R. part 485, subpart B
17 or subpart H, or any entity that provides neonatal or
18 pediatric hospital-based healthcare services by licensed
19 practitioners solely within a hospital licensed under chapter
20 395.

21 (b) Entities that own, directly or indirectly,
22 entities licensed or registered by the state pursuant to
23 chapter 395; or entities that own, directly or indirectly,
24 entities licensed or registered by the state and providing
25 only health care services within the scope of services
26 authorized pursuant to their respective licenses granted under
27 s. 383.30-383.335, chapter 390, chapter 394, chapter 395,
28 chapter 397, this chapter except part XIII, chapter 463,
29 chapter 465, chapter 466, chapter 478, part I of chapter 483
30 ~~chapter 480~~, chapter 484, ~~or~~ chapter 651, end-stage renal
31 disease providers authorized under 42 C.F.R. part 405, subpart

1 U, or providers certified under 42 C.F.R. part 485, subpart B
2 or subpart H, or any entity that provides neonatal or
3 pediatric hospital-based healthcare services by licensed
4 practitioners solely within a hospital licensed under chapter
5 395.

6 (c) Entities that are owned, directly or indirectly,
7 by an entity licensed or registered by the state pursuant to
8 chapter 395; or entities that are owned, directly or
9 indirectly, by an entity licensed or registered by the state
10 and providing only health care services within the scope of
11 services authorized pursuant to their respective licenses
12 granted under s. 383.30-383.335, chapter 390, chapter 394,
13 ~~chapter 395,~~ chapter 397, this chapter except part XIII ,
14 chapter 463, chapter 465, chapter 466, chapter 478, part I of
15 chapter 483 ~~chapter 480~~, chapter 484, or chapter 651;
16 end-stage renal disease providers authorized under 42 C.F.R.
17 part 405, subpart U; or providers certified under 42 C.F.R.
18 part 485, subpart B or subpart H, or any entity that provides
19 neonatal or pediatric hospital-based healthcare services by
20 licensed practitioners solely within a hospital under chapter
21 395.

22 (d) Entities that are under common ownership, directly
23 or indirectly, with an entity licensed or registered by the
24 state pursuant to chapter 395; or entities that are under
25 common ownership, directly or indirectly, with an entity
26 licensed or registered by the state and providing only health
27 care services within the scope of services authorized pursuant
28 to their respective licenses granted under s. 383.30-383.335,
29 chapter 390, chapter 394, ~~chapter 395,~~ chapter 397, this
30 chapter except part XIII, chapter 463, chapter 465, chapter
31 466, chapter 478, part I of chapter 483 ~~480~~, chapter 484, ~~or~~

1 chapter 651; end-stage renal disease providers authorized
2 under 42 C.F.R. part 405, subpart U; or providers certified
3 under 42 C.F.R. part 485, subpart B or subpart H or any entity
4 that provides neonatal or pediatric hospital-based healthcare
5 services by licensed practitioners solely within a hospital
6 licensed under chapter 395.

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

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

18 ~~(g)(f)~~ A sole proprietorship, group practice,
19 partnership, or corporation that provides health care services
20 by licensed health care practitioners under chapter 457,
21 chapter 458, chapter 459, chapter 460, chapter 461, chapter
22 462, chapter 463, chapter 466, chapter 467, chapter 480,
23 chapter 484, chapter 486, chapter 490, chapter 491, or part I,
24 part III, part X, part XIII, or part XIV of chapter 468, or s.
25 464.012, which are wholly owned by one or more ~~a~~ licensed
26 health care practitioners ~~practitioner~~, or the licensed health
27 care practitioners set forth in this paragraph ~~practitioner~~
28 and the spouse, parent, ~~or~~ child, or sibling of a licensed
29 health care practitioner, so long as one of the owners who is
30 a licensed health care practitioner is supervising the
31 business activities ~~services performed therein~~ and is legally

1 responsible for the entity's compliance with all federal and
2 state laws. However, a health care practitioner may not
3 supervise services beyond the scope of the practitioner's
4 license, except that, for the purposes of this part, a clinic
5 owned by a licensee in s. 456.053(3)(b) that provides only
6 services authorized pursuant to s. 456.053(3)(b) may be
7 supervised by a licensee specified in s. 456.053(3)(b).

8 (h)(g) Clinical facilities affiliated with an
9 accredited medical school at which training is provided for
10 medical students, residents, or fellows.

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

14 (5)(4) "Medical director" means a physician who is
15 employed or under contract with a clinic and who maintains a
16 full and unencumbered physician license in accordance with
17 chapter 458, chapter 459, chapter 460, or chapter 461.
18 However, if the clinic does not provide services pursuant to
19 the respective physician practices acts listed in this
20 subsection, it is limited to providing health care services
21 pursuant to chapter 457, chapter 484, chapter 486, chapter
22 490, or chapter 491 or part I, part III, part X, part XIII, or
23 part XIV of chapter 468, the clinic may appoint a
24 Florida-licensed health care practitioner who does not provide
25 services pursuant to the respective physician practices acts
26 listed in this subsection licensed under that chapter to serve
27 as a clinic director who is responsible for the clinic's
28 activities. A health care practitioner may not serve as the
29 clinic director if the services provided at the clinic are
30 beyond the scope of that practitioner's license, except that a
31 licensee specified in s. 456.053(3)(b) who provides only

1 services authorized pursuant to s. 456.053(3)(b) may serve as
2 clinic director of an entity providing services as specified
3 in s. 456.053(3)(b).

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

8 (7) "Portable equipment provider" means an entity that
9 contracts with or employs persons to provide portable
10 equipment to multiple locations performing treatment or
11 diagnostic testing of individuals, that bills third-party
12 payors for those services, and that otherwise meets the
13 definition of a clinic in subsection (4).

14 Section 15. The creation of section 400.9905(4)(i),
15 Florida Statutes, by this act is intended to clarify the
16 legislative intent of this provision as it existed at the time
17 the provisions initially took effect as sections
18 456.0375(1)(b) and 400.9905(4)(i), Florida Statutes, as
19 created by this act, shall operate retroactively to October 1,
20 2001. Nothing in this section shall be construed as amending,
21 modifying, limiting, or otherwise affecting in any way the
22 legislative intent, scope, terms, prohibition, or requirements
23 of section 456.053, Florida Statutes.

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

28 400.991 License requirements; background screenings;
29 prohibitions.--

30 (1)(a) Each clinic, as defined in s. 400.9905, must be
31 licensed and shall at all times maintain a valid license with

1 the agency. Each clinic location shall be licensed separately
2 regardless of whether the clinic is operated under the same
3 business name or management as another clinic.

4 (b) Each mobile clinic must obtain a separate health
5 care clinic license and clinics must provide to the agency, at
6 least quarterly, its ~~their~~ projected street location ~~locations~~
7 to enable the agency to locate and inspect such clinic
8 ~~clinics~~. A portable equipment provider must obtain a health
9 care clinic license for a single administrative office and is
10 not required to submit quarterly projected street locations.

11 (2) The initial clinic license application shall be
12 filed with the agency by all clinics, as defined in s.
13 400.9905, on or before July ~~March~~ 1, 2004. A clinic license
14 must be renewed biennially.

15 (3) Applicants that submit an application on or before
16 July ~~March~~ 1, 2004, which meets all requirements for initial
17 licensure as specified in this section shall receive a
18 temporary license until the completion of an initial
19 inspection verifying that the applicant meets all requirements
20 in rules authorized in s. 400.9925. However, a clinic engaged
21 in magnetic resonance imaging services may not receive a
22 temporary license unless it presents evidence satisfactory to
23 the agency that such clinic is making a good faith effort and
24 substantial progress in seeking accreditation required under
25 s. 400.9935.

26 (7) Each applicant for licensure shall comply with the
27 following requirements:

28 (a) As used in this subsection, the term "applicant"
29 means individuals owning or controlling, directly or
30 indirectly, 5 percent or more of an interest in a clinic; the
31 medical or clinic director, or a similarly titled person who

1 is responsible for the day-to-day operation of the licensed
2 clinic; the financial officer or similarly titled individual
3 who is responsible for the financial operation of the clinic;
4 and licensed health care practitioners ~~medical providers~~ at
5 the clinic.

6 (b) Upon receipt of a completed, signed, and dated
7 application, the agency shall require background screening of
8 the applicant, in accordance with the level 2 standards for
9 screening set forth in chapter 435. Proof of compliance with
10 the level 2 background screening requirements of chapter 435
11 which has been submitted within the previous 5 years in
12 compliance with any other health care licensure requirements
13 of this state is acceptable in fulfillment of this paragraph.

14 Applicants who own less than 10 percent of a health care
15 clinic are not required to submit fingerprints under this
16 section.

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

20 400.9935 Clinic responsibilities.--

21 (1) Each clinic shall appoint a medical director or
22 clinic director who shall agree in writing to accept legal
23 responsibility for the following activities on behalf of the
24 clinic. The medical director or the clinic director shall:

25 (g) Conduct systematic reviews of clinic billings to
26 ensure that the billings are not fraudulent or unlawful. Upon
27 discovery of an unlawful charge, the medical director or
28 clinic director shall take immediate corrective action. If the
29 clinic performs only the technical component of magnetic
30 resonance imaging, static radiographs, computed tomography, or
31 positron emission tomography and provides the professional

1 interpretation of such services, in a fixed facility that is
2 accredited by the Joint Commission on Accreditation of
3 Healthcare Organizations or the Accreditation Association for
4 Ambulatory Health Care and the American College of Radiology,
5 and if, in the preceding quarter, the percentage of scans
6 performed by that clinic that were billed to a personal injury
7 protection insurance carrier was less than 15 percent, the
8 chief financial officer of the clinic may, in a written
9 acknowledgment provided to the agency, assume the
10 responsibility for the conduct of the systematic reviews of
11 clinic billings to ensure that the billings are not fraudulent
12 or unlawful.

13 (9) Any person or entity providing health care
14 services which is not a clinic, as defined under s. 400.9905,
15 may voluntarily apply for a certificate of exemption from
16 licensure under its exempt status with the agency on a form
17 that sets forth its name or names and addresses, a statement
18 of the reasons why it cannot be defined as a clinic, and other
19 information deemed necessary by the agency. An exemption is
20 not transferable. The agency may charge an applicant for a
21 certificate of exemption in an amount equal to \$100 or the
22 actual cost of processing the certificate, whichever is less.

23 (11)

24 (b) The agency may ~~deny~~ ~~disallow~~ the application or
25 revoke the license of any entity formed for the purpose of
26 avoiding compliance with the accreditation provisions of this
27 subsection and whose principals were previously principals of
28 an entity that was unable to meet the accreditation
29 requirements within the specified timeframes. The agency may
30 adopt rules as to the accreditation of magnetic resonance
31 imaging clinics.

1 Section 18. Subsections (1) and (3) of section
2 400.995, Florida Statutes, are amended, and a new subsection
3 (10) is added to said section, to read:

4 400.995 Agency administrative penalties.--

5 (1) The agency may deny the application for a license
6 renewal, revoke or suspend the license, and impose
7 administrative fin~~es~~ ~~penalties against clinics~~ of up to \$5,000
8 per violation for violations of the requirements of this part
9 or rules of the agency. In determining if a penalty is to be
10 imposed and in fixing the amount of the fine, the agency shall
11 consider the following factors:

12 (a) The gravity of the violation, including the
13 probability that death or serious physical or emotional harm
14 to a patient will result or has resulted, the severity of the
15 action or potential harm, and the extent to which the
16 provisions of the applicable laws or rules were violated.

17 (b) Actions taken by the owner, medical director, or
18 clinic director to correct violations.

19 (c) Any previous violations.

20 (d) The financial benefit to the clinic of committing
21 or continuing the violation.

22 (3) Any action taken to correct a violation shall be
23 documented in writing by the owner, medical director, or
24 clinic director of the clinic and verified through followup
25 visits by agency personnel. The agency may impose a fine and,
26 in the case of an owner-operated clinic, revoke or deny a
27 clinic's license when a clinic medical director or clinic
28 director knowingly ~~fraudulently~~ misrepresents actions taken to
29 correct a violation.

30 (10) If the agency issues a notice of intent to deny a
31 license application after a temporary license has been issued

1 pursuant to s. 400.991(3), the temporary license shall expire
2 on the date of the notice and may not be extended during any
3 proceeding for administrative or judicial review pursuant to
4 chapter 120.

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

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

11 (2) Fifty percent of the application fee if the
12 temporary license has been issued but the inspection has not
13 been completed; or

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

15 Section 20. Any person or entity defined as a clinic
16 under section 400.9905, Florida Statutes, shall not be in
17 violation of part XIII of chapter 400, Florida Statutes, due
18 to failure to apply for a clinic license by March 1, 2004, as
19 previously required by section 400.991, Florida Statutes.
20 Payment to any such person or entity by an insurer or other
21 person liable for payment to such person or entity may not be
22 denied on the grounds that the person or entity failed to
23 apply for or obtain a clinic license before March 1, 2004.

24 Section 21. This act shall take effect upon becoming a
25 law.