

By Senator Pruitt

28-1694-04

1 A bill to be entitled
2 An act relating to certificates of need;
3 amending s. 395.003, F.S.; prohibiting the
4 Agency for Health Care Administration from
5 issuing or renewing a hospital's license if
6 more than a specified percentage of the
7 hospital's patients receive care and treatment
8 classified in specified diagnostic-related
9 groups; providing an exemption; authorizing the
10 agency to adopt rules; amending s. 408.032,
11 F.S.; revising definitions relating to health
12 facilities and services; amending s. 408.033,
13 F.S.; requiring that local health councils
14 serve counties in a health service planning
15 district; directing the local health council to
16 develop a plan for services at the local level
17 with the Department of Health; providing for
18 the costs of operating a local health council
19 to come from assessments imposed on selected
20 health care facilities; directing the
21 department to enter into contracts with the
22 local health councils for certain services;
23 amending s. 408.034, F.S.; conforming
24 provisions to changes made by the act; amending
25 s. 408.035, F.S.; revising criteria for
26 reviewing an application for a
27 certificate-of-need; amending s. 408.036, F.S.;
28 revising health-care-related projects that are
29 subject to the certificate-of-need process;
30 revising health-care-related projects that are
31 subject to an expedited certificate-of-need

1 process; revising the list of projects exempt
2 from the certificate-of-need process; requiring
3 health care facilities and providers to notify
4 the agency of certain specified activities;
5 amending s. 408.0361, F.S.; requiring the
6 agency to adopt rules for licensure standards
7 for adult interventional cardiology services
8 and burn units; providing minimum criteria for
9 inclusion in the rules; providing that certain
10 health care providers of adult interventional
11 cardiology services are exempt from complying
12 with the rules for 2 years following the date
13 of their next license renewal, but must meet
14 the licensure standards thereafter; requiring
15 the agency to license two levels of treatment
16 for adult interventional cardiology services;
17 providing criteria for the two levels of
18 licensure; directing the Secretary of Health
19 Care Administration to appoint an advisory
20 group to study the issue of replacing
21 certificate-of-need review of organ transplant
22 programs operating under ch. 408, F.S., with
23 licensure regulation of organ transplant
24 programs under ch. 395, F.S.; providing for
25 membership; requiring the advisory group to
26 make certain recommendations; directing the
27 advisory group to submit a report to the
28 Governor, the secretary, and the Legislature by
29 a specific date; amending s. 408.038, F.S. ;
30 increasing fees for certificate-of-need
31 applications; amending s. 408.039, F.S. ;

1 providing for an annual review cycle for
2 certificate-of-need applications; revising the
3 review procedures; amending s. 408.040, F.S.;
4 providing for conditions and monitoring for
5 holders of a certificate of need or an
6 exemption certificate; providing that failure
7 to report to the agency constitutes
8 noncompliance with conditions of the
9 certificate; amending s. 408.0455, F.S.;
10 providing that rules of the agency in effect on
11 June 30, 2004, shall remain in effect until
12 amended or repealed; repealing s. 408.043(2),
13 F.S., relating to special provisions for
14 hospice facilities; repealing s. 408.045, F.S.,
15 relating to the use of a competitive sealed
16 proposal to obtain a certificate of need for an
17 intermediate care facility for the
18 developmentally disabled; providing an
19 effective date.

20
21 WHEREAS, the Legislature finds that it is essential for
22 the public health and safety of this state that general
23 hospitals be available to serve the residents of this state,
24 and

25 WHEREAS, the Legislature finds that over 60 general
26 hospitals have closed in this state and the Legislature is
27 concerned that more hospitals may close, and

28 WHEREAS, the Legislature finds that creating hospitals
29 that provide limited services will serve only paying patients
30 and may cause harm to the continued existence of general
31 hospitals serving broad populations of this state, and

1 WHEREAS, the Legislature finds that creating hospitals
2 that provide limited services may limit or eliminate
3 competitive alternatives in the health care service market;
4 may result in over-utilization of certain high-cost health
5 care services, such as cardiac, orthopedic, and cancer
6 services; may increase costs to the health care system; and
7 may adversely affect the quality of health care, NOW,
8 THEREFORE,

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (9) is added to section 395.003,
13 Florida Statutes, to read:

14 395.003 Licensure; issuance, renewal, denial,
15 modification, suspension, and revocation.--

16 (9)(a) A hospital may not be licensed under this part,
17 or have its license renewed, if 65 percent or more of its
18 discharged patients, as reported to the Agency for Health Care
19 Administration under s. 408.061, received diagnosis, care, and
20 treatment within the following diagnostic-related groups:

21 1. Cardiac-related diseases and disorders classified
22 as DRGs 103-145, 478-479, 514-518, 525-527;

23 2. Orthopedic-related diseases and disorders
24 classified as DRGs 209-256, 471, 491, 496-503, 519-520;

25 3. Cancer-related diseases and disorders classified as
26 DRGs 64, 82, 172, 173, 199, 200, 203, 257-260, 274, 275, 303,
27 306, 307, 318, 319, 338, 344, 346, 347, 363, 366, 367,
28 400-414, 473, 492; or

29 4. Any combination of the above discharges.
30
31

1 The agency may not issue or renew a hospital's license if the
2 hospital's actual discharges in the most recent year for which
3 data is available, or the projected discharges over the next
4 12 months, meet the criteria of this subsection. The agency
5 shall revoke a hospital's license if the hospital fails to
6 meet these criteria during any year of operation.

7 (b) Hospitals licensed on or before June 1, 2004,
8 shall be exempt from the requirements in this subsection if
9 the hospital maintains the same ownership, facility street
10 address, and range of services provided on June 1, 2004.

11 (c) The agency may adopt rules to administer this
12 subsection. However, the statutory requirements are applicable
13 on July 1, 2004. In any administrative proceeding challenging
14 the denial or revocation of a hospital's license under this
15 subsection, the hearing shall be based on the facts and law in
16 effect at the time of the agency's proposed agency action. Any
17 hospital may initiate or intervene in an administrative
18 hearing to deny or revoke the license of a competing hospital
19 located within the same district or service area on a showing
20 that one of the hospital's established programs will be
21 substantially affected if a license is issued to the competing
22 hospital.

23 Section 2. Section 408.032, Florida Statutes, is
24 amended to read:

25 408.032 Definitions relating to Health Facility and
26 Services Development Act.--As used in ss. 408.031-408.045, the
27 term:

28 (1) "Agency" means the Agency for Health Care
29 Administration.

30 (2) "Capital expenditure" means an expenditure,
31 including an expenditure for a construction project undertaken

1 by a health care facility as its own contractor, which, under
2 generally accepted accounting principles, is not properly
3 chargeable as an expense of operation and maintenance, which
4 is made to change the bed capacity of the facility, or
5 substantially change the services or service area of the
6 health care facility, health service provider, or hospice, and
7 which includes the cost of the studies, surveys, designs,
8 plans, working drawings, specifications, initial financing
9 costs, and other activities essential to acquisition,
10 improvement, expansion, or replacement of the plant and
11 equipment.

12 (3) "Certificate of need" means a written statement
13 issued by the agency evidencing community need for a new,
14 converted, expanded, or otherwise significantly modified
15 health care facility, health service, or hospice.

16 (4) "Commenced construction" means initiation of and
17 continuous activities beyond site preparation associated with
18 erecting or modifying a health care facility, including
19 procurement of a building permit applying the use of
20 agency-approved construction documents, proof of an executed
21 owner/contractor agreement or an irrevocable or binding forced
22 account, and actual undertaking of foundation forming with
23 steel installation and concrete placing.

24 (5) "District" means a health service planning
25 district composed of the following counties:

26 District 1.--Escambia, Santa Rosa, Okaloosa, and Walton
27 Counties.

28 District 2.--Holmes, Washington, Bay, Jackson,
29 Franklin, Gulf, Gadsden, Liberty, Calhoun, Leon, Wakulla,
30 Jefferson, Madison, and Taylor Counties.

31

1 District 3.--Hamilton, Suwannee, Lafayette, Dixie,
2 Columbia, Gilchrist, Levy, Union, Bradford, Putnam, Alachua,
3 Marion, Citrus, Hernando, Sumter, and Lake Counties.

4 District 4.--Baker, Nassau, Duval, Clay, St. Johns,
5 Flagler, and Volusia Counties.

6 District 5.--Pasco and Pinellas Counties.

7 District 6.--Hillsborough, Manatee, Polk, Hardee, and
8 Highlands Counties.

9 District 7.--Seminole, Orange, Osceola, and Brevard
10 Counties.

11 District 8.--Sarasota, DeSoto, Charlotte, Lee, Glades,
12 Hendry, and Collier Counties.

13 District 9.--Indian River, Okeechobee, St. Lucie,
14 Martin, and Palm Beach Counties.

15 District 10.--Broward County.

16 District 11.--Dade and Monroe Counties.

17 (6) "Exemption" means the process by which a proposal
18 that would otherwise require a certificate of need may proceed
19 without a certificate of need.

20 (7) "Expedited review" means the process by which
21 certain types of applications are not subject to the review
22 cycle requirements contained in s. 408.039(1), and the letter
23 of intent requirements contained in s. 408.039(2).

24 (8) "Health care facility" means a hospital, long-term
25 care hospital, skilled nursing facility, hospice, or
26 intermediate care facility for the developmentally disabled. A
27 facility relying solely on spiritual means through prayer for
28 healing is not included as a health care facility.

29 (9) "Health services" means inpatient diagnostic,
30 curative, or comprehensive medical rehabilitative services and
31

1 includes mental health services. Obstetric services are not
2 health services for purposes of ss. 408.031-408.045.

3 (10) "Hospice" or "hospice program" means a hospice as
4 defined in part VI of chapter 400.

5 (11) "Hospital" means a health care facility licensed
6 under chapter 395.

7 (12) "Intermediate care facility for the
8 developmentally disabled" means a residential facility
9 licensed under chapter 393 and certified by the Federal
10 Government under ~~pursuant to~~ the Social Security Act as a
11 provider of Medicaid services to persons who are mentally
12 retarded or who have a related condition.

13 (13) "Long-term care hospital" means a hospital
14 licensed under chapter 395 which meets the requirements of 42
15 C.F.R. s. 412.23(e) and seeks exclusion from the acute care
16 Medicare prospective payment system for inpatient hospital
17 services.

18 (14) "Mental health services" means inpatient services
19 provided in a hospital licensed under chapter 395 and listed
20 on the hospital license as psychiatric beds for adults;
21 psychiatric beds for children and adolescents; intensive
22 residential treatment beds for children and adolescents;
23 substance abuse beds for adults; or substance abuse beds for
24 children and adolescents.

25 (15) "Nursing home geographically underserved area"
26 means:

27 (a) A county in which there is no existing or approved
28 nursing home;

29 (b) An area with a radius of at least 20 miles in
30 which there is no existing or approved nursing home; or

31

1 (c) An area with a radius of at least 20 miles in
2 which all existing nursing homes have maintained at least a 95
3 percent occupancy rate for the most recent 6 months or a 90
4 percent occupancy rate for the most recent 12 months.

5 (16) "Skilled nursing facility" means an institution,
6 or a distinct part of an institution, which is primarily
7 engaged in providing, to inpatients, skilled nursing care and
8 related services for patients who require medical or nursing
9 care, or rehabilitation services for the rehabilitation of
10 injured, disabled, or sick persons.

11 (17) "Tertiary health service" means a health service
12 which, due to its high level of intensity, complexity,
13 specialized or limited applicability, and cost, should be
14 limited to, and concentrated in, a limited number of hospitals
15 to ensure the quality, availability, and cost-effectiveness of
16 the such service. Examples of this such service include, but
17 are not limited to, pediatric cardiac catheterization,
18 pediatric open-heart surgery, organ transplantation, specialty
19 burn units, neonatal intensive care units, comprehensive
20 rehabilitation, and medical or surgical services that which
21 are experimental or developmental in nature to the extent that
22 providing the the provision of such services is not yet
23 contemplated within the commonly accepted course of diagnosis
24 or treatment for the condition addressed by a given service.
25 The agency shall establish by rule a list of all tertiary
26 health services.

27 ~~(18) "Regional area" means any of those regional~~
28 ~~health planning areas established by the agency to which local~~
29 ~~and district health planning funds are directed to local~~
30 ~~health councils through the General Appropriations Act.~~

31

1 Section 3. Section 408.033, Florida Statutes, is
2 amended to read:

3 408.033 Local and state health planning.--

4 (1) LOCAL HEALTH COUNCILS.--

5 (a) Local health councils are ~~hereby~~ established as
6 public or private nonprofit agencies serving the counties of a
7 district ~~or regional area of the agency~~. The members of each
8 council shall be appointed in an equitable manner by the
9 county commissions having jurisdiction in the respective
10 district. Each council shall be composed of a number of
11 persons equal to 1 1/2 times the number of counties that
12 ~~which~~ compose the district or 12 members, whichever is
13 greater. Each county in a district shall be entitled to at
14 least one member on the council. The balance of the
15 membership of the council shall be allocated among the
16 counties of the district on the basis of population rounded to
17 the nearest whole number; except that in a district composed
18 of only two counties, no county shall have fewer than four
19 members. The appointees shall be representatives of health
20 care providers, health care purchasers, and nongovernmental
21 health care consumers, but not excluding elected government
22 officials. The members of the consumer group shall include a
23 representative number of persons over 60 years of age. A
24 majority of council members shall consist of health care
25 purchasers and health care consumers. The local health
26 council shall provide each county commission a schedule for
27 appointing council members to ensure that council membership
28 complies with the requirements of this paragraph. The members
29 of the local health council shall elect a chair. Members shall
30 serve for terms of 2 years and may be eligible for
31 reappointment.

- 1 (b) Each local health council may:
- 2 1. Develop a district ~~or regional area~~ health plan
- 3 that permits each local health council to develop strategies
- 4 and set priorities for implementation based on its unique
- 5 local health needs. ~~The district or regional area health plan~~
- 6 ~~must contain preferences for the development of health~~
- 7 ~~services and facilities, which may be considered by the agency~~
- 8 ~~in its review of certificate-of-need applications. The~~
- 9 ~~district health plan shall be submitted to the agency and~~
- 10 ~~updated periodically. The district health plans shall use a~~
- 11 ~~uniform format and be submitted to the agency according to a~~
- 12 ~~schedule developed by the agency in conjunction with the local~~
- 13 ~~health councils. The schedule must provide for the development~~
- 14 ~~of district health plans by major sections over a multiyear~~
- 15 ~~period. The elements of a district plan which are necessary~~
- 16 ~~to the review of certificate-of-need applications for proposed~~
- 17 ~~projects within the district may be adopted by the agency as a~~
- 18 ~~part of its rules.~~
- 19 2. Advise the agency on health care issues and
- 20 resource allocations.
- 21 3. Promote public awareness of community health needs,
- 22 emphasizing health promotion and cost-effective health service
- 23 selection.
- 24 4. Collect data and conduct analyses and studies
- 25 related to health care needs of the district, including the
- 26 needs of medically indigent persons, and assist the agency and
- 27 other state agencies in carrying out data collection
- 28 activities that relate to the functions in this subsection.
- 29 5. Monitor the onsite construction progress, if any,
- 30 of certificate-of-need approved projects and report council
- 31 findings to the agency on forms provided by the agency.

1 6. Advise and assist any regional planning councils
2 within each district that have elected to address health
3 issues in their strategic regional policy plans with the
4 development of the health element of the plans to address the
5 health goals and policies in the State Comprehensive Plan.

6 7. Advise and assist local governments within each
7 district on the development of an optional health plan element
8 of the comprehensive plan provided in chapter 163, to assure
9 compatibility with the health goals and policies in the State
10 Comprehensive Plan and district health plan. To facilitate
11 the implementation of this section, the local health council
12 shall annually provide the local governments in its service
13 area, upon request, with:

14 a. A copy and appropriate updates of the district
15 health plan;

16 b. A report of hospital and nursing home utilization
17 statistics for facilities within the local government
18 jurisdiction; and

19 c. Applicable agency rules and calculated need
20 methodologies for health facilities and services regulated
21 under s. 408.034 for the district served by the local health
22 council.

23 8. Monitor and evaluate the adequacy, appropriateness,
24 and effectiveness, within the district, of local, state,
25 federal, and private funds distributed to meet the needs of
26 the medically indigent and other underserved population
27 groups.

28 9. In conjunction with the Department of Health Agency
29 ~~for Health Care Administration~~, plan for services at the local
30 level for persons infected with the human immunodeficiency
31 virus.

1 10. Provide technical assistance to encourage and
2 support activities by providers, purchasers, consumers, and
3 local, regional, and state agencies in meeting the health care
4 goals, objectives, and policies adopted by the local health
5 council.

6 11. Provide the agency with data required by rule for
7 the review of certificate-of-need applications and the
8 projection of need for health services and facilities in the
9 district.

10 (c) Local health councils may conduct public hearings
11 under ~~pursuant to~~ s. 408.039(3)(b).

12 (d) Each local health council shall enter into a
13 memorandum of agreement with each regional planning council in
14 its district that elects to address health issues in its
15 strategic regional policy plan. In addition, each local
16 health council shall enter into a memorandum of agreement with
17 each local government that includes an optional health element
18 in its comprehensive plan. Each memorandum of agreement must
19 specify the manner in which each local government, regional
20 planning council, and local health council will coordinate its
21 activities to ensure a unified approach to health planning and
22 implementation efforts.

23 (e) Local health councils may employ personnel or
24 contract for staffing services with persons who possess
25 appropriate qualifications to carry out the councils'
26 purposes. However, these ~~such~~ personnel are not state
27 employees.

28 (f) Personnel of the local health councils shall
29 provide an annual orientation to council members about council
30 member responsibilities. ~~The orientation shall include~~
31 ~~presentations and participation by agency staff.~~

1 (g) Each local health council is authorized to accept
2 and receive, in furtherance of its health planning functions,
3 funds, grants, and services from governmental agencies and
4 from private or civic sources and to perform studies related
5 to local health planning in exchange for such funds, grants,
6 or services. Each local health council shall, no later than
7 January 30 of each year, render an accounting of the receipt
8 and disbursement of such funds received by it to the
9 Department of Health agency. The Department of Health agency
10 shall consolidate all such reports and submit such
11 consolidated report to the Legislature no later than March 1
12 of each year. ~~Funds received by a local health council~~
13 ~~pursuant to this paragraph shall not be deemed to be a~~
14 ~~substitute for, or an offset against, any funding provided~~
15 ~~pursuant to subsection (2).~~

16 (2) FUNDING.--

17 (a) The Legislature intends that the cost of local
18 health councils be borne by ~~application fees for certificates~~
19 ~~of need and~~ by assessments on selected health care facilities
20 subject to facility licensure by the Agency for Health Care
21 Administration, including abortion clinics, assisted living
22 facilities, ambulatory surgical centers, birthing centers,
23 clinical laboratories except community nonprofit blood banks
24 and clinical laboratories operated by practitioners for
25 exclusive use regulated under s. 483.035, home health
26 agencies, hospices, hospitals, intermediate care facilities
27 for the developmentally disabled, nursing homes, and
28 multiphasic testing centers and by assessments on
29 organizations subject to certification by the agency under
30 ~~pursuant to~~ chapter 641, part III, including health
31 maintenance organizations and prepaid health clinics.

1 (b)1. A hospital licensed under chapter 395, a nursing
2 home licensed under chapter 400, and an assisted living
3 facility licensed under chapter 400 shall be assessed an
4 annual fee based on number of beds.

5 2. All other facilities and organizations listed in
6 paragraph (a) shall each be assessed an annual fee of \$150.

7 3. Facilities operated by the Department of Children
8 and Family Services, the Department of Health, or the
9 Department of Corrections and any hospital that ~~which~~ meets
10 the definition of rural hospital under ~~pursuant to~~ s. 395.602
11 are exempt from the assessment required in this subsection.

12 (c)1. The agency shall, by rule, establish fees for
13 hospitals and nursing homes based on an assessment of \$2 per
14 bed. However, no ~~such~~ facility shall be assessed more than a
15 total of \$500 under this subsection.

16 2. The agency shall, by rule, establish fees for
17 assisted living facilities based on an assessment of \$1 per
18 bed. However, no ~~such~~ facility shall be assessed more than a
19 total of \$150 under this subsection.

20 3. The agency shall, by rule, establish an annual fee
21 of \$150 for all other facilities and organizations listed in
22 paragraph (a).

23 (d) The agency shall, by rule, establish a facility
24 billing and collection process for the billing and collection
25 of the health facility fees authorized by this subsection.

26 (e) A health facility which is assessed a fee under
27 this subsection is subject to a fine of \$100 per day for each
28 day in which the facility is late in submitting its annual fee
29 up to maximum of the annual fee owed by the facility. A
30 facility which refuses to pay the fee or fine is subject to
31 the forfeiture of its license.

1 (f) The agency shall deposit in the Health Care Trust
2 Fund all health care facility assessments that are assessed
3 under this subsection and ~~proceeds from the~~
4 ~~certificate-of-need application fees.~~ The agency shall
5 transfer these funds to the Department of Health for an amount
6 ~~sufficient to maintain the aggregate funding of level for the~~
7 ~~local health councils as specified in the General~~
8 ~~Appropriations Act.~~ The remaining certificate-of-need
9 application fees shall be used only for the purpose of
10 administering the certificate-of-need program ~~Health Facility~~
11 ~~and Services Development Act.~~

12 (3) DUTIES AND RESPONSIBILITIES OF THE AGENCY.--

13 (a) The agency, ~~in conjunction with the local health~~
14 ~~councils,~~ is responsible for the coordinated planning of
15 health care services in the state.

16 (b) The agency shall develop and maintain a
17 comprehensive health care database for the purpose of health
18 planning and for certificate-of-need determinations. The
19 agency or its contractor is authorized to require the
20 submission of information from health facilities, health
21 service providers, and licensed health professionals which is
22 determined by the agency, through rule, to be necessary for
23 meeting the agency's responsibilities as established in this
24 section.

25 ~~(c) The agency shall assist personnel of the local~~
26 ~~health councils in providing an annual orientation to council~~
27 ~~members about council member responsibilities.~~

28 (c)(d) The Department of Health ~~agency~~ shall contract
29 with the local health councils for the services specified in
30 subsection (1). All contract funds shall be distributed
31 according to an allocation plan developed by the Department of

1 ~~Health agency that provides for a minimum and equal funding~~
2 ~~base for each local health council. Any remaining funds shall~~
3 ~~be distributed based on adjustments for workload. The agency~~
4 ~~may also make grants to or reimburse local health councils~~
5 ~~from federal funds provided to the state for activities~~
6 ~~related to those functions set forth in this section. The~~
7 Department of Health ~~agency~~ may withhold funds from a local
8 health council or cancel its contract with a local health
9 council which does not meet performance standards agreed upon
10 by the Department of Health ~~agency~~ and local health councils.

11 Section 4. Subsections (1) and (2) of section 408.034,
12 Florida Statutes, are amended to read:

13 408.034 Duties and responsibilities of agency;
14 rules.--

15 (1) The agency is designated as the single state
16 agency to issue, revoke, or deny certificates of need and to
17 issue, revoke, or deny exemptions from certificate-of-need
18 review in accordance with ~~the district plans and~~ present and
19 future federal and state statutes. The agency is designated
20 as the state health planning agency for purposes of federal
21 law.

22 (2) In the exercise of its authority to issue licenses
23 to health care facilities and health service providers, as
24 provided under chapters 393, 395, and parts II and VI of
25 chapter 400, the agency may not issue a license to any health
26 care facility or health service provider that, ~~hospice, or~~
27 ~~part of a health care facility which~~ fails to receive a
28 certificate of need or an exemption for the licensed facility
29 or service.

30 Section 5. Section 408.035, Florida Statutes, is
31 amended to read:

1 408.035 Review criteria.--The agency shall determine
2 the reviewability of applications and shall review
3 applications for certificate-of-need determinations for health
4 care facilities and health services in context with the
5 following criteria:

6 (1) The need for the health care facilities and health
7 services being proposed ~~in relation to the applicable district~~
8 ~~health plan.~~

9 (2) The availability, quality of care, accessibility,
10 and extent of utilization of existing health care facilities
11 and health services in the service district of the applicant.

12 (3) The ability of the applicant to provide quality of
13 care and the applicant's record of providing quality of care.

14 ~~(4) The need in the service district of the applicant~~
15 ~~for special health care services that are not reasonably and~~
16 ~~economically accessible in adjoining areas.~~

17 ~~(5) The needs of research and educational facilities,~~
18 ~~including, but not limited to, facilities with institutional~~
19 ~~training programs and community training programs for health~~
20 ~~care practitioners and for doctors of osteopathic medicine and~~
21 ~~medicine at the student, internship, and residency training~~
22 ~~levels.~~

23 (4)~~(6)~~ The availability of resources, including health
24 personnel, management personnel, and funds for capital and
25 operating expenditures, for project accomplishment and
26 operation.

27 (5)~~(7)~~ The extent to which the proposed services will
28 enhance access to health care for residents of the service
29 district.

30 (6)~~(8)~~ The immediate and long-term financial
31 feasibility of the proposal.

1 ~~(7)(9)~~ The extent to which the proposal will foster
2 competition that promotes quality and cost-effectiveness.

3 ~~(8)(10)~~ The costs and methods of the proposed
4 construction, including the costs and methods of energy
5 provision and the availability of alternative, less costly, or
6 more effective methods of construction.

7 ~~(9)(11)~~ The applicant's past and proposed provision of
8 health care services to Medicaid patients and the medically
9 indigent.

10 ~~(10)(12)~~ The applicant's designation as a Gold Seal
11 Program nursing facility under ~~pursuant to~~ s. 400.235, when
12 the applicant is requesting additional nursing home beds at
13 that facility.

14 Section 6. Section 408.036, Florida Statutes, is
15 amended to read:

16 408.036 Projects subject to review; exemptions.--

17 (1) APPLICABILITY.--Unless exempt under subsection
18 (3), all health-care-related projects, as described in
19 paragraphs ~~(a)-(e)(a)-(h)~~, are subject to review and must
20 file an application for a certificate of need with the agency.
21 The agency is exclusively responsible for determining whether
22 a health-care-related project is subject to review under ss.
23 408.031-408.045.

24 (a) The addition of community nursing home or ICF/DD
25 beds by new construction or alteration.

26 (b) The new construction or establishment of
27 additional health care facilities, including a replacement
28 health care facility when the proposed project site is not
29 located on the same site as, or within 1 mile of, the existing
30 health care facility, if the number of beds in each licensed
31 bed category will not increase.

1 (c) The conversion from one type of health care
2 facility to another, including the conversion from a general
3 hospital, a specialty hospital, or long-term care hospital.

4 ~~(d) An increase in the total licensed bed capacity of~~
5 ~~a health care facility.~~

6 (d)(e) The establishment of a hospice or hospice
7 inpatient facility, except as provided in s. 408.043.

8 ~~(f) The establishment of inpatient health services by~~
9 ~~a health care facility, or a substantial change in such~~
10 ~~services.~~

11 ~~(g) An increase in the number of beds for acute care,~~
12 ~~nursing home care beds, specialty burn units, neonatal~~
13 ~~intensive care units, comprehensive rehabilitation, mental~~
14 ~~health services, or hospital-based distinct part skilled~~
15 ~~nursing units, or at a long-term care hospital.~~

16 (e)(h) The establishment of tertiary health services.

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

20 ~~(a) Research, education, and training programs.~~

21 ~~(b) Shared services contracts or projects.~~

22 (a)(e) A transfer of a certificate of need, except
23 that, when an existing hospital is acquired by a purchaser,
24 all certificates of need issued to the hospital which are not
25 yet operational are acquired by the purchaser without need for
26 a transfer.

27 (b) Replacement of a community nursing home or ICF/DD
28 when the proposed project site is located within the same
29 district and the same planning area of the health care
30 facility being replaced, if the number of licensed beds in the
31

1 proposed project is the same as that of the facility being
2 replaced.

3 ~~(d) A 50-percent increase in nursing home beds for a~~
4 ~~facility incorporated and operating in this state for at least~~
5 ~~60 years on or before July 1, 1988, which has a licensed~~
6 ~~nursing home facility located on a campus providing a variety~~
7 ~~of residential settings and supportive services. The~~
8 ~~increased nursing home beds shall be for the exclusive use of~~
9 ~~the campus residents. Any application on behalf of an~~
10 ~~applicant meeting this requirement shall be subject to the~~
11 ~~base fee of \$5,000 provided in s. 408.038.~~

12 ~~(e) Replacement of a health care facility when the~~
13 ~~proposed project site is located in the same district and~~
14 ~~within a 1-mile radius of the replaced health care facility.~~

15 ~~(f) The conversion of mental health services beds~~
16 ~~licensed under chapter 395 or hospital-based distinct part~~
17 ~~skilled nursing unit beds to general acute care beds; the~~
18 ~~conversion of mental health services beds between or among the~~
19 ~~licensed bed categories defined as beds for mental health~~
20 ~~services; or the conversion of general acute care beds to beds~~
21 ~~for mental health services.~~

22 ~~1. Conversion under this paragraph shall not establish~~
23 ~~a new licensed bed category at the hospital but shall apply~~
24 ~~only to categories of beds licensed at that hospital.~~

25 ~~2. Beds converted under this paragraph must be~~
26 ~~licensed and operational for at least 12 months before the~~
27 ~~hospital may apply for additional conversion affecting beds of~~
28 ~~the same type.~~

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

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

12 (b)~~(c)~~ For the conversion of licensed acute care
13 hospital beds to Medicare and Medicaid certified skilled
14 nursing beds in a rural hospital, as defined in s. 395.602, so
15 long as the conversion of the beds does not involve the
16 construction of new facilities. The total number of skilled
17 nursing beds, including swing beds, may not exceed one-half of
18 the total number of licensed beds in the rural hospital as of
19 July 1, 1993. Certified skilled nursing beds designated under
20 this paragraph, excluding swing beds, shall be included in the
21 community nursing home bed inventory. A rural hospital which
22 subsequently decertifies any acute care beds exempted under
23 this paragraph shall notify the agency of the decertification,
24 and the agency shall adjust the community nursing home bed
25 inventory accordingly.

26 (c)~~(d)~~ For the addition of nursing home beds at a
27 skilled nursing facility that is part of a retirement
28 community that provides a variety of residential settings and
29 supportive services and that has been incorporated and
30 operated in this state for at least 65 years on or before July
31 1, 1994. All nursing home beds must not be available to the

1 public but must be for the exclusive use of the community
2 residents.

3 ~~(e) For an increase in the bed capacity of a nursing~~
4 ~~facility licensed for at least 50 beds as of January 1, 1994,~~
5 ~~under part II of chapter 400 which is not part of a continuing~~
6 ~~care facility if, after the increase, the total licensed bed~~
7 ~~capacity of that facility is not more than 60 beds and if the~~
8 ~~facility has been continuously licensed since 1950 and has~~
9 ~~received a superior rating on each of its two most recent~~
10 ~~licensure surveys.~~

11 (d)(f) For an inmate health care facility built by or
12 for the exclusive use of the Department of Corrections as
13 provided in chapter 945. This exemption expires when the ~~such~~
14 facility is converted to other uses.

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

17 ~~(h) For the delicensure of beds, upon 30 days' written~~
18 ~~notice to the agency. A request for exemption submitted under~~
19 ~~this paragraph must identify the number, the category of beds,~~
20 ~~and the name of the facility in which the beds to be~~
21 ~~delicensed are located.~~

22 (e)(i) For the provision of adult inpatient diagnostic
23 cardiac catheterization services in a hospital.

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

27 a. The applicant must certify it will not provide
28 therapeutic cardiac catheterization pursuant to the grant of
29 the exemption.

30 b. The applicant must certify it will meet and
31 continuously maintain the minimum licensure requirements

1 adopted by the agency governing such programs under ~~pursuant~~
2 to subparagraph 2.

3 c. The applicant must certify it will provide a
4 minimum of 2 percent of its services to charity and Medicaid
5 patients.

6 2. The agency shall adopt licensure requirements by
7 rule which govern the operation of adult inpatient diagnostic
8 cardiac catheterization programs established under ~~pursuant to~~
9 the exemption provided in this paragraph. The rules shall
10 ensure that the ~~such~~ programs:

11 a. Perform only adult inpatient diagnostic cardiac
12 catheterization services authorized by the exemption and will
13 not provide therapeutic cardiac catheterization or any other
14 services not authorized by the exemption.

15 b. Maintain sufficient appropriate equipment and
16 health personnel to ensure quality and safety.

17 c. Maintain appropriate times of operation and
18 protocols to ensure availability and appropriate referrals in
19 the event of emergencies.

20 d. Maintain appropriate program volumes to ensure
21 quality and safety.

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

24 3.a. The exemption provided by this paragraph shall
25 not apply unless the agency determines that the program is in
26 compliance with the requirements of subparagraph 1. and that
27 the program will, after beginning operation, continuously
28 comply with the rules adopted under ~~pursuant to~~ subparagraph
29 2. The agency shall monitor the ~~such~~ programs to ensure
30 compliance with the requirements of subparagraph 2.

31

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

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

8 (III) If the exemption for a program expires under
9 ~~pursuant to~~ sub-sub-subparagraph (I) or sub-sub-subparagraph
10 (II), the agency may ~~shall~~ not grant an exemption under
11 ~~pursuant to~~ this paragraph for an adult inpatient diagnostic
12 cardiac catheterization program located at the same hospital
13 until 2 years following the date of the determination by the
14 agency that the program failed to comply with the rules
15 adopted under ~~pursuant to~~ subparagraph 2.

16 (f)~~(j)~~ For mobile surgical facilities and related
17 health care services provided under contract with the
18 Department of Corrections or a private correctional facility
19 operating under ~~pursuant to~~ chapter 957.

20 (g)~~(k)~~ For state veterans' nursing homes operated by
21 or on behalf of the Florida Department of Veterans' Affairs in
22 accordance with part II of chapter 296 for which at least 50
23 percent of the construction cost is federally funded and for
24 which the Federal Government pays a per diem rate not to
25 exceed one-half of the cost of the veterans' care in the ~~such~~
26 state nursing homes. These beds shall not be included in the
27 nursing home bed inventory.

28 (h)~~(l)~~ For combination within one nursing home
29 facility of the beds or services authorized by two or more
30 certificates of need issued in the same planning subdistrict.
31 An exemption granted under this paragraph shall extend the

1 validity period of the certificates of need to be consolidated
2 by the length of the period beginning upon submission of the
3 exemption request and ending with issuance of the exemption.
4 The longest validity period among the certificates shall be
5 applicable to each of the combined certificates.

6 (i)~~(m)~~ For division into two or more nursing home
7 facilities of beds or services authorized by one certificate
8 of need issued in the same planning subdistrict. An exemption
9 granted under this paragraph shall extend the validity period
10 of the certificate of need to be divided by the length of the
11 period beginning upon submission of the exemption request and
12 ending with issuance of the exemption.

13 ~~(n) For the addition of hospital beds licensed under~~
14 ~~chapter 395 for acute care, mental health services, or a~~
15 ~~hospital-based distinct part skilled nursing unit in a number~~
16 ~~that may not exceed 10 total beds or 10 percent of the~~
17 ~~licensed capacity of the bed category being expanded,~~
18 ~~whichever is greater. Beds for specialty burn units, neonatal~~
19 ~~intensive care units, or comprehensive rehabilitation, or at a~~
20 ~~long-term care hospital, may not be increased under this~~
21 ~~paragraph.~~

22 ~~1. In addition to any other documentation otherwise~~
23 ~~required by the agency, a request for exemption submitted~~
24 ~~under this paragraph must:~~

25 ~~a. Certify that the prior 12-month average occupancy~~
26 ~~rate for the category of licensed beds being expanded at the~~
27 ~~facility meets or exceeds 80 percent or, for a hospital-based~~
28 ~~distinct part skilled nursing unit, the prior 12-month average~~
29 ~~occupancy rate meets or exceeds 96 percent.~~

30 ~~b. Certify that any beds of the same type authorized~~
31 ~~for the facility under this paragraph before the date of the~~

1 ~~current request for an exemption have been licensed and~~
2 ~~operational for at least 12 months.~~

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

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

9 ~~(o) For the addition of acute care beds, as authorized~~
10 ~~by rule consistent with s. 395.003(4), in a number that may~~
11 ~~not exceed 10 total beds or 10 percent of licensed bed~~
12 ~~capacity, whichever is greater, for temporary beds in a~~
13 ~~hospital that has experienced high seasonal occupancy within~~
14 ~~the prior 12-month period or in a hospital that must respond~~
15 ~~to emergency circumstances.~~

16 ~~(j)(p)~~ For the addition of nursing home beds licensed
17 under chapter 400 in a number not exceeding 10 total beds or
18 10 percent of the number of beds licensed in the facility
19 being expanded, whichever is greater.

20 1. In addition to any other documentation required by
21 the agency, a request for exemption submitted under this
22 paragraph must:

23 a. Effective until June 30, 2001, certify that the
24 facility has not had any class I or class II deficiencies
25 within the 30 months preceding the request for addition.

26 b. Effective on July 1, 2001, certify that the
27 facility has been designated as a Gold Seal nursing home under
28 s. 400.235.

29 c. Certify that the prior 12-month average occupancy
30 rate for the nursing home beds at the facility meets or
31 exceeds 96 percent.

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

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

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

11 (k) For establishing a Level II neonatal intensive
12 care unit with at least 10 beds, upon documentation to the
13 agency that the applicant hospital had a minimum of 1,500
14 births during the previous 12 months, or establishing a Level
15 III neonatal intensive care unit with at least 15 beds, upon
16 documentation to the agency that the applicant hospital has a
17 Level II neonatal intensive care unit of at least 10 beds and
18 had a minimum of 3,500 births during the previous 12 months,
19 if the applicant commits to providing services to Medicaid and
20 charity care patients at a level equal to or greater than the
21 district average. This commitment is subject to s. 408.040.

22 (l) For adding comprehensive medical rehabilitation or
23 mental health services or beds, if the applicant commits to
24 providing services to Medicaid or charity care patients at a
25 level equal to or greater than the district average. This
26 commitment is subject to s. 408.040.

27 ~~(q) For establishment of a specialty hospital offering~~
28 ~~a range of medical service restricted to a defined age or~~
29 ~~gender group of the population or a restricted range of~~
30 ~~services appropriate to the diagnosis, care, and treatment of~~
31 ~~patients with specific categories of medical illnesses or~~

1 ~~disorders, through the transfer of beds and services from an~~
2 ~~existing hospital in the same county.~~

3 ~~(r) For the conversion of hospital-based Medicare and~~
4 ~~Medicaid certified skilled nursing beds to acute care beds, if~~
5 ~~the conversion does not involve the construction of new~~
6 ~~facilities.~~

7 ~~(s)1. For an adult open-heart-surgery program to be~~
8 ~~located in a new hospital provided the new hospital is being~~
9 ~~established in the location of an existing hospital with an~~
10 ~~adult open-heart-surgery program, the existing hospital and~~
11 ~~the existing adult open-heart-surgery program are being~~
12 ~~relocated to a replacement hospital, and the replacement~~
13 ~~hospital will utilize a closed-staff model. A hospital is~~
14 ~~exempt from the certificate-of-need review for the~~
15 ~~establishment of an open-heart-surgery program if the~~
16 ~~application for exemption submitted under this paragraph~~
17 ~~complies with the following criteria:~~

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

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

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

1 ~~d. The applicant is a newly licensed hospital in a~~
2 ~~physical location previously owned and licensed to a hospital~~
3 ~~performing more than 300 open-heart procedures each year,~~
4 ~~including heart transplants.~~

5 ~~e. The applicant must certify that it can perform more~~
6 ~~than 300 diagnostic cardiac catheterization procedures per~~
7 ~~year, combined inpatient and outpatient, by the end of the~~
8 ~~third year of its operation.~~

9 ~~f. The applicant's payor mix at a minimum reflects the~~
10 ~~community average for Medicaid, charity care, and self-pay~~
11 ~~patients or the applicant must certify that it will provide a~~
12 ~~minimum of 5 percent of Medicaid, charity care, and self-pay~~
13 ~~to open-heart surgery patients.~~

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

18 ~~h. In order to ensure continuity of available~~
19 ~~services, the applicant of the newly licensed hospital may~~
20 ~~apply for this certificate-of-need before taking possession of~~
21 ~~the physical facilities. The effective date of the~~
22 ~~certificate-of-need will be concurrent with the effective date~~
23 ~~of the newly issued hospital license.~~

24 ~~2. By December 31, 2004, and annually thereafter, the~~
25 ~~agency shall submit a report to the Legislature providing~~
26 ~~information concerning the number of requests for exemption~~
27 ~~received under this paragraph and the number of exemptions~~
28 ~~granted or denied.~~

29 ~~3. This paragraph is repealed effective January 1,~~
30 ~~2008.~~

31

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

11 ~~a. The applicant must certify that it will meet and~~
12 ~~continuously maintain the minimum licensure requirements~~
13 ~~adopted by the agency governing adult open heart programs,~~
14 ~~including the most current guidelines of the American College~~
15 ~~of Cardiology and American Heart Association Guidelines for~~
16 ~~Adult Open Heart Programs.~~

17 ~~b. The applicant must certify that it will maintain~~
18 ~~sufficient appropriate equipment and health personnel to~~
19 ~~ensure quality and safety.~~

20 ~~c. The applicant must certify that it will maintain~~
21 ~~appropriate times of operation and protocols to ensure~~
22 ~~availability and appropriate referrals in the event of~~
23 ~~emergencies.~~

24 ~~d. The applicant can demonstrate that it is referring~~
25 ~~300 or more patients per year from the hospital, including the~~
26 ~~emergency room, for cardiac services at a hospital with~~
27 ~~cardiac services, or that the average wait for transfer for 50~~
28 ~~percent or more of the cardiac patients exceeds 4 hours.~~

29 ~~e. The applicant is a general acute care hospital that~~
30 ~~is in operation for 3 years or more.~~

31

1 ~~f. The applicant is performing more than 300~~
2 ~~diagnostic cardiac catheterization procedures per year,~~
3 ~~combined inpatient and outpatient.~~

4 ~~g. The applicant's payor mix at a minimum reflects the~~
5 ~~community average for Medicaid, charity care, and self-pay~~
6 ~~patients or the applicant must certify that it will provide a~~
7 ~~minimum of 5 percent of Medicaid, charity care, and self-pay~~
8 ~~to open-heart-surgery patients.~~

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

13 ~~2. By December 31, 2004, and annually thereafter, the~~
14 ~~Agency for Health Care Administration shall submit a report to~~
15 ~~the Legislature providing information concerning the number of~~
16 ~~requests for exemption received under this paragraph and the~~
17 ~~number of exemptions granted or denied.~~

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

24 (5) NOTIFICATION.--Health care facilities and
25 providers must notify the agency of the following:

26 (a) Replacement of a health care facility when the
27 proposed project site is located in the same district and on
28 the existing health care facility site or within a 1-mile
29 radius of the replaced health care facility, if the number and
30 type of beds do not increase.

31

1 (b) The termination of a health care service, upon 30
2 days' written notice to the agency.

3 (c) The addition or delicensure of beds.

4
5 Notification under this subsection may be made at any time
6 before the action described, by electronic, facsimile, or
7 written means.

8 Section 7. Section 408.0361, Florida Statutes, is
9 amended to read:

10 408.0361 Diagnostic cardiac catheterization services
11 providers; compliance with guidelines and requirements.--

12 (1) Each provider of diagnostic cardiac
13 catheterization services shall comply with the requirements of
14 s. 408.036(3)(e)2.a.-d.s. ~~408.036(3)(i)2.a.-d.~~, and rules of
15 the agency for ~~Health Care Administration~~ governing the
16 operation of adult inpatient diagnostic cardiac
17 catheterization programs, including the most recent guidelines
18 of the American College of Cardiology and American Heart
19 Association Guidelines for Cardiac Catheterization and Cardiac
20 Catheterization Laboratories.

21 (2) The agency shall adopt rules for licensure
22 standards for adult interventional cardiology services and
23 burn units licensed under chapter 395. The rules shall
24 consider at a minimum:

25 (a) Staffing;

26 (b) Equipment;

27 (c) Physical plant;

28 (d) Operating protocols;

29 (e) Provision of services to Medicaid and charity care
30 patients;

31 (f) Accreditation;

- 1 (g) Licensure period;
2 (h) Fees; and
3 (i) Enforcement of minimum standards.
4

5 Any provider holding a certificate of need on July 1, 2004,
6 and any provider in receipt of a notice of intent to grant a
7 certificate of need or a final order of the agency granting a
8 certificate of need for an adult interventional cardiology
9 service or burn unit shall be exempt from complying with the
10 rules for 2 years following the date of its next license
11 renewal. Thereafter, each provider must meet the licensure
12 standards for each license renewal.

13 (3) When adopting rules for adult interventional
14 cardiology services, the agency shall include rules that allow
15 for:

16 (a) The establishment of two hospital program
17 licensure levels: a Level I program authorizing the
18 performance of adult percutaneous cardiac intervention without
19 on-site cardiac surgery and a Level II program authorizing the
20 performance of percutaneous cardiac intervention with on-site
21 cardiac surgery.

22 (b) A hospital seeking a Level I program,
23 demonstration that for the most recent 12-month period as
24 reported to the agency it has provided a minimum of 300 adult
25 inpatient and outpatient diagnostic cardiac catheterizations
26 and that it has a formalized, written transfer agreement with
27 a hospital that has a Level II program, including written
28 transport protocols to ensure safe and efficient transfer of a
29 patient within 60 minutes.

30 (c) A hospital seeking a Level II program,
31 demonstration that for the most recent 12-month period as

1 reported to the agency that it has performed a minimum of
2 1,100 adult inpatient and outpatient diagnostic cardiac
3 catheterizations, or has discharged at least 800 patients with
4 the primary diagnosis of ischemic heart disease.

5 (d) A demonstration of sufficient trained staff,
6 equipment, and operating procedures to assure patient quality
7 and safety.

8 (e) The establishment of appropriate hours of
9 operation and protocols to ensure availability and timely
10 referral in the event of emergencies.

11 (f) A demonstration of a plan to provide services to
12 Medicaid and charity care patients.

13 (4) After a hospital's cardiac interventional program
14 has been operational for 12 consecutive months, and the
15 risk-adjusted mortality for coronary bypass surgery for any
16 successive 12-month period exceeds, by more than 1.75 times,
17 the national risk-adjusted mortality rate for coronary bypass
18 surgery, as reported to the American Society of Thoracic
19 Surgeons, in the first 2 years of operation of the hospital's
20 Level II program, or by more than 1.25 times the national risk
21 adjusted mortality rate for coronary bypass surgery, as
22 reported by the American Society of Thoracic Surgeons, in any
23 successive 12-month period after the second year of operation,
24 the hospital shall perform a 30-day focused review of its
25 Level II program with the intention of reducing the
26 risk-adjusted mortality rate to reasonably acceptable levels.
27 If mortality levels do not return to reasonably acceptable
28 levels, the agency may initiate action up to and including
29 suspension or revocation of licensure of the Level II program.

30 Section 8. The Secretary of Health Care Administration
31 shall appoint an advisory group to study the issue of

1 replacing certificate-of-need review of organ transplant
2 programs operating under chapter 408, Florida Statutes, with
3 licensure regulation of organ transplant programs under
4 chapter 395, Florida Statutes. The advisory group must include
5 three representatives of organ transplant providers, one
6 representative of an organ procurement organization, one
7 representative of the Division of Health Quality Assurance,
8 one representative of the Medicaid program, and one organ
9 transplant patient advocate. The advisory group shall, at a
10 minimum, make recommendations regarding access to organs,
11 delivery of services to Medicaid and charity care patients,
12 staff training, and resource requirements for organ transplant
13 programs in a report submitted to the Governor, the Secretary
14 of Health Care Administration, and the Legislature by July 1,
15 2005.

16 Section 9. Section 408.038, Florida Statutes, is
17 amended to read:

18 408.038 Fees.--The agency shall assess fees on
19 certificate-of-need applications. The ~~Such~~ fees shall be for
20 the purpose of funding ~~the functions of the local health~~
21 ~~councils and~~ the activities of the agency and shall be
22 allocated as provided in s. 408.033. The fee shall be
23 determined as follows:

24 (1) A minimum base fee of \$10,000~~\$5,000~~.

25 (2) In addition to the base fee of \$10,000~~\$5,000~~,
26 0.015 of each dollar of proposed expenditure, except that a
27 fee may not exceed \$50,000~~\$22,000~~.

28 Section 10. Section 408.039, Florida Statutes, is
29 amended to read:

30 408.039 Review process.--The review process for
31 certificates of need shall be as follows:

1 (1) REVIEW CYCLES.--The agency by rule shall provide
2 for applications to be submitted on a timetable or cycle
3 basis; provide for review on a timely basis; and provide for
4 all completed applications pertaining to similar types of
5 services or facilities affecting the same service district to
6 be considered in relation to each other no less often than
7 annually ~~two times a year~~.

8 (2) LETTERS OF INTENT.--

9 (a) At least 30 days before ~~prior to~~ filing an
10 application, a letter of intent shall be filed by the
11 applicant with the agency, respecting the development of a
12 proposal subject to review. No letter of intent is required
13 for expedited projects as defined by rule by the agency.

14 (b) The agency shall provide a mechanism by which
15 applications may be filed to compete with proposals described
16 in filed letters of intent.

17 (c) Letters of intent must describe the proposal;
18 specify the number of beds sought, if any; identify the
19 services to be provided and the specific subdistrict location;
20 and identify the applicant.

21 (d) Within 21 days after filing a letter of intent,
22 the agency shall publish notice of the filing of letters of
23 intent in the Florida Administrative Weekly and notice that,
24 if requested, a public hearing shall be held at the local
25 level within 21 days after the application is deemed complete.
26 Notices under this paragraph must contain due dates applicable
27 to the cycle for filing applications and for requesting a
28 hearing.

29 (3) APPLICATION PROCESSING.--

30 (a) An applicant shall file an application with the
31 agency, and shall furnish a copy of the application to ~~the~~

1 ~~local health council~~ and the agency. Within 15 days after the
2 applicable application filing deadline established by agency
3 rule, the staff of the agency shall determine if the
4 application is complete. If the application is incomplete,
5 the staff shall request specific information from the
6 applicant necessary for the application to be complete;
7 however, the staff may make only one ~~such~~ request. If the
8 requested information is not filed with the agency within 21
9 days of the receipt of the staff's request, the application
10 shall be deemed incomplete and deemed withdrawn from
11 consideration.

12 (b) Upon the request of any applicant or substantially
13 affected person within 14 days after notice that an
14 application has been filed, a public hearing may be held at
15 the agency's discretion if the agency determines that a
16 proposed project involves issues of great local public
17 interest. The public hearing shall allow applicants and other
18 interested parties reasonable time to present their positions
19 and to present rebuttal information. A recorded verbatim
20 record of the hearing shall be maintained. The public hearing
21 shall be held at the local level within 21 days after the
22 application is deemed complete.

23 (4) STAFF RECOMMENDATIONS.--

24 (a) The agency's review of and final agency action on
25 applications shall be in accordance with ~~the district health~~
26 ~~plan, and~~ statutory criteria, and the implementing
27 administrative rules. In the application review process, the
28 agency shall give a preference, as defined by rule of the
29 agency, to an applicant that ~~which~~ proposes to develop a
30 nursing home in a nursing home geographically underserved
31 area.

1 (b) Within 60 days after all the applications in a
2 review cycle are determined to be complete, the agency shall
3 issue its State Agency Action Report and Notice of Intent to
4 grant a certificate of need for the project in its entirety,
5 to grant a certificate of need for identifiable portions of
6 the project, or to deny a certificate of need. The State
7 Agency Action Report shall set forth in writing its findings
8 of fact and determinations upon which its decision is based.
9 ~~If a finding of fact or determination by the agency is counter~~
10 ~~to the district health plan of the local health council, the~~
11 ~~agency shall provide in writing its reason for its findings,~~
12 ~~item by item, to the local health council.~~If the agency
13 intends to grant a certificate of need, the State Agency
14 Action Report or the Notice of Intent shall also include any
15 conditions which the agency intends to attach to the
16 certificate of need. The agency shall designate by rule a
17 senior staff person, other than the person who issues the
18 final order, to issue State Agency Action Reports and Notices
19 of Intent.

20 (c) The agency shall publish its proposed decision set
21 forth in the Notice of Intent in the Florida Administrative
22 Weekly within 14 days after the Notice of Intent is issued.

23 (d) If no administrative hearing is requested under
24 ~~pursuant to~~ subsection (5), the State Agency Action Report and
25 the Notice of Intent shall become the final order of the
26 agency. The agency shall provide a copy of the final order to
27 the appropriate local health council.

28 (5) ADMINISTRATIVE HEARINGS.--

29 (a) Within 21 days after publication of notice of the
30 State Agency Action Report and Notice of Intent, any person
31 authorized under paragraph (c) to participate in a hearing may

1 file a request for an administrative hearing; failure to file
2 a request for hearing within 21 days of publication of notice
3 shall constitute a waiver of any right to a hearing and a
4 waiver of the right to contest the final decision of the
5 agency. A copy of the request for hearing shall be served on
6 the applicant.

7 (b) Hearings shall be held in Tallahassee unless the
8 administrative law judge determines that changing the location
9 will facilitate the proceedings. The agency shall assign
10 proceedings requiring hearings to the Division of
11 Administrative Hearings of the Department of Management
12 Services within 10 days after the time has expired for
13 requesting a hearing. Except upon unanimous consent of the
14 parties or upon the granting by the administrative law judge
15 of a motion of continuance, hearings shall commence within 60
16 days after the administrative law judge has been assigned. All
17 parties, except the agency, shall bear their own expense of
18 preparing a transcript. In any application for a certificate
19 of need which is referred to the Division of Administrative
20 Hearings for hearing, the administrative law judge shall
21 complete and submit to the parties a recommended order as
22 provided in ss. 120.569 and 120.57. The recommended order
23 shall be issued within 30 days after the receipt of the
24 proposed recommended orders or the deadline for submission of
25 the ~~such~~ proposed recommended orders, whichever is earlier.
26 The division shall adopt procedures for administrative
27 hearings which shall maximize the use of stipulated facts and
28 shall provide for the admission of prepared testimony.

29 (c) In administrative proceedings challenging the
30 issuance or denial of a certificate of need, only applicants
31 considered by the agency in the same batching cycle are

1 entitled to a comparative hearing on their applications.
2 Existing health care facilities may initiate or intervene in
3 an administrative hearing upon a showing that an established
4 program will be substantially affected by the issuance of any
5 certificate of need, whether reviewed under s. 408.036(1) or
6 (2), to a competing proposed facility or program within the
7 same district.

8 (d) The applicant's failure to strictly comply with
9 the requirements of s. 408.037(1) or paragraph (2)(c) is not
10 cause for dismissal of the application, unless the failure to
11 comply impairs the fairness of the proceeding or affects the
12 correctness of the action taken by the agency.

13 (e) The agency shall issue its final order within 45
14 days after receipt of the recommended order. If the agency
15 fails to take action within this ~~such~~ time, or as otherwise
16 agreed to by the applicant and the agency, the applicant may
17 take appropriate legal action to compel the agency to act.
18 When making a determination on an application for a
19 certificate of need, the agency is specifically exempt from
20 the time limitations provided in s. 120.60(1).

21 (6) JUDICIAL REVIEW.--

22 (a) A party to an administrative hearing for an
23 application for a certificate of need has the right, within
24 not more than 30 days after the date of the final order, to
25 seek judicial review in the District Court of Appeal under
26 ~~pursuant to~~ s. 120.68. The agency shall be a party to this ~~in~~
27 ~~any such~~ proceeding.

28 (b) In the ~~such~~ judicial review, the court shall
29 affirm the final order of the agency, unless the decision is
30 arbitrary, capricious, or not in compliance with ss.
31 408.031-408.045.

1 (c) The court, in its discretion, may award reasonable
2 attorney's fees and costs to the prevailing party if the court
3 finds that there was a complete absence of a justiciable issue
4 of law or fact raised by the losing party.

5 Section 11. Section 408.040, Florida Statutes, is
6 amended to read:

7 408.040 Conditions and monitoring.--

8 (1)(a) The agency may issue a certificate of need or
9 an exemption predicated upon statements of intent expressed by
10 an applicant in the application for a certificate of need or
11 exemption. Any conditions imposed on a certificate of need or
12 an exemption based on such statements of intent shall be
13 stated on the face of the certificate of need or in the
14 exemption approval.

15 (b) The agency may consider, in addition to the other
16 criteria specified in s. 408.035, a statement of intent by the
17 applicant that a specified percentage of the annual patient
18 days at the facility will be utilized by patients eligible for
19 care under Title XIX of the Social Security Act. Any
20 certificate of need issued to a nursing home in reliance upon
21 an applicant's statements that a specified percentage of
22 annual patient days will be utilized by residents eligible for
23 care under Title XIX of the Social Security Act must include a
24 statement that this ~~such~~ certification is a condition of
25 issuance of the certificate of need. The certificate-of-need
26 program shall notify the Medicaid program office and the
27 Department of Elderly Affairs when it imposes conditions as
28 authorized in this paragraph in an area in which a community
29 diversion pilot project is implemented.

30 (c) A certificateholder or exemption holder may apply
31 to the agency for a modification of conditions imposed under

1 paragraph (a) or paragraph (b). If the holder of a certificate
2 of need or exemption demonstrates good cause why the
3 certificate or exemption should be modified, the agency shall
4 reissue the certificate of need or exemption with such
5 modifications as may be appropriate. The agency shall by rule
6 define the factors constituting good cause for modification.

7 (d) If the holder of a certificate of need or
8 certificate-of-need exemption fails to comply with a condition
9 upon which the issuance of the certificate or exemption was
10 predicated, the agency shall ~~may~~ assess an administrative fine
11 against the certificateholder or exemption holder in an amount
12 not to exceed \$1,000 per failure per day. Failure to annually
13 report compliance with any condition upon which the issuance
14 of the certificate or exemption was predicated constitutes
15 noncompliance.In assessing the penalty, the agency shall take
16 into account as mitigation the degree of noncompliance
17 ~~relative lack of severity of a particular failure.~~ Proceeds
18 of such penalties shall be deposited in the Public Medical
19 Assistance Trust Fund.

20 (2)(a) Unless the applicant has commenced
21 construction, if the project provides for construction, unless
22 the applicant has incurred an enforceable capital expenditure
23 commitment for a project, if the project does not provide for
24 construction, or unless subject to paragraph (b), a
25 certificate of need shall terminate 18 months after the date
26 of issuance. The agency shall monitor the progress of the
27 holder of the certificate of need in meeting the timetable for
28 project development specified in the application ~~with the~~
29 ~~assistance of the local health council as specified in s.~~
30 ~~408.033(1)(b)5.~~ and may revoke the certificate of need, if
31 the holder of the certificate is not meeting such timetable

1 and is not making a good-faith effort, as defined by rule, to
2 meet it.

3 (b) A certificate of need issued to an applicant
4 holding a provisional certificate of authority under chapter
5 651 shall terminate 1 year after the applicant receives a
6 valid certificate of authority from the Office of Insurance
7 Regulation of the Financial Services Commission.

8 (c) The certificate-of-need validity period for a
9 project shall be extended by the agency, to the extent that
10 the applicant demonstrates to the satisfaction of the agency
11 that good-faith commencement of the project is being delayed
12 by litigation or by governmental action or inaction with
13 respect to regulations or permitting precluding commencement
14 of the project.

15 (3) The agency shall require the submission of an
16 executed architect's certification of final payment for each
17 certificate-of-need project approved by the agency. Each
18 project that involves construction shall submit such
19 certification to the agency within 30 days following
20 completion of construction.

21 Section 12. Section 408.0455, Florida Statutes, is
22 amended to read:

23 408.0455 Rules; pending proceedings.--The rules of the
24 agency in effect on June 30, 2004 ~~1997~~, shall remain in effect
25 and shall be enforceable by the agency with respect to ss.
26 408.031-408.045 until the ~~such~~ rules are repealed or amended
27 by the agency, ~~and no judicial or administrative proceeding~~
28 ~~pending on July 1, 1997, shall be abated as a result of the~~
29 ~~provisions of ss. 408.031-408.043(1) and (2); s. 408.044; or~~
30 ~~s. 408.045.~~

31

1 Section 13. Subsection (2) of section 408.043, and
2 section 408.045, Florida Statutes, are repealed.

3 Section 14. This act shall take effect July 1, 2004.

4
5 *****

6 SENATE SUMMARY

7 Directs the Agency for Health Care Administration not to
8 issue or renew a license of a hospital if more than a
9 specified percentage of the hospital's patients receive
10 care and treatment classified in certain specified
11 diagnostic-related groups. Provides exemptions.
12 Authorizes the agency to adopt rules. Directs the local
13 health council to develop a plan for services at the
14 local level with the Department of Health. Provides that
15 the costs to operate a local health council come from
16 assessments imposed on selected health care facilities.
17 Revises criteria for reviewing an application for a
18 certificate of need. Requires the agency to adopt rules
19 for licensure standards for adult interventional
20 cardiology services and burn units. Provides that certain
21 health care providers of adult interventional cardiology
22 service are exempt from complying with the rules for 2
23 years following the date of their next license renewal,
24 but must meet the licensure standards thereafter.
25 Requires the agency to license two levels of treatment
26 for adult interventional cardiology services. Directs the
27 agency to appoint an advisory group to study the
28 specified issues. Requires the advisory group to make
29 certain recommendations. Directs the advisory group to
30 submit a report to the Governor, the secretary, and the
31 Legislature by a specific date. Provides for conditions
 and monitoring for holders of a certificate of need or an
 exemption certificate. (See bill for details.)