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1
2 An act relating to certificates of need; amending s.
3 408.035, F.S.; revising the requirements for the Agency
4 for Health Care Administration with respect to reviewing
5 an application for a certificate of need for a general
6 hospital; amending s. 408.037, F.S.; revising the
7 requirements for an application for a certificate of need
8 by an applicant for a general hospital; amending s.
9 408.039, F.S.; requiring the agency to attend public
10 hearings on such applications; requiring an existing
11 hospital to submit a written statement of opposition in
12 order to challenge the agency decision on an application
13 for a certificate of need for a general hospital;
14 authorizing the applicant to submit a written response;
15 limiting filing a letter of intent to file an application;
16 limiting the period of a continuance that may be granted
17 with respect to an administrative hearing considering an
18 application for a general hospital; limiting the parties
19 who may challenge in an administrative hearing involving
20 an application for a certificate of need; limiting the
21 scope of the challenge; authorizing the administrative
22 judge to expand the scope of the issues to be heard upon a
23 motion showing good cause; requiring that the party
24 appealing a final order granting a certificate of need for
25 a general hospital pay the appellee's attorney's fees and
26 costs subject to certain requirements; repealing s.
27 408.040(3), F.S.; relating to a requirement for an
28 architect's certification of final payment before issuance
29 of a certificate of need; providing for application of the

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30 act; providing for severability; providing an effective
31 date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Section 408.035, Florida Statutes, is amended to
36 read:

37 408.035 Review criteria.--

38 (1) The agency shall determine the reviewability of
39 applications and shall review applications for certificate-of-
40 need determinations for health care facilities and health
41 services in context with the following criteria, except for
42 general hospitals as defined in s. 395.002:

43 (a)~~(1)~~ The need for the health care facilities and health
44 services being proposed.

45 (b)~~(2)~~ The availability, quality of care, accessibility,
46 and extent of utilization of existing health care facilities and
47 health services in the service district of the applicant.

48 (c)~~(3)~~ The ability of the applicant to provide quality of
49 care and the applicant's record of providing quality of care.

50 (d)~~(4)~~ The availability of resources, including health
51 personnel, management personnel, and funds for capital and
52 operating expenditures, for project accomplishment and operation.

53 (e)~~(5)~~ The extent to which the proposed services will
54 enhance access to health care for residents of the service
55 district.

56 (f)~~(6)~~ The immediate and long-term financial feasibility of
57 the proposal.

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58 (g)~~(7)~~ The extent to which the proposal will foster
59 competition that promotes quality and cost-effectiveness.

60 (h)~~(8)~~ The costs and methods of the proposed construction,
61 including the costs and methods of energy provision and the
62 availability of alternative, less costly, or more effective
63 methods of construction.

64 (i)~~(9)~~ The applicant's past and proposed provision of
65 health care services to Medicaid patients and the medically
66 indigent.

67 (j)~~(10)~~ The applicant's designation as a Gold Seal Program
68 nursing facility pursuant to s. 400.235, when the applicant is
69 requesting additional nursing home beds at that facility.

70 (2) For a general hospital, the agency shall consider only
71 the criteria specified in paragraph (1) (a), paragraph (1) (b),
72 except for quality of care in paragraph (1) (b), and paragraphs
73 (1) (e), (g), and (i).

74 Section 2. Section 408.037, Florida Statutes, is amended to
75 read:

76 408.037 Application content.--

77 (1) Except as provided in subsection (2) for a general
78 hospital, an application for a certificate of need must contain:

79 (a) A detailed description of the proposed project and
80 statement of its purpose and need in relation to the district
81 health plan.

82 (b) A statement of the financial resources needed by and
83 available to the applicant to accomplish the proposed project.
84 This statement must include:

85 1. A complete listing of all capital projects, including
86 new health facility development projects and health facility

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87 | acquisitions applied for, pending, approved, or underway in any
88 | state at the time of application, regardless of whether or not
89 | that state has a certificate-of-need program or a capital
90 | expenditure review program pursuant to s. 1122 of the Social
91 | Security Act. The agency may, by rule, require less-detailed
92 | information from major health care providers. This listing must
93 | include the applicant's actual or proposed financial commitment
94 | to those projects and an assessment of their impact on the
95 | applicant's ability to provide the proposed project.

96 | 2. A detailed listing of the needed capital expenditures,
97 | including sources of funds.

98 | 3. A detailed financial projection, including a statement
99 | of the projected revenue and expenses for the first 2 years of
100 | operation after completion of the proposed project. This
101 | statement must include a detailed evaluation of the impact of the
102 | proposed project on the cost of other services provided by the
103 | applicant.

104 | (c) An audited financial statement of the applicant. In an
105 | application submitted by an existing health care facility, health
106 | maintenance organization, or hospice, financial condition
107 | documentation must include, but need not be limited to, a balance
108 | sheet and a profit-and-loss statement of the 2 previous fiscal
109 | years' operation.

110 | (2) An application for a certificate of need for a general
111 | hospital must contain a detailed description of the proposed
112 | general hospital project and a statement of its purpose and the
113 | needs it will meet. The proposed project's location, as well as
114 | its primary and secondary service areas, must be identified by
115 | zip code. Primary service area is defined as the zip codes from

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116 which the applicant projects that it will draw 75 percent of its
117 discharges. Secondary service area is defined as the zip codes
118 from which the applicant projects that it will draw its remaining
119 discharges. If, subsequent to issuance of a final order approving
120 the certificate of need, the proposed location of the general
121 hospital changes or the primary service area materially changes,
122 the agency shall revoke the certificate of need. However, if the
123 agency determines that such changes are deemed to enhance access
124 to hospital services in the service district, the agency may
125 permit such changes to occur. A party participating in the
126 administrative hearing regarding the issuance of the certificate
127 of need for a general hospital has standing to participate in any
128 subsequent proceeding regarding the revocation of the certificate
129 of need for a hospital for which the location has changed or for
130 which the primary service area has materially changed. In
131 addition, the application for the certificate of need for a
132 general hospital must include a statement of intent that, if
133 approved by final order of the agency, the applicant shall within
134 120 days after issuance of the final order or, if there is an
135 appeal of the final order, within 120 days after the issuance of
136 the court's mandate on appeal, furnish satisfactory proof of the
137 applicant's financial ability to operate. The agency shall
138 establish documentation requirements, to be completed by each
139 applicant, which show anticipated provider revenues and
140 expenditures, the basis for financing the anticipated cash-flow
141 requirements of the provider, and an applicant's access to
142 contingency financing. A party participating in the
143 administrative hearing regarding the issuance of the certificate
144 of need for a general hospital may provide written comments

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145 concerning the adequacy of the financial information provided,
146 but such party does not have standing to participate in an
147 administrative proceeding regarding proof of the applicant's
148 financial ability to operate. The agency may require a licensee
149 to provide proof of financial ability to operate at any time if
150 there is evidence of financial instability, including, but not
151 limited to, unpaid expenses necessary for the basic operations of
152 the provider.

153 (3)~~(2)~~ The applicant must certify that it will license and
154 operate the health care facility. For an existing health care
155 facility, the applicant must be the licenseholder of the
156 facility.

157 Section 3. Subsection (3), paragraphs (b) and (c) of
158 subsection (5), and paragraph (d) is added to subsection (6) of
159 section 408.039, Florida Statutes, to read:

160 408.039 Review process.--The review process for
161 certificates of need shall be as follows:

162 (3) APPLICATION PROCESSING.--

163 (a) An applicant shall file an application with the agency
164 and shall furnish a copy of the application to the agency. Within
165 15 days after the applicable application filing deadline
166 established by agency rule, the staff of the agency shall
167 determine if the application is complete. If the application is
168 incomplete, the staff shall request specific information from the
169 applicant necessary for the application to be complete; however,
170 the staff may make only one such request. If the requested
171 information is not filed with the agency within 21 days after the
172 receipt of the staff's request, the application shall be deemed
173 incomplete and deemed withdrawn from consideration.

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174 (b) Upon the request of any applicant or substantially
175 affected person within 14 days after notice that an application
176 has been filed, a public hearing may be held at the agency's
177 discretion if the agency determines that a proposed project
178 involves issues of great local public interest. In such cases,
179 the agency shall attend the public hearing. The public hearing
180 shall allow applicants and other interested parties reasonable
181 time to present their positions and to present rebuttal
182 information. A recorded verbatim record of the hearing shall be
183 maintained. The public hearing shall be held at the local level
184 within 21 days after the application is deemed complete.

185 (c) Except for competing applicants, in order to be
186 eligible to challenge the agency decision on a general hospital
187 application under review pursuant to paragraph (5)(c), existing
188 hospitals must submit a detailed written statement of opposition
189 to the agency and to the applicant. The detailed written
190 statement must be received by the agency and the applicant within
191 21 days after the general hospital application is deemed complete
192 and made available to the public.

193 (d) In those cases where a written statement of opposition
194 has been timely filed regarding a certificate of need application
195 for a general hospital, the applicant for the general hospital
196 may submit a written response to the agency. Such response must
197 be received by the agency within 10 days of the written statement
198 due date.

199 (5) ADMINISTRATIVE HEARINGS.--

200 (b) Hearings shall be held in Tallahassee unless the
201 administrative law judge determines that changing the location
202 will facilitate the proceedings. The agency shall assign

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203 | proceedings requiring hearings to the Division of Administrative
204 | Hearings of the Department of Management Services within 10 days
205 | after the time has expired for requesting a hearing. Except upon
206 | unanimous consent of the parties or upon the granting by the
207 | administrative law judge of a motion of continuance, hearings
208 | shall commence within 60 days after the administrative law judge
209 | has been assigned. For an application for a general hospital,
210 | administrative hearings shall commence within 6 months after the
211 | administrative law judge has been assigned, and a continuance may
212 | not be granted absent a finding of extraordinary circumstances by
213 | the administrative law judge. All parties, except the agency,
214 | shall bear their own expense of preparing a transcript. In any
215 | application for a certificate of need which is referred to the
216 | Division of Administrative Hearings for hearing, the
217 | administrative law judge shall complete and submit to the parties
218 | a recommended order as provided in ss. 120.569 and 120.57. The
219 | recommended order shall be issued within 30 days after the
220 | receipt of the proposed recommended orders or the deadline for
221 | submission of such proposed recommended orders, whichever is
222 | earlier. The division shall adopt procedures for administrative
223 | hearings which shall maximize the use of stipulated facts and
224 | shall provide for the admission of prepared testimony.

225 | (c) In administrative proceedings challenging the issuance
226 | or denial of a certificate of need, only applicants considered by
227 | the agency in the same batching cycle are entitled to a
228 | comparative hearing on their applications. Existing health care
229 | facilities may initiate or intervene in an administrative hearing
230 | upon a showing that an established program will be substantially
231 | affected by the issuance of any certificate of need, whether

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232 reviewed under s. 408.036(1) or (2), to a competing proposed
233 facility or program within the same district. With respect to an
234 application for a general hospital, competing applicants and only
235 those existing hospitals that submitted a detailed written
236 statement of opposition to an application as provided in this
237 paragraph may initiate or intervene in an administrative hearing.
238 Such challenges to a general hospital application shall be
239 limited in scope to the issues raised in the detailed written
240 statement of opposition that was provided to the agency. The
241 administrative law judge may, upon a motion showing good cause,
242 expand the scope of the issues to be heard at the hearing. Such
243 motion shall include substantial and detailed facts and reasons
244 for failure to include such issues in the original written
245 statement of opposition.

246 (6) JUDICIAL REVIEW.--

247 (d) The party appealing a final order that grants a general
248 hospital certificate of need shall pay the appellee's attorney's
249 fees and costs, in an amount up to \$1 million, from the beginning
250 of the original administrative action if the appealing party
251 loses the appeal, subject to the following limitations and
252 requirements:

253 1. The party appealing a final order must post a bond in
254 the amount of \$1 million in order to maintain the appeal.

255 2. Except as provided under s. 120.595(5), in no event
256 shall the agency be held liable for any other party's attorney's
257 fees or costs.

258 Section 4. Subsection (3) of section 408.040, Florida
259 Statutes, is repealed.

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260 Section 5. The provisions of this act do not apply to a
261 certificate of need application filed before the effective date
262 of this act.

263 Section 6. If any provision of this act or its
264 application to any person or circumstance is held invalid, the
265 invalidity does not affect other provisions or applications of
266 the act which can be given effect without the invalid provision
267 or application, and to this end the provisions of this act are
268 severable.

269 Section 7. This act shall take effect upon becoming a law.