

CHAMBER ACTION

1 The Committee on Future of Florida's Families recommends the  
2 following:

3  
4 **Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to health care facilities; creating s.  
8 400.0712, F.S.; authorizing the Agency for Health Care  
9 Administration to issue inactive licenses to nursing homes  
10 for all or a portion of their beds under certain  
11 circumstances; providing requirements for application for  
12 and issuance of such licenses; providing rulemaking  
13 authority; amending s. 400.071, F.S.; deleting a provision  
14 relating to issuance of inactive licenses, to conform;  
15 amending s. 400.021, F.S.; redefining the term "resident  
16 care plan," as used in part II of ch. 400, F.S.; amending  
17 s. 400.23, F.S.; providing that certain information from  
18 the agency must be promptly updated to reflect the most  
19 current agency actions; amending s. 400.211, F.S.;  
20 revising inservice training requirements for persons  
21 employed as nursing assistants in a nursing home facility;  
22 amending s. 408.034, F.S.; requiring the nursing-home-bed-  
23 need methodology established by the agency by rule to

HB 267

2004  
CS

24 | include a goal of maintaining a specified subdistrict  
25 | average occupancy rate; amending s. 408.036, F.S.,  
26 | relating to health-care-related projects subject to review  
27 | for a certificate of need; subjecting certain projects  
28 | relating to replacement of a nursing home and relocation  
29 | of nursing home beds to expedited review; revising  
30 | requirements for certain projects relating to the addition  
31 | of nursing home beds which are exempt from review;  
32 | exempting from review certain projects relating to  
33 | replacement of a licensed nursing home bed on the same  
34 | site or nearby and consolidation or combination of  
35 | licensed nursing homes or transfer of beds between  
36 | licensed nursing homes within the same planning  
37 | subdistrict; providing rulemaking authority; providing for  
38 | assessment of exemption-request fees; amending s. 52, ch.  
39 | 2001-45, Laws of Florida; specifying nonapplication of a  
40 | moratorium on certificates of need and authorizing  
41 | approval of certain certificates of need for certain  
42 | counties under certain circumstances; providing review  
43 | requirements and bed limitations; amending s. 651.118,  
44 | F.S.; revising provisions relating to use of sheltered  
45 | nursing home beds at a continuing care facility by persons  
46 | who are not residents of the continuing care facility;  
47 | providing an effective date.

48 |  
49 | Be It Enacted by the Legislature of the State of Florida:  
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HB 267

2004  
CS

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

53 400.0712 Application for inactive license.--

54 (1) As specified in this section, the agency may issue an  
55 inactive license to a nursing home facility for all or a portion  
56 of its beds. Any request by a licensee that a nursing home or  
57 portion of a nursing home become inactive must be submitted to  
58 the agency in the approved format. The facility may not initiate  
59 any suspension of services, notify residents, or initiate  
60 facility closure before receiving approval from the agency; and  
61 a facility that violates this provision shall not be issued an  
62 inactive license. Upon agency approval of an inactive license,  
63 the nursing home shall notify residents of any necessary  
64 discharge or transfer as provided in s. 400.0255.

65 (2) The agency may issue an inactive license to a nursing  
66 home that chooses to use an unoccupied contiguous portion of the  
67 facility for an alternative use to meet the needs of elderly  
68 persons through the use of less restrictive, less institutional  
69 services.

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

73 (b) A request to extend the inactive license must be  
74 submitted to the agency in the approved format and approved by  
75 the agency in writing.

76 (c) Nursing homes that receive an inactive license to  
77 provide alternative services shall not receive preference for

78 participation in the Assisted Living for the Elderly Medicaid  
79 waiver.

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

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

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

90 (c) Reactivation of an inactive license requires that the  
91 applicant pay all licensure fees and be inspected by the agency  
92 to confirm that all of the requirements of this part and  
93 applicable rules are met.

94 (4) The agency shall adopt rules pursuant to ss.  
95 120.536(1) and 120.54 necessary to implement this section.

96 Section 2. Subsections (10), (11), and (12) of section  
97 400.071, Florida Statutes, are amended to read:

98 400.071 Application for license.--

99 ~~(10) The agency may issue an inactive license to a nursing~~  
100 ~~home that will be temporarily unable to provide services but~~  
101 ~~that is reasonably expected to resume services. Such designation~~  
102 ~~may be made for a period not to exceed 12 months but may be~~  
103 ~~renewed by the agency for up to 6 additional months. Any request~~  
104 ~~by a licensee that a nursing home become inactive must be~~  
105 ~~submitted to the agency and approved by the agency prior to~~

106 ~~initiating any suspension of service or notifying residents.~~  
 107 ~~Upon agency approval, the nursing home shall notify residents of~~  
 108 ~~any necessary discharge or transfer as provided in s. 400.0255.~~

109 (10)~~(11)~~ As a condition of licensure, each facility must  
 110 establish and submit with its application a plan for quality  
 111 assurance and for conducting risk management.

112 (11)~~(12)~~ The applicant must provide the agency with proof  
 113 of a legal right to occupy the property before a license may be  
 114 issued. Proof may include, but is not limited to, copies of  
 115 warranty deeds, lease or rental agreements, contracts for deeds,  
 116 or quitclaim deeds.

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

119 400.021 Definitions.--When used in this part, unless the  
 120 context otherwise requires, the term:

121 (17) "Resident care plan" means a written plan developed,  
 122 maintained, and reviewed not less than quarterly by a registered  
 123 nurse, with participation from other facility staff and the  
 124 resident or his or her designee or legal representative, which  
 125 includes a comprehensive assessment of the needs of an  
 126 individual resident; the type and frequency of services required  
 127 to provide the necessary care for the resident to attain or  
 128 maintain the highest practicable physical, mental, and  
 129 psychosocial well-being; a listing of services provided within  
 130 or outside the facility to meet those needs; and an explanation  
 131 of service goals. The resident care plan must be signed by the  
 132 director of nursing or another registered nurse employed by the  
 133 facility to whom institutional responsibilities have been

HB 267

2004  
CS

134 delegated and by the resident, the resident's designee, or the  
 135 resident's legal representative. The facility may not use an  
 136 agency or temporary registered nurse to satisfy the foregoing  
 137 requirement and must document the institutional responsibilities  
 138 that have been delegated to the registered nurse.

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

141 400.23 Rules; evaluation and deficiencies; licensure  
 142 status.--

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

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

148 400.211 Persons employed as nursing assistants;  
 149 certification requirement.--

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

155 (a) Be sufficient to ensure the continuing competence of  
 156 nursing assistants and must meet the standard specified in s.  
 157 464.203(7), ~~must be at least 18 hours per year, and may include~~  
 158 ~~hours accrued under s. 464.203(8);~~

159 (b) Include, at a minimum:

160 1. Techniques for assisting with eating and proper  
 161 feeding;

162           2. Principles of adequate nutrition and hydration;

163           3. Techniques for assisting and responding to the

164 cognitively impaired resident or the resident with difficult

165 behaviors;

166           4. Techniques for caring for the resident at the end-of-

167 life; and

168           5. Recognizing changes that place a resident at risk for

169 pressure ulcers and falls; and

170           (c) Address areas of weakness as determined in nursing

171 assistant performance reviews and may address the special needs

172 of residents as determined by the nursing home facility staff.

173

174 Costs associated with this training may not be reimbursed from

175 additional Medicaid funding through interim rate adjustments.

176           Section 6. Subsection (5) of section 408.034, Florida

177 Statutes, is amended to read:

178           408.034 Duties and responsibilities of agency; rules.--

179           (5) The agency shall establish by rule a nursing-home-bed-

180 need methodology that has a goal of maintaining a subdistrict

181 average occupancy rate of 94 percent and that reduces the

182 community nursing home bed need for the areas of the state where

183 the agency establishes pilot community diversion programs

184 through the Title XIX aging waiver program.

185           Section 7. Paragraphs (g) and (h) are added to subsection

186 (2) of section 408.036, Florida Statutes, paragraph (p) of

187 subsection (3) is amended, paragraphs (u) and (v) are added to

188 subsection (3) of said section, and subsection (4) is reenacted

189 to read:

HB 267

2004  
CS

190 408.036 Projects subject to review; exemptions.--

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

194 (g) Replacement of a nursing home within the same  
195 district, provided the proposed project site is located within a  
196 geographic area that contains at least 65 percent of the  
197 facility's current residents and is within a 30-mile radius of  
198 the replaced nursing home.

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

204  
205 The agency shall develop rules to implement the provisions for  
206 expedited review, including time schedule, application content  
207 which may be reduced from the full requirements of s.  
208 408.037(1), and application processing.

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

211 (p) For the addition of nursing home beds licensed under  
212 chapter 400 in a number not exceeding 10 total beds or 10  
213 percent of the number of beds licensed in the facility being  
214 expanded, whichever is greater, or for the addition of nursing  
215 home beds licensed under chapter 400 at a facility that has been  
216 designated as a Gold Seal nursing home under s. 400.235 in a  
217 number not exceeding 20 total beds or 10 percent of the number



218 of beds licensed in the facility being expanded, whichever is  
 219 greater.

220 1. In addition to any other documentation required by the  
 221 agency, a request for exemption submitted under this paragraph  
 222 must:

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

226 ~~b. Effective on July 1, 2001, certify that the facility~~  
 227 ~~has been designated as a Gold Seal nursing home under s.~~  
 228 ~~400.235.~~

229 ~~b.e.~~ Certify that the prior 12-month average occupancy  
 230 rate for the nursing home beds at the facility meets or exceeds  
 231 96 percent.

232 ~~c.d.~~ Certify that any beds authorized for the facility  
 233 under this paragraph before the date of the current request for  
 234 an exemption have been licensed and operational for at least 12  
 235 months.

236 2. The timeframes and monitoring process specified in s.  
 237 408.040(2)(a)-(c) apply to any exemption issued under this  
 238 paragraph.

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

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

245       (v) For consolidation or combination of licensed nursing  
 246 homes or transfer of beds between licensed nursing homes within  
 247 the same planning subdistrict, by providers that operate  
 248 multiple nursing homes within that planning subdistrict,  
 249 provided there is no increase in the planning subdistrict total  
 250 of nursing home beds and the relocation does not exceed 30 miles  
 251 from the original location.

252       (4) A request for exemption under subsection (3) may be  
 253 made at any time and is not subject to the batching requirements  
 254 of this section. The request shall be supported by such  
 255 documentation as the agency requires by rule. The agency shall  
 256 assess a fee of \$250 for each request for exemption submitted  
 257 under subsection (3).

258       Section 8. Section 52 of chapter 2001-45, Laws of Florida,  
 259 as amended by section 1693 of chapter 2003-261, Laws of Florida,  
 260 is amended to read:

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

265       (2) The Legislature finds that the continued growth in the  
 266 Medicaid budget for nursing home care has constrained the  
 267 ability of the state to meet the needs of its elderly residents  
 268 through the use of less restrictive and less institutional  
 269 methods of long-term care. It is therefore the intent of the  
 270 Legislature to limit the increase in Medicaid nursing home  
 271 expenditures in order to provide funds to invest in long-term  
 272 care that is community-based and provides supportive services in

273 a manner that is both more cost-effective and more in keeping  
274 with the wishes of the elderly residents of this state.

275 (3) This moratorium on certificates of need shall not  
276 apply to sheltered nursing home beds in a continuing care  
277 retirement community certified by the former Department of  
278 Insurance or by the Office of Insurance Regulation pursuant to  
279 chapter 651, Florida Statutes.

280 (4)(a) This moratorium on certificates of need shall not  
281 apply, and a certificate of need for additional community  
282 nursing home beds may be approved, for a county that meets the  
283 following circumstances:

- 284 1. The county has no community nursing home beds.
- 285 2. The lack of community nursing home beds occurs because  
286 all nursing home beds in the county that were licensed on July  
287 1, 2001, have subsequently closed.

288 (b) The certificate-of-need review for such circumstances  
289 shall be subject to the comparative review process consistent  
290 with the provisions of s. 408.039, Florida Statutes, and the  
291 number of beds may not exceed the number of beds lost by the  
292 county after July 1, 2001.

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

295 651.118 Agency for Health Care Administration;  
296 certificates of need; sheltered beds; community beds.--

297 (7) Notwithstanding the provisions of subsection (2), at  
298 the discretion of the continuing care provider, sheltered  
299 nursing home beds may be used for persons who are not residents  
300 of the continuing care facility and who are not parties to a

301 continuing care contract for a period of up to 5 years after the  
 302 date of issuance of the initial nursing home license. A provider  
 303 whose 5-year period has expired or is expiring may request the  
 304 Agency for Health Care Administration for an extension, not to  
 305 exceed 30 percent of the total sheltered nursing home beds, if  
 306 the utilization by residents of the nursing home facility in the  
 307 sheltered beds will not generate sufficient income to cover  
 308 nursing home facility expenses, as evidenced by one of the  
 309 following:

310 (a) The nursing home facility has a net loss for the most  
 311 recent fiscal year as determined under generally accepted  
 312 accounting principles, excluding the effects of extraordinary or  
 313 unusual items, as demonstrated in the most recently audited  
 314 financial statement; or

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

320  
 321 The agency shall be authorized to grant an extension to the  
 322 provider based on the evidence required in this subsection. The  
 323 agency may request a continuing care facility to use up to 25  
 324 percent of the patient days generated by new admissions of  
 325 nonresidents during the extension period to serve Medicaid  
 326 recipients for those beds authorized for extended use if there  
 327 is a demonstrated need in the respective service area and if  
 328 funds are available. A provider who obtains an extension is

HB 267

2004  
CS

329 prohibited from applying for additional sheltered beds under the  
330 provision of subsection (2), unless additional residential units  
331 are built or the provider can demonstrate need by continuing  
332 care facility residents to the Agency for Health Care  
333 Administration. The 5-year limit does not apply to up to five  
334 sheltered beds designated for inpatient hospice care as part of  
335 a contractual arrangement with a hospice licensed under part VI  
336 of chapter 400. A continuing care facility that uses such beds  
337 after the 5-year period shall report such use to the Agency for  
338 Health Care Administration. For purposes of this subsection,  
339 "resident" means a person who, upon admission to the continuing  
340 care facility, initially resides in a part of the continuing  
341 care facility not licensed under part II of chapter 400.

342 Section 10. This act shall take effect upon becoming a  
343 law.