

By the Committee on Health Care

587-1301-06

1 A bill to be entitled

2 An act relating to certificates of need;

3 transferring, renumbering, and amending s.

4 651.1185, F.S.; extending the moratorium on

5 certificates of need for additional community

6 nursing home beds until July 1, 2011; providing

7 an exception to the moratorium; amending s.

8 408.040, F.S.; authorizing nursing homes in

9 certain counties to request a reduction in

10 their annual Medicaid patient days; requiring

11 the Agency for Health Care Administration to

12 automatically grant such a request if the

13 nursing home meets certain conditions;

14 providing for future repeal; providing an

15 effective date.

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17 Be It Enacted by the Legislature of the State of Florida:

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19 Section 1. Section 651.1185, Florida Statutes, is

20 transferred, renumbered as section 408.0435, Florida Statutes,

21 and amended to read:

22 408.0435 ~~651.1185~~ Moratorium on nursing home

23 certificates of need.--

24 (1) Notwithstanding the establishment of need as

25 provided for in this chapter ~~408~~, ~~a~~ ~~no~~ certificate of need for

26 additional community nursing home beds ~~may not~~ ~~shall~~ be

27 approved by the agency until July 1, 2011 ~~2006~~.

28 (2) The Legislature finds that the continued growth in

29 the Medicaid budget for nursing home care has constrained the

30 ability of the state to meet the needs of its elderly

31 residents through the use of less restrictive and less

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

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

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

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

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

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

29 (5) The moratorium on certificates of need does not
30 apply for the addition of nursing home beds licensed under
31 chapter 400 to a nursing home located in a county having up to

1 50,000 residents, in a number not exceeding 10 total beds or
2 10 percent of the number of beds licensed in the facility
3 being expanded, whichever is greater. In addition to any other
4 documentation required by the agency, a request submitted
5 under this subsection must:

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

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

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

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

21 (6) The moratorium on certificates of need does not
22 apply for the addition of nursing home beds licensed under
23 chapter 400 in a number not exceeding 10 total beds or 10
24 percent of the number of beds licensed in the facility being
25 expanded, whichever is greater, if the facility meets the
26 requirements of paragraph (a).

27 (a) In addition to any other documentation required by
28 the agency, a request for the addition of beds under this
29 subsection must certify that:

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1 1. The facility has not had any class I or class II
2 deficiencies within the 30 months preceding the request for
3 addition;

4 2. The prior 12-month average occupancy rate for the
5 nursing home beds at the facility meets or exceeds 96 percent;

6 3. The occupancy rate for nursing home beds in the
7 subdistrict is 94 percent or greater; and

8 4. Any beds authorized for the facility under this
9 subsection before the date of the current request for
10 additional beds have been licensed and operational for at
11 least 12 months.

12 (b) A nursing home may request additional beds under
13 this subsection as an exemption from the provisions of s.
14 408.036(1). The timeframes and monitoring process specified in
15 s. 408.040(2)(a)-(c) apply to any exemption issued under this
16 subsection.

17 (c) The agency shall count beds authorized under this
18 subsection as approved beds in the published inventory of
19 nursing home beds until the beds are licensed.

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

23 Section 2. Subsection (1) of section 408.040, Florida
24 Statutes, is amended to read:

25 408.040 Conditions and monitoring.--

26 (1)(a) The agency may issue a certificate of need, or
27 an exemption, predicated upon statements of intent expressed
28 by an applicant in the application for a certificate of need
29 or an exemption. Any conditions imposed on a certificate of
30 need or an exemption based on such statements of intent shall
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1 | be stated on the face of the certificate of need or in the
2 | exemption approval.

3 | (b) The agency may consider, in addition to the other
4 | criteria specified in s. 408.035, a statement of intent by the
5 | applicant that a specified percentage of the annual patient
6 | days at the facility will be utilized by patients eligible for
7 | care under Title XIX of the Social Security Act. Any
8 | certificate of need issued to a nursing home in reliance upon
9 | an applicant's statements that a specified percentage of
10 | annual patient days will be utilized by residents eligible for
11 | care under Title XIX of the Social Security Act must include a
12 | statement that such certification is a condition of issuance
13 | of the certificate of need. The certificate-of-need program
14 | shall notify the Medicaid program office and the Department of
15 | Elderly Affairs when it imposes conditions as authorized in
16 | this paragraph in an area in which a community diversion pilot
17 | project is implemented.

18 | (c) A certificateholder or an exemption holder may
19 | apply to the agency for a modification of conditions imposed
20 | under paragraph (a) or paragraph (b). If the holder of a
21 | certificate of need or an exemption demonstrates good cause
22 | why the certificate or exemption should be modified, the
23 | agency shall reissue the certificate of need or exemption with
24 | such modifications as may be appropriate. The agency shall by
25 | rule define the factors constituting good cause for
26 | modification.

27 | (d) If a nursing home is located in a county where a
28 | long-term care community diversion pilot project has been
29 | implemented under s. 430.705 or in a county where an
30 | integrated, fixed-payment delivery system for Medicaid
31 | recipients who are 60 years of age or older has been

1 implemented under s. 409.912(5), the nursing home may request
2 a reduction in the percentage of annual patient days utilized
3 by residents who are eligible for care under Title XIX of the
4 Social Security Act, which is a condition of the nursing
5 home's certificate of need. The agency shall automatically
6 grant the nursing home's request if the reduction is not more
7 than 15 percent of the nursing home's annual
8 Medicaid-patient-days condition. A nursing home may submit
9 only one request every 2 years for an automatic reduction. A
10 requesting nursing home must notify the agency in writing at
11 least 60 days in advance of its intent to reduce its annual
12 Medicaid-patient-days condition by not more than 15 percent.
13 The agency must acknowledge the request in writing and must
14 change its records to reflect the revised certificate-of-need
15 condition. This paragraph expires June 30, 2011.

16 (e)(d) If the holder of a certificate of need or an
17 exemption fails to comply with a condition upon which the
18 issuance of the certificate or exemption was predicated, the
19 agency may assess an administrative fine against the
20 certificateholder or exemption holder in an amount not to
21 exceed \$1,000 per failure per day. Failure to annually report
22 compliance with any condition upon which the issuance of the
23 certificate or exemption was predicated constitutes
24 noncompliance. In assessing the penalty, the agency shall take
25 into account as mitigation the degree of noncompliance.
26 Proceeds of such penalties shall be deposited in the Public
27 Medical Assistance Trust Fund.

28 Section 3. This act shall take effect upon becoming a
29 law.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 790

The committee substitute authorizes nursing homes in certain counties to request up to a 15 percent reduction in their annual Medicaid patient-days certificate-of-need conditions. If the nursing homes meet certain conditions, then the Agency for Health Care Administration must automatically grant such requests. The bill provides for a future repeal of this provision. The bill clarifies that a nursing home can apply for additional beds under the bill as a CON exemption.