

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.
 8 408.036, F.S.; exempting a nursing home that is
 9 created by combining certain licensed beds from
 10 requirements for obtaining a certificate of
 11 need from the Agency for Health Care
 12 Administration; amending s. 408.040, F.S.;
 13 authorizing nursing homes in certain counties
 14 to request a reduction in their annual Medicaid
 15 patient days; requiring the Agency for Health
 16 Care Administration to automatically grant such
 17 a request if the nursing home meets certain
 18 conditions; providing for future repeal;
 19 providing an effective date.

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

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 23 Section 1. Section 651.1185, Florida Statutes, is
 24 transferred, renumbered as section 408.0435, Florida Statutes,
 25 and amended to read:

26 408.0435 ~~651.1185~~ Moratorium on nursing home
 27 certificates of need.--

28 (1) Notwithstanding the establishment of need as
 29 provided for in this chapter ~~408~~, ~~a~~ ~~no~~ certificate of need for
 30 additional community nursing home beds may not ~~shall~~ be
 31 approved by the agency until July 1, 2011 ~~2006~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (b) A nursing home may request additional beds under
16 this subsection as an exemption from the provisions of s.
17 408.036(1). The timeframes and monitoring process specified in
18 s. 408.040(2)(a)-(c) apply to any exemption issued under this
19 subsection.

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

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

26 Section 2. Present paragraphs (f)-(s) of subsection
27 (3) of section 408.036, Florida Statutes, are redesignated as
28 paragraphs (g)-(t), respectively, and a new paragraph (f) is
29 added to that subsection, to read:

30 408.036 Projects subject to review; exemptions.--

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

4 (f) For the creation of a single nursing home within a
5 district by combining licensed beds from two or more licensed
6 nursing homes within such district, regardless of subdistrict
7 boundaries, where 50 percent of the beds in the created
8 nursing home are transferred from the only nursing home in a
9 county and its utilization data demonstrate that it had an
10 occupancy rate of less than 75 percent for the 12-month period
11 ending 90 days before the request for the exemption.

12 Section 3. Subsection (1) of section 408.040, Florida
13 Statutes, is amended to read:

14 408.040 Conditions and monitoring.--

15 (1)(a) The agency may issue a certificate of need, or
16 an exemption, predicated upon statements of intent expressed
17 by an applicant in the application for a certificate of need
18 or an exemption. Any conditions imposed on a certificate of
19 need or an exemption based on such statements of intent shall
20 be stated on the face of the certificate of need or in the
21 exemption approval.

22 (b) The agency may consider, in addition to the other
23 criteria specified in s. 408.035, a statement of intent by the
24 applicant that a specified percentage of the annual patient
25 days at the facility will be utilized by patients eligible for
26 care under Title XIX of the Social Security Act. Any
27 certificate of need issued to a nursing home in reliance upon
28 an applicant's statements that a specified percentage of
29 annual patient days will be utilized by residents eligible for
30 care under Title XIX of the Social Security Act must include a
31 statement that such certification is a condition of issuance

1 of the certificate of need. The certificate-of-need program
2 shall notify the Medicaid program office and the Department of
3 Elderly Affairs when it imposes conditions as authorized in
4 this paragraph in an area in which a community diversion pilot
5 project is implemented.

6 (c) A certificateholder or an exemption holder may
7 apply to the agency for a modification of conditions imposed
8 under paragraph (a) or paragraph (b). If the holder of a
9 certificate of need or an exemption demonstrates good cause
10 why the certificate or exemption should be modified, the
11 agency shall reissue the certificate of need or exemption with
12 such modifications as may be appropriate. The agency shall by
13 rule define the factors constituting good cause for
14 modification.

15 (d) If a nursing home is located in a county where a
16 long-term care community diversion pilot project has been
17 implemented under s. 430.705 or in a county where an
18 integrated, fixed-payment delivery system for Medicaid
19 recipients who are 60 years of age or older has been
20 implemented under s. 409.912(5), the nursing home may request
21 a reduction in the percentage of annual patient days utilized
22 by residents who are eligible for care under Title XIX of the
23 Social Security Act, which is a condition of the nursing
24 home's certificate of need. The agency shall automatically
25 grant the nursing home's request if the reduction is not more
26 than 15 percent of the nursing home's annual
27 Medicaid-patient-days condition. A nursing home may submit
28 only one request every 2 years for an automatic reduction. A
29 requesting nursing home must notify the agency in writing at
30 least 60 days in advance of its intent to reduce its annual
31 Medicaid-patient-days condition by not more than 15 percent.

1 The agency must acknowledge the request in writing and must
2 change its records to reflect the revised certificate-of-need
3 condition. This paragraph expires June 30, 2011.

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

16 Section 4. This act shall take effect upon becoming a
17 law.

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