

Amendment No.

CHAMBER ACTION

Senate

House

.

1 Representatives Grimsley and Cannon offered the following:

2
3 **Amendment (with title amendment)**

4 Between lines 384 and 385, insert:

5 Section 1. Section 408.032, Florida Statutes, is amended
6 to read:

7 408.032 Definitions relating to Health Facility and
8 Services Development Act.—As used in ss. 408.031-408.045, the
9 term:

10 (8) "Health care facility" means a ~~hospital, long-term~~
11 ~~care hospital,~~ skilled nursing facility, hospice, or
12 intermediate care facility for the developmentally disabled. A
13 facility relying solely on spiritual means through prayer for
14 healing is not included as a health care facility.

15 ~~(9) "Health services" means inpatient diagnostic,~~
16 ~~curative, or comprehensive medical rehabilitative services and~~
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17 ~~includes mental health services. Obstetric services are not~~
18 ~~health services for purposes of ss. 408.031-408.045.~~

19 (9) ~~(10)~~ "Hospice" or "hospice program" means a hospice as
20 defined in part IV of chapter 400.

21 ~~(11)~~ "Hospital" means a health care facility licensed
22 under chapter 395.

23 (10) ~~(12)~~ "Intermediate care facility for the
24 developmentally disabled" means a residential facility licensed
25 under chapter 393 and certified by the Federal Government
26 pursuant to the Social Security Act as a provider of Medicaid
27 services to persons who are mentally retarded or who have a
28 related condition.

29 ~~(13)~~ "Long-term care hospital" means a hospital licensed
30 under chapter 395 which meets the requirements of 42 C.F.R. s.
31 412.23(e) and seeks exclusion from the acute care Medicare
32 prospective payment system for inpatient hospital services.

33 ~~(14)~~ "Mental health services" means inpatient services
34 provided in a hospital licensed under chapter 395 and listed on
35 the hospital license as psychiatric beds for adults; psychiatric
36 beds for children and adolescents; intensive residential
37 treatment beds for children and adolescents; substance abuse
38 beds for adults; or substance abuse beds for children and
39 adolescents.

40 (11) ~~(15)~~ "Nursing home geographically underserved area"
41 means:

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

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

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

50 (12)~~(16)~~ "Skilled nursing facility" means an institution,
51 or a distinct part of an institution, which is primarily engaged
52 in providing, to inpatients, skilled nursing care and related
53 services for patients who require medical or nursing care, or
54 rehabilitation services for the rehabilitation of injured,
55 disabled, or sick persons.

56 ~~(17) "Tertiary health service" means a health service~~
57 ~~which, due to its high level of intensity, complexity,~~
58 ~~specialized or limited applicability, and cost, should be~~
59 ~~limited to, and concentrated in, a limited number of hospitals~~
60 ~~to ensure the quality, availability, and cost effectiveness of~~
61 ~~such service. Examples of such service include, but are not~~
62 ~~limited to, pediatric cardiac catheterization, pediatric open-~~
63 ~~heart surgery, organ transplantation, neonatal intensive care~~
64 ~~units, comprehensive rehabilitation, and medical or surgical~~
65 ~~services which are experimental or developmental in nature to~~
66 ~~the extent that the provision of such services is not yet~~
67 ~~contemplated within the commonly accepted course of diagnosis or~~
68 ~~treatment for the condition addressed by a given service. The~~
69 ~~agency shall establish by rule a list of all tertiary health~~
70 ~~services.~~

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71 Section 2. Subsection (2) of section 408.034, Florida
72 Statutes, is amended to read:

73 408.034 Duties and responsibilities of agency; rules.—

74 (2) In the exercise of its authority to issue licenses to
75 health care facilities and health service providers, as provided
76 under chapter ~~chapters~~ 393 and ~~395~~ and parts II and IV of
77 chapter 400, the agency may not issue a license to any health
78 care facility or health service provider that fails to receive a
79 certificate of need or an exemption for the licensed facility or
80 service.

81 Section 3. Section 408.035, Florida Statutes, is amended to
82 read:

83 408.035 Review criteria.—

84 ~~(1)~~ The agency shall determine the reviewability of
85 applications and shall review applications for certificate-of-
86 need determinations for health care facilities and health
87 services in context with the following criteria, ~~except for~~
88 ~~general hospitals as defined in s. 395.002:~~

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

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

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

96 (4) ~~(d)~~ The availability of resources, including health
97 personnel, management personnel, and funds for capital and

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98 operating expenditures, for project accomplishment and
99 operation.

100 ~~(5)(e)~~ The extent to which the proposed services will
101 enhance access to health care for residents of the service
102 district.

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

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

107 ~~(8)(h)~~ The costs and methods of the proposed construction,
108 including the costs and methods of energy provision and the
109 availability of alternative, less costly, or more effective
110 methods of construction.

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

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

117 ~~(2) For a general hospital, the agency shall consider only~~
118 ~~the criteria specified in paragraph (1)(a), paragraph (1)(b),~~
119 ~~except for quality of care in paragraph (1)(b), and paragraphs~~
120 ~~(1)(e), (g), and (i).~~

121 Section 4. Section 408.032, Florida Statutes, is amended
122 to read:

123 408.036 Projects subject to review; exemptions.-

124 (1) APPLICABILITY.-Unless exempt under subsection (3), all
125 health-care-related projects, as described in paragraphs (a)-
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126 (g), are subject to review and must file an application for a
127 certificate of need with the agency. The agency is exclusively
128 responsible for determining whether a health-care-related
129 project is subject to review under ss. 408.031-408.045.

130 (a) The addition of beds in community nursing homes or
131 intermediate care facilities for the developmentally disabled by
132 new construction or alteration.

133 (b) The new construction or establishment of additional
134 health care facilities, including a replacement health care
135 facility when the proposed project site is not located on the
136 same site as or within 1 mile of the existing health care
137 facility, if the number of beds in each licensed bed category
138 will not increase.

139 (c) The conversion from one type of health care facility
140 to another, ~~including the conversion from a general hospital, a~~
141 ~~specialty hospital, or a long-term care hospital.~~

142 (d) The establishment of a hospice or hospice inpatient
143 facility, except as provided in s. 408.043.

144 (e) An increase in the number of beds for comprehensive
145 rehabilitation.

146 ~~(f) The establishment of tertiary health services,~~
147 ~~including inpatient comprehensive rehabilitation services.~~

148 ~~(g) An increase in the number of beds for acute care in a~~
149 ~~hospital that is located in a low-growth county. A low-growth~~
150 ~~county is defined as a county that has:~~

151 ~~1. A hospital with an occupancy rate for licensed acute~~
152 ~~care which has been below 60 percent for the previous 5 years;~~

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153 ~~2. Experienced a growth rate of 4 percent or less for the~~
154 ~~most recent 3-year period for which data are available, as~~
155 ~~determined using the population statistics published in the most~~
156 ~~recent edition of the Florida Statistical Abstract;~~

157 ~~3. A population of 400,000 or fewer according to the most~~
158 ~~recent edition of the Florida Statistical Abstract; and~~

159 ~~4. A hospital that has combined gross revenue from~~
160 ~~Medicaid and charity patients which exceeds \$60 million per year~~
161 ~~for the previous 2 years.~~

162
163 ~~This paragraph is repealed effective July 1, 2009.~~

164 (2) PROJECTS SUBJECT TO EXPEDITED REVIEW.—Unless exempt
165 pursuant to subsection (3), projects subject to an expedited
166 review shall include, but not be limited to:

167 (a) A transfer of a certificate of need, ~~except that when~~
168 ~~an existing hospital is acquired by a purchaser, all~~
169 ~~certificates of need issued to the hospital which are not yet~~
170 ~~operational shall be acquired by the purchaser, without need for~~
171 ~~a transfer.~~

172 (b) Replacement of a nursing home within the same
173 district, if the proposed project site is located within a
174 geographic area that contains at least 65 percent of the
175 facility's current residents and is within a 30-mile radius of
176 the replaced nursing home.

177 (c) Relocation of a portion of a nursing home's licensed
178 beds to a facility within the same district, if the relocation
179 is within a 30-mile radius of the existing facility and the

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180 total number of nursing home beds in the district does not
181 increase.

182

183 The agency shall develop rules to implement the provisions for
184 expedited review, including time schedule, application content
185 which may be reduced from the full requirements of s.

186 408.037(1), and application processing.

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

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

192 ~~(b) For the conversion of licensed acute care hospital~~
193 ~~beds to Medicare and Medicaid certified skilled nursing beds in~~
194 ~~a rural hospital, as defined in s. 395.602, so long as the~~
195 ~~conversion of the beds does not involve the construction of new~~
196 ~~facilities. The total number of skilled nursing beds, including~~
197 ~~swing beds, may not exceed one-half of the total number of~~
198 ~~licensed beds in the rural hospital as of July 1, 1993.~~

199 ~~Certified skilled nursing beds designated under this paragraph,~~
200 ~~excluding swing beds, shall be included in the community nursing~~
201 ~~home bed inventory. A rural hospital that subsequently~~
202 ~~decertifies any acute care beds exempted under this paragraph~~
203 ~~shall notify the agency of the decertification, and the agency~~
204 ~~shall adjust the community nursing home bed inventory~~
205 ~~accordingly.~~

206 (b)(e) For the addition of nursing home beds at a skilled
207 nursing facility that is part of a retirement community that
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208 provides a variety of residential settings and supportive
209 services and that has been incorporated and operated in this
210 state for at least 65 years on or before July 1, 1994. All
211 nursing home beds must not be available to the public but must
212 be for the exclusive use of the community residents.

213 ~~(c)-(d)~~ For an inmate health care facility built by or for
214 the exclusive use of the Department of Corrections as provided
215 in chapter 945. This exemption expires when such facility is
216 converted to other uses.

217 ~~(d)-(e)~~ For mobile surgical facilities and related health
218 care services provided under contract with the Department of
219 Corrections or a private correctional facility operating
220 pursuant to chapter 957.

221 ~~(e)-(f)~~ For the creation of a single nursing home within a
222 district by combining licensed beds from two or more licensed
223 nursing homes within such district, regardless of subdistrict
224 boundaries, if 50 percent of the beds in the created nursing
225 home are transferred from the only nursing home in a county and
226 its utilization data demonstrate that it had an occupancy rate
227 of less than 75 percent for the 12-month period ending 90 days
228 before the request for the exemption. This paragraph is repealed
229 upon the expiration of the moratorium established in s.
230 408.0435(1).

231 ~~(f)-(g)~~ For state veterans' nursing homes operated by or on
232 behalf of the Florida Department of Veterans' Affairs in
233 accordance with part II of chapter 296 for which at least 50
234 percent of the construction cost is federally funded and for
235 which the Federal Government pays a per diem rate not to exceed
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236 one-half of the cost of the veterans' care in such state nursing
237 homes. These beds shall not be included in the nursing home bed
238 inventory.

239 ~~(g)~~ ~~(h)~~ For combination within one nursing home facility of
240 the beds or services authorized by two or more certificates of
241 need issued in the same planning subdistrict. An exemption
242 granted under this paragraph shall extend the validity period of
243 the certificates of need to be consolidated by the length of the
244 period beginning upon submission of the exemption request and
245 ending with issuance of the exemption. The longest validity
246 period among the certificates shall be applicable to each of the
247 combined certificates.

248 ~~(h)~~ ~~(i)~~ For division into two or more nursing home
249 facilities of beds or services authorized by one certificate of
250 need issued in the same planning subdistrict. An exemption
251 granted under this paragraph shall extend the validity period of
252 the certificate of need to be divided by the length of the
253 period beginning upon submission of the exemption request and
254 ending with issuance of the exemption.

255 ~~(j)~~ ~~For the addition of hospital beds licensed under~~
256 ~~chapter 395 for comprehensive rehabilitation in a number that~~
257 ~~may not exceed 10 total beds or 10 percent of the licensed~~
258 ~~capacity, whichever is greater.~~

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

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262 ~~a. Certify that the prior 12 month average occupancy rate~~
263 ~~for the licensed beds being expanded meets or exceeds 80~~
264 ~~percent.~~

265 ~~b. Certify that the beds have been licensed and~~
266 ~~operational for at least 12 months.~~

267 ~~2. The timeframes and monitoring process specified in s.~~
268 ~~408.040(2)(a)-(c) apply to any exemption issued under this~~
269 ~~paragraph.~~

270 ~~3. The agency shall count beds authorized under this~~
271 ~~paragraph as approved beds in the published inventory of~~
272 ~~hospital beds until the beds are licensed.~~

273 (i)~~(k)~~ For the addition of nursing home beds licensed
274 under chapter 400 in a number not exceeding 10 total beds or 10
275 percent of the number of beds licensed in the facility being
276 expanded, whichever is greater; or, for the addition of nursing
277 home beds licensed under chapter 400 at a facility that has been
278 designated as a Gold Seal nursing home under s. 400.235 in a
279 number not exceeding 20 total beds or 10 percent of the number
280 of licensed beds in the facility being expanded, whichever is
281 greater.

282 1. In addition to any other documentation required by the
283 agency, a request for exemption submitted under this paragraph
284 must:

285 a. Certify that the facility has not had any class I or
286 class II deficiencies within the 30 months preceding the request
287 for addition.

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288 b. Certify that the prior 12-month average occupancy rate
289 for the nursing home beds at the facility meets or exceeds 96
290 percent.

291 c. Certify that any beds authorized for the facility under
292 this paragraph before the date of the current request for an
293 exemption have been licensed and operational for at least 12
294 months.

295 2. The timeframes and monitoring process specified in s.
296 408.040(2)(a)-(c) apply to any exemption issued under this
297 paragraph.

298 3. The agency shall count beds authorized under this
299 paragraph as approved beds in the published inventory of nursing
300 home beds until the beds are licensed.

301 ~~(1) For the establishment of:~~

302 ~~1. A Level II neonatal intensive care unit with at least~~
303 ~~10 beds, upon documentation to the agency that the applicant~~
304 ~~hospital had a minimum of 1,500 births during the previous 12~~
305 ~~months; or~~

306 ~~2. A Level III neonatal intensive care unit with at least~~
307 ~~15 beds, upon documentation to the agency that the applicant~~
308 ~~hospital has a Level II neonatal intensive care unit of at least~~
309 ~~10 beds and had a minimum of 3,500 births during the previous 12~~
310 ~~months,~~

311
312 ~~if the applicant demonstrates that it meets the requirements for~~
313 ~~quality of care, nurse staffing, physician staffing, physical~~
314 ~~plant, equipment, emergency transportation, and data reporting~~
315 ~~found in agency certificate-of-need rules for Level II and Level~~
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316 ~~III neonatal intensive care units and if the applicant commits~~
317 ~~to the provision of services to Medicaid and charity patients at~~
318 ~~a level equal to or greater than the district average. Such a~~
319 ~~commitment is subject to s. 408.040.~~

320 ~~(m)1. For the provision of adult open heart services in a~~
321 ~~hospital located within the boundaries of a health service~~
322 ~~planning district, as defined in s. 408.032(5), which has~~
323 ~~experienced an annual net out-migration of at least 600 open-~~
324 ~~heart surgery cases for 3 consecutive years according to the~~
325 ~~most recent data reported to the agency, and the district's~~
326 ~~population per licensed and operational open-heart programs~~
327 ~~exceeds the state average of population per licensed and~~
328 ~~operational open-heart programs by at least 25 percent. All~~
329 ~~hospitals within a health service planning district which meet~~
330 ~~the criteria reference in sub-subparagraphs 2.a.-h. shall be~~
331 ~~eligible for this exemption on July 1, 2004, and shall receive~~
332 ~~the exemption upon filing for it and subject to the following:~~

333 ~~a. A hospital that has received a notice of intent to~~
334 ~~grant a certificate of need or a final order of the agency~~
335 ~~granting a certificate of need for the establishment of an open-~~
336 ~~heart surgery program is entitled to receive a letter of~~
337 ~~exemption for the establishment of an adult open heart surgery~~
338 ~~program upon filing a request for exemption and complying with~~
339 ~~the criteria enumerated in sub-subparagraphs 2.a.-h., and is~~
340 ~~entitled to immediately commence operation of the program.~~

341 ~~b. An otherwise eligible hospital that has not received a~~
342 ~~notice of intent to grant a certificate of need or a final order~~
343 ~~of the agency granting a certificate of need for the~~

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344 ~~establishment of an open heart surgery program is entitled to~~
345 ~~immediately receive a letter of exemption for the establishment~~
346 ~~of an adult open heart surgery program upon filing a request for~~
347 ~~exemption and complying with the criteria enumerated in sub-~~
348 ~~subparagraphs 2.a. h., but is not entitled to commence operation~~
349 ~~of its program until December 31, 2006.~~

350 ~~2. A hospital shall be exempt from the certificate of need~~
351 ~~review for the establishment of an open heart surgery program~~
352 ~~when the application for exemption submitted under this~~
353 ~~paragraph complies with the following criteria:~~

354 ~~a. The applicant must certify that it will meet and~~
355 ~~continuously maintain the minimum licensure requirements adopted~~
356 ~~by the agency governing adult open heart programs, including the~~
357 ~~most current guidelines of the American College of Cardiology~~
358 ~~and American Heart Association Guidelines for Adult Open Heart~~
359 ~~Programs.~~

360 ~~b. The applicant must certify that it will maintain~~
361 ~~sufficient appropriate equipment and health personnel to ensure~~
362 ~~quality and safety.~~

363 ~~c. The applicant must certify that it will maintain~~
364 ~~appropriate times of operation and protocols to ensure~~
365 ~~availability and appropriate referrals in the event of~~
366 ~~emergencies.~~

367 ~~d. The applicant can demonstrate that it has discharged at~~
368 ~~least 300 inpatients with a principal diagnosis of ischemic~~
369 ~~heart disease for the most recent 12-month period as reported to~~
370 ~~the agency.~~

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

373 ~~f. The applicant is performing more than 300 diagnostic~~
374 ~~cardiac catheterization procedures per year, combined inpatient~~
375 ~~and outpatient.~~

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

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

385 ~~3. By December 31, 2004, and annually thereafter, the~~
386 ~~agency shall submit a report to the Legislature providing~~
387 ~~information concerning the number of requests for exemption it~~
388 ~~has received under this paragraph during the calendar year and~~
389 ~~the number of exemptions it has granted or denied during the~~
390 ~~calendar year.~~

391 ~~(n) For the provision of percutaneous coronary~~
392 ~~intervention for patients presenting with emergency myocardial~~
393 ~~infarctions in a hospital without an approved adult open-heart-~~
394 ~~surgery program. In addition to any other documentation required~~
395 ~~by the agency, a request for an exemption submitted under this~~
396 ~~paragraph must comply with the following:~~

397 ~~1. The applicant must certify that it will meet and~~
398 ~~continuously maintain the requirements adopted by the agency for~~
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399 ~~the provision of these services. These licensure requirements~~
400 ~~shall be adopted by rule pursuant to ss. 120.536(1) and 120.54~~
401 ~~and must be consistent with the guidelines published by the~~
402 ~~American College of Cardiology and the American Heart~~
403 ~~Association for the provision of percutaneous coronary~~
404 ~~interventions in hospitals without adult open-heart services. At~~
405 ~~a minimum, the rules shall require the following:~~

406 ~~a. Cardiologists must be experienced interventionalists~~
407 ~~who have performed a minimum of 75 interventions within the~~
408 ~~previous 12 months.~~

409 ~~b. The hospital must provide a minimum of 36 emergency~~
410 ~~interventions annually in order to continue to provide the~~
411 ~~service.~~

412 ~~e. The hospital must offer sufficient physician, nursing,~~
413 ~~and laboratory staff to provide the services 24 hours a day, 7~~
414 ~~days a week.~~

415 ~~d. Nursing and technical staff must have demonstrated~~
416 ~~experience in handling acutely ill patients requiring~~
417 ~~intervention based on previous experience in dedicated~~
418 ~~interventional laboratories or surgical centers.~~

419 ~~e. Cardiac care nursing staff must be adept in hemodynamic~~
420 ~~monitoring and Intra-aortic Balloon Pump (IABP) management.~~

421 ~~f. Formalized written transfer agreements must be~~
422 ~~developed with a hospital with an adult open-heart-surgery~~
423 ~~program, and written transport protocols must be in place to~~
424 ~~ensure safe and efficient transfer of a patient within 60~~
425 ~~minutes. Transfer and transport agreements must be reviewed and~~

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426 ~~tested, with appropriate documentation maintained at least every~~
427 ~~3 months.~~

428 ~~g. Hospitals implementing the service must first undertake~~
429 ~~a training program of 3 to 6 months' duration, which includes~~
430 ~~establishing standards and testing logistics, creating quality~~
431 ~~assessment and error management practices, and formalizing~~
432 ~~patient-selection criteria.~~

433 ~~2. The applicant must certify that it will use at all~~
434 ~~times the patient-selection criteria for the performance of~~
435 ~~primary angioplasty at hospitals without adult open-heart-~~
436 ~~surgery programs issued by the American College of Cardiology~~
437 ~~and the American Heart Association. At a minimum, these criteria~~
438 ~~would provide for the following:~~

439 ~~a. Avoidance of interventions in hemodynamically stable~~
440 ~~patients who have identified symptoms or medical histories.~~

441 ~~b. Transfer of patients who have a history of coronary~~
442 ~~disease and clinical presentation of hemodynamic instability.~~

443 ~~3. The applicant must agree to submit a quarterly report~~
444 ~~to the agency detailing patient characteristics, treatment, and~~
445 ~~outcomes for all patients receiving emergency percutaneous~~
446 ~~coronary interventions pursuant to this paragraph. This report~~
447 ~~must be submitted within 15 days after the close of each~~
448 ~~calendar quarter.~~

449 ~~4. The exemption provided by this paragraph does not apply~~
450 ~~unless the agency determines that the hospital has taken all~~
451 ~~necessary steps to be in compliance with all requirements of~~
452 ~~this paragraph, including the training program required under~~
453 ~~sub-subparagraph 1.g.~~

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454 ~~5. Failure of the hospital to continuously comply with the~~
455 ~~requirements of sub-subparagraphs 1.c.-f. and subparagraphs 2.~~
456 ~~and 3. will result in the immediate expiration of this~~
457 ~~exemption.~~

458 ~~6. Failure of the hospital to meet the volume requirements~~
459 ~~of sub-subparagraphs 1.a. and b. within 18 months after the~~
460 ~~program begins offering the service will result in the immediate~~
461 ~~expiration of the exemption.~~

462
463 ~~If the exemption for this service expires under subparagraph 5.~~
464 ~~or subparagraph 6., the agency may not grant another exemption~~
465 ~~for this service to the same hospital for 2 years and then only~~
466 ~~upon a showing that the hospital will remain in compliance with~~
467 ~~the requirements of this paragraph through a demonstration of~~
468 ~~corrections to the deficiencies that caused expiration of the~~
469 ~~exemption. Compliance with the requirements of this paragraph~~
470 ~~includes compliance with the rules adopted pursuant to this~~
471 ~~paragraph.~~

472 ~~(o) For the addition of mental health services or beds if~~
473 ~~the applicant commits to providing services to Medicaid or~~
474 ~~charity care patients at a level equal to or greater than the~~
475 ~~district average. Such a commitment is subject to s. 408.040.~~

476 ~~(j)-(p)~~ For replacement of a licensed nursing home on the
477 same site, or within 3 miles of the same site, if the number of
478 licensed beds does not increase.

479 ~~(k)-(q)~~ For consolidation or combination of licensed
480 nursing homes or transfer of beds between licensed nursing homes
481 within the same planning subdistrict, by providers that operate
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482 multiple nursing homes within that planning subdistrict, if
483 there is no increase in the planning subdistrict total number of
484 nursing home beds and the site of the relocation is not more
485 than 30 miles from the original location.

486 (l)~~(r)~~ For beds in state mental health treatment
487 facilities defined in s. 394.455 and state mental health
488 forensic facilities operated under chapter 916.

489 (m)~~(s)~~ For beds in state developmental disabilities
490 centers as defined in s. 393.063.

491 Section 5. Section 408.037, Florida Statutes, is amended
492 to read:

493 408.037 Application content.—

494 (1) ~~Except as provided in subsection (2) for a general~~
495 ~~hospital,~~ An application for a certificate of need must contain:

496 (a) A detailed description of the proposed project and
497 statement of its purpose and need in relation to the district
498 health plan.

499 (b) A statement of the financial resources needed by and
500 available to the applicant to accomplish the proposed project.
501 This statement must include:

502 1. A complete listing of all capital projects, including
503 new health facility development projects and health facility
504 acquisitions applied for, pending, approved, or underway in any
505 state at the time of application, regardless of whether or not
506 that state has a certificate-of-need program or a capital
507 expenditure review program pursuant to s. 1122 of the Social
508 Security Act. The agency may, by rule, require less-detailed
509 information from major health care providers. This listing must

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510 include the applicant's actual or proposed financial commitment
511 to those projects and an assessment of their impact on the
512 applicant's ability to provide the proposed project.

513 2. A detailed listing of the needed capital expenditures,
514 including sources of funds.

515 3. A detailed financial projection, including a statement
516 of the projected revenue and expenses for the first 2 years of
517 operation after completion of the proposed project. This
518 statement must include a detailed evaluation of the impact of
519 the proposed project on the cost of other services provided by
520 the applicant.

521 (c) An audited financial statement of the applicant. In an
522 application submitted by an existing health care facility,
523 health maintenance organization, or hospice, financial condition
524 documentation must include, but need not be limited to, a
525 balance sheet and a profit-and-loss statement of the 2 previous
526 fiscal years' operation.

527 ~~(2) An application for a certificate of need for a general~~
528 ~~hospital must contain a detailed description of the proposed~~
529 ~~general hospital project and a statement of its purpose and the~~
530 ~~needs it will meet. The proposed project's location, as well as~~
531 ~~its primary and secondary service areas, must be identified by~~
532 ~~zip code. Primary service area is defined as the zip codes from~~
533 ~~which the applicant projects that it will draw 75 percent of its~~
534 ~~discharges. Secondary service area is defined as the zip codes~~
535 ~~from which the applicant projects that it will draw its~~
536 ~~remaining discharges. If, subsequent to issuance of a final~~
537 ~~order approving the certificate of need, the proposed location~~
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538 ~~of the general hospital changes or the primary service area~~
539 ~~materially changes, the agency shall revoke the certificate of~~
540 ~~need. However, if the agency determines that such changes are~~
541 ~~deemed to enhance access to hospital services in the service~~
542 ~~district, the agency may permit such changes to occur. A party~~
543 ~~participating in the administrative hearing regarding the~~
544 ~~issuance of the certificate of need for a general hospital has~~
545 ~~standing to participate in any subsequent proceeding regarding~~
546 ~~the revocation of the certificate of need for a hospital for~~
547 ~~which the location has changed or for which the primary service~~
548 ~~area has materially changed. In addition, the application for~~
549 ~~the certificate of need for a general hospital must include a~~
550 ~~statement of intent that, if approved by final order of the~~
551 ~~agency, the applicant shall within 120 days after issuance of~~
552 ~~the final order or, if there is an appeal of the final order,~~
553 ~~within 120 days after the issuance of the court's mandate on~~
554 ~~appeal, furnish satisfactory proof of the applicant's financial~~
555 ~~ability to operate. The agency shall establish documentation~~
556 ~~requirements, to be completed by each applicant, which show~~
557 ~~anticipated provider revenues and expenditures, the basis for~~
558 ~~financing the anticipated cash-flow requirements of the~~
559 ~~provider, and an applicant's access to contingency financing. A~~
560 ~~party participating in the administrative hearing regarding the~~
561 ~~issuance of the certificate of need for a general hospital may~~
562 ~~provide written comments concerning the adequacy of the~~
563 ~~financial information provided, but such party does not have~~
564 ~~standing to participate in an administrative proceeding~~
565 ~~regarding proof of the applicant's financial ability to operate.~~

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566 ~~The agency may require a licensee to provide proof of financial~~
567 ~~ability to operate at any time if there is evidence of financial~~
568 ~~instability, including, but not limited to, unpaid expenses~~
569 ~~necessary for the basic operations of the provider.~~

570 (2)~~(3)~~ The applicant must certify that it will license and
571 operate the health care facility. For an existing health care
572 facility, the applicant must be the licenseholder of the
573 facility.

574 Section 6. Section 408.039, Florida Statutes, is amended
575 to read:

576 408.039 Review process.—The review process for
577 certificates of need shall be as follows:

578 (1) REVIEW CYCLES.—The agency by rule shall provide for
579 applications to be submitted on a timetable or cycle basis;
580 provide for review on a timely basis; and provide for all
581 completed applications pertaining to similar types of services
582 or facilities affecting the same service district to be
583 considered in relation to each other no less often than
584 annually.

585 (2) LETTERS OF INTENT.—

586 (a) At least 30 days prior to filing an application, a
587 letter of intent shall be filed by the applicant with the
588 agency, respecting the development of a proposal subject to
589 review. No letter of intent is required for expedited projects
590 as defined by rule by the agency.

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

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594 (c) Letters of intent must describe the proposal; specify
595 the number of beds sought, if any; identify the services to be
596 provided and the specific subdistrict location; and identify the
597 applicant.

598 (d) Within 21 days after filing a letter of intent, the
599 agency shall publish notice of the filing of letters of intent
600 in the Florida Administrative Weekly and notice that, if
601 requested, a public hearing shall be held at the local level
602 within 21 days after the application is deemed complete. Notices
603 under this paragraph must contain due dates applicable to the
604 cycle for filing applications and for requesting a hearing.

605 (3) APPLICATION PROCESSING.—

606 (a) An applicant shall file an application with the agency
607 and shall furnish a copy of the application to the agency.
608 Within 15 days after the applicable application filing deadline
609 established by agency rule, the staff of the agency shall
610 determine if the application is complete. If the application is
611 incomplete, the staff shall request specific information from
612 the applicant necessary for the application to be complete;
613 however, the staff may make only one such request. If the
614 requested information is not filed with the agency within 21
615 days after the receipt of the staff's request, the application
616 shall be deemed incomplete and deemed withdrawn from
617 consideration.

618 (b) Upon the request of any applicant or substantially
619 affected person within 14 days after notice that an application
620 has been filed, a public hearing may be held at the agency's
621 discretion if the agency determines that a proposed project
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622 involves issues of great local public interest. In such cases,
623 the agency shall attend the public hearing. The public hearing
624 shall allow applicants and other interested parties reasonable
625 time to present their positions and to present rebuttal
626 information. A recorded verbatim record of the hearing shall be
627 maintained. The public hearing shall be held at the local level
628 within 21 days after the application is deemed complete.

629 ~~(c) Except for competing applicants, in order to be~~
630 ~~eligible to challenge the agency decision on a general hospital~~
631 ~~application under review pursuant to paragraph (5) (c), existing~~
632 ~~hospitals must submit a detailed written statement of opposition~~
633 ~~to the agency and to the applicant. The detailed written~~
634 ~~statement must be received by the agency and the applicant~~
635 ~~within 21 days after the general hospital application is deemed~~
636 ~~complete and made available to the public.~~

637 ~~(d) In those cases where a written statement of opposition~~
638 ~~has been timely filed regarding a certificate of need~~
639 ~~application for a general hospital, the applicant for the~~
640 ~~general hospital may submit a written response to the agency.~~
641 ~~Such response must be received by the agency within 10 days of~~
642 ~~the written statement due date.~~

643 (4) STAFF RECOMMENDATIONS.—

644 (a) The agency's review of and final agency action on
645 applications shall be in accordance with statutory criteria and
646 the implementing administrative rules. In the application review
647 process, the agency shall give a preference, as defined by rule
648 of the agency, to an applicant which proposes to develop a
649 nursing home in a nursing home geographically underserved area.

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650 (b) Within 60 days after all the applications in a review
651 cycle are determined to be complete, the agency shall issue its
652 State Agency Action Report and Notice of Intent to grant a
653 certificate of need for the project in its entirety, to grant a
654 certificate of need for identifiable portions of the project, or
655 to deny a certificate of need. The State Agency Action Report
656 shall set forth in writing its findings of fact and
657 determinations upon which its decision is based. If the agency
658 intends to grant a certificate of need, the State Agency Action
659 Report or the Notice of Intent shall also include any conditions
660 which the agency intends to attach to the certificate of need.
661 The agency shall designate by rule a senior staff person, other
662 than the person who issues the final order, to issue State
663 Agency Action Reports and Notices of Intent.

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

667 (d) If no administrative hearing is requested pursuant to
668 subsection (5), the State Agency Action Report and the Notice of
669 Intent shall become the final order of the agency. The agency
670 shall provide a copy of the final order to the appropriate local
671 health council.

672 (5) ADMINISTRATIVE HEARINGS.—

673 (a) Within 21 days after publication of notice of the
674 State Agency Action Report and Notice of Intent, any person
675 authorized under paragraph (c) to participate in a hearing may
676 file a request for an administrative hearing; failure to file a
677 request for hearing within 21 days of publication of notice

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678 shall constitute a waiver of any right to a hearing and a waiver
679 of the right to contest the final decision of the agency. A copy
680 of the request for hearing shall be served on the applicant.

681 (b) Hearings shall be held in Tallahassee unless the
682 administrative law judge determines that changing the location
683 will facilitate the proceedings. The agency shall assign
684 proceedings requiring hearings to the Division of Administrative
685 Hearings of the Department of Management Services within 10 days
686 after the time has expired for requesting a hearing. Except upon
687 unanimous consent of the parties or upon the granting by the
688 administrative law judge of a motion of continuance, hearings
689 shall commence within 60 days after the administrative law judge
690 has been assigned. ~~For an application for a general hospital,~~
691 ~~administrative hearings shall commence within 6 months after the~~
692 ~~administrative law judge has been assigned, and a continuance~~
693 ~~may not be granted absent a finding of extraordinary~~
694 ~~circumstances by the administrative law judge.~~ All parties,
695 except the agency, shall bear their own expense of preparing a
696 transcript. In any application for a certificate of need which
697 is referred to the Division of Administrative Hearings for
698 hearing, the administrative law judge shall complete and submit
699 to the parties a recommended order as provided in ss. 120.569
700 and 120.57. The recommended order shall be issued within 30 days
701 after the receipt of the proposed recommended orders or the
702 deadline for submission of such proposed recommended orders,
703 whichever is earlier. The division shall adopt procedures for
704 administrative hearings which shall maximize the use of

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705 stipulated facts and shall provide for the admission of prepared
706 testimony.

707 (c) In administrative proceedings challenging the issuance
708 or denial of a certificate of need, only applicants considered
709 by the agency in the same batching cycle are entitled to a
710 comparative hearing on their applications. Existing health care
711 facilities may initiate or intervene in an administrative
712 hearing upon a showing that an established program will be
713 substantially affected by the issuance of any certificate of
714 need, whether reviewed under s. 408.036(1) or (2), to a
715 competing proposed facility or program within the same district.
716 ~~With respect to an application for a general hospital, competing~~
717 ~~applicants and only those existing hospitals that submitted a~~
718 ~~detailed written statement of opposition to an application as~~
719 ~~provided in this paragraph may initiate or intervene in an~~
720 ~~administrative hearing. Such challenges to a general hospital~~
721 ~~application shall be limited in scope to the issues raised in~~
722 ~~the detailed written statement of opposition that was provided~~
723 ~~to the agency. The administrative law judge may, upon a motion~~
724 ~~showing good cause, expand the scope of the issues to be heard~~
725 ~~at the hearing. Such motion shall include substantial and~~
726 ~~detailed facts and reasons for failure to include such issues in~~
727 ~~the original written statement of opposition.~~

728 (d) The applicant's failure to strictly comply with the
729 requirements of s. 408.037(1) or paragraph (2)(c) is not cause
730 for dismissal of the application, unless the failure to comply
731 impairs the fairness of the proceeding or affects the
732 correctness of the action taken by the agency.

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733 (e) The agency shall issue its final order within 45 days
734 after receipt of the recommended order. If the agency fails to
735 take action within such time, or as otherwise agreed to by the
736 applicant and the agency, the applicant may take appropriate
737 legal action to compel the agency to act. When making a
738 determination on an application for a certificate of need, the
739 agency is specifically exempt from the time limitations provided
740 in s. 120.60(1).

741 (6) JUDICIAL REVIEW.—

742 (a) A party to an administrative hearing for an
743 application for a certificate of need has the right, within not
744 more than 30 days after the date of the final order, to seek
745 judicial review in the District Court of Appeal pursuant to s.
746 120.68. The agency shall be a party in any such proceeding.

747 (b) In such judicial review, the court shall affirm the
748 final order of the agency, unless the decision is arbitrary,
749 capricious, or not in compliance with ss. 408.031-408.045.

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

754 ~~(d) The party appealing a final order that grants a~~
755 ~~general hospital certificate of need shall pay the appellee's~~
756 ~~attorney's fees and costs, in an amount up to \$1 million, from~~
757 ~~the beginning of the original administrative action if the~~
758 ~~appealing party loses the appeal, subject to the following~~
759 ~~limitations and requirements:~~

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

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

765 Section 7. Section 408.043, Florida Statutes, is amended
766 to read:

767 408.043 Special provisions.—

768 ~~(1) OSTEOPATHIC ACUTE CARE HOSPITALS. When an application~~
769 ~~is made for a certificate of need to construct or to expand an~~
770 ~~osteopathic acute care hospital, the need for such hospital~~
771 ~~shall be determined on the basis of the need for and~~
772 ~~availability of osteopathic services and osteopathic acute care~~
773 ~~hospitals in the district. When a prior certificate of need to~~
774 ~~establish an osteopathic acute care hospital has been issued in~~
775 ~~a district, and the facility is no longer used for that purpose,~~
776 ~~the agency may continue to count such facility and beds as an~~
777 ~~existing osteopathic facility in any subsequent application for~~
778 ~~construction of an osteopathic acute care hospital.~~

779 (1)~~(2)~~ HOSPICES.—When an application is made for a
780 certificate of need to establish or to expand a hospice, the
781 need for such hospice shall be determined on the basis of the
782 need for and availability of hospice services in the community.
783 The formula on which the certificate of need is based shall
784 discourage regional monopolies and promote competition. The
785 inpatient hospice care component of a hospice which is a
786 freestanding facility, or a part of a facility, which is
787 primarily engaged in providing inpatient care and related

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788 services and is not licensed as a health care facility shall
789 also be required to obtain a certificate of need. Provision of
790 hospice care by any current provider of health care is a
791 significant change in service and therefore requires a
792 certificate of need for such services.

793 ~~(2)~~~~(3)~~ RURAL HEALTH NETWORKS.—Preference shall be given in
794 the award of a certificate of need to members of certified rural
795 health networks, as provided for in s. 381.0406, subject to the
796 following conditions:

797 (a) Need must be shown pursuant to s. 408.035.

798 (b) The proposed project must:

799 1. Strengthen health care services in rural areas through
800 partnerships between rural care providers; or

801 2. Increase access to inpatient health care services for
802 Medicaid recipients or other low-income persons who live in
803 rural areas.

804 (c) No preference shall be given under this section for
805 the establishment of skilled nursing facility services by a
806 hospital.

807 ~~(3)~~~~(4)~~ PRIVATE ACCREDITATION NOT REQUIRED.—Accreditation
808 by any private organization may not be a requirement for the
809 issuance or maintenance of a certificate of need under ss.
810 408.031-408.045.

811 Section 8. Section 408.05, Florida Statutes, is amended to
812 read:

813 408.05 Florida Center for Health Information and Policy
814 Analysis.—

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815 (1) ESTABLISHMENT.—The agency shall establish a Florida
816 Center for Health Information and Policy Analysis. The center
817 shall establish a comprehensive health information system to
818 provide for the collection, compilation, coordination, analysis,
819 indexing, dissemination, and utilization of both purposefully
820 collected and extant health-related data and statistics. The
821 center shall be staffed with public health experts,
822 biostatisticians, information system analysts, health policy
823 experts, economists, and other staff necessary to carry out its
824 functions. Notwithstanding s. 408.032(8), as used in ss. 408.05-
825 408.063, the term "health care facility" means a hospital, long-
826 term care hospital, skilled nursing facility, hospice, or
827 intermediate care facility for the developmentally disabled. A
828 facility relying solely on spiritual means through prayer for
829 healing is not included as a health care facility.

830

831

832

833

T I T L E A M E N D M E N T

834

Remove line 8 and insert:

835

expiration of the section on a specified date; amending s.

836

408.032, F.S.; revising definitions; amending s. 408.034,

837

F.S.; revising duties and responsibilities of the Agency

838

for Health Care Administration in the exercise of its

839

authority to issue licenses to health care facilities and

840

health service providers; amending s. 408.035, F.S.;

841

revising review criteria for applications for certificate-

842

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843 of-need determinations for health care facilities and
844 health services; removing general hospitals from such
845 provisions; amending s. 408.036, F.S.; revising health-
846 care-related projects subject to review for a certificate
847 of need and exemptions therefrom; amending s. 408.037,
848 F.S.; revising content requirements with respect to an
849 application for a certificate of need; amending s.
850 408.039, F.S.; revising the review process for
851 certificates of need; amending s. 408.043, F.S.; revising
852 special provisions to eliminate provisions relating to
853 osteopathic acute care hospitals; amending s. 408.05,
854 F.S.; defining the term "health care facility" for
855 purposes of the Florida Center for Health Information and
856 Policy Analysis; creating s.