



756214

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/08/2014	.	
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	.	
	.	

The Committee on Health Policy (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (5) of section 408.034, Florida Statutes, is amended, present subsection (6) of that section is redesignated as subsection (8), and a new subsection (6) and subsection (7) are added to that section, to read:

408.034 Duties and responsibilities of agency; rules.—

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



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11 need methodology that has a goal of maintaining a subdistrict
12 average occupancy rate of 92 94 percent ~~and that reduces the~~
13 ~~community nursing home bed need for the areas of the state where~~
14 ~~the agency establishes pilot community diversion programs~~
15 ~~through the Title XIX aging waiver program.~~

16 (6) If nursing home bed need is determined to exist in
17 geographically contiguous subdistricts within a district, an
18 applicant may aggregate the subdistricts' need for a new
19 community nursing home in one of the subdistricts. If need is
20 aggregated from two subdistricts, the proposed nursing home site
21 must be located in the subdistrict with the greater need as
22 published by the agency in the Florida Administrative Register.
23 However, if need is aggregated from more than two subdistricts,
24 the location of the proposed nursing home site must provide
25 reasonable geographic access for residents in the respective
26 subdistricts given the relative bed need in each.

27 (7) If nursing home bed need is determined to exist in a
28 subdistrict, an additional positive application factor may be
29 recognized in the application review process for an applicant
30 who agrees to voluntarily relinquish licensed nursing home beds
31 in one or more subdistricts where there is no calculated need.
32 The applicant must demonstrate that it operates, controls, or
33 has an agreement with another licensed community nursing home to
34 ensure that beds are voluntarily relinquished if the application
35 is approved and the applicant is licensed.

36 Section 2. Subsection (2) and paragraphs (f), (k), (p), and
37 (q) of subsection (3) of section 408.036, Florida Statutes, are
38 amended to read:

39 408.036 Projects subject to review; exemptions.-



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40 (2) PROJECTS SUBJECT TO EXPEDITED REVIEW.—Unless exempt
41 pursuant to subsection (3), the following projects are subject
42 to an expedited review ~~shall include, but not be limited to:~~

43 (a) ~~A~~ Transfer of a certificate of need, except that when
44 an existing hospital is acquired by a purchaser, all
45 certificates of need issued to the hospital which are not yet
46 operational shall be acquired by the purchaser, without need for
47 a transfer.

48 (b) Replacement of a nursing home ~~within the same district,~~
49 if the proposed project site is ~~located within a geographic area~~
50 ~~that contains at least 65 percent of the facility's current~~
51 ~~residents and is~~ within a 30-mile radius of the replaced nursing
52 home. If the proposed project site is outside the subdistrict
53 where the replaced nursing home is located, the prior 6-month
54 occupancy rate for licensed community nursing homes in the
55 proposed subdistrict must be at least 85 percent in accordance
56 with the agency's most recently published inventory.

57 (c) Replacement of a nursing home within the same district,
58 if the proposed project site is outside a 30-mile radius of the
59 replaced nursing home but within the same subdistrict or a
60 geographically contiguous subdistrict. If the proposed project
61 site is in the geographically contiguous subdistrict, the prior
62 6-month occupancy rate for licensed community nursing homes for
63 that subdistrict must be at least 85 percent in accordance with
64 the agency's most recently published inventory.

65 (d) ~~(e)~~ Relocation of a portion of a nursing home's licensed
66 beds to another a facility or to establish a new facility within
67 the same district or within a geographically contiguous
68 district, if the relocation is within a 30-mile radius of the



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69 existing facility and the total number of nursing home beds in
70 the state ~~district~~ does not increase.

71 (e) ~~(d)~~ The New construction of a community nursing home in
72 a retirement community as further provided in this paragraph.

73 1. Expedited review under this paragraph is available if
74 all of the following criteria are met:

75 a. The residential use area of the retirement community is
76 deed-restricted as housing for older persons as defined in s.
77 760.29(4) (b) .

78 b. The retirement community is located in a county in which
79 25 percent or more of its population is age 65 and older.

80 c. The retirement community is located in a county that has
81 a rate of no more than 16.1 beds per 1,000 persons age 65 years
82 or older. The rate shall be determined by using the current
83 number of licensed and approved community nursing home beds in
84 the county per the agency's most recent published inventory.

85 d. The retirement community has a population of at least
86 8,000 residents within the county, based on a population data
87 source accepted by the agency.

88 e. The number of proposed community nursing home beds in an
89 application does not exceed the projected bed need after
90 applying the rate of 16.1 beds per 1,000 persons aged 65 years
91 and older projected for the county 3 years into the future using
92 the estimates adopted by the agency reduced by, ~~after~~
93 ~~subtracting~~ the agency's most recently published inventory of
94 licensed and approved community nursing home beds in the county
95 ~~per the agency's most recent published inventory.~~

96 2. No more than 120 community nursing home beds shall be
97 approved for a qualified retirement community under each request



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98 ~~for application~~ for expedited review. Subsequent requests for
99 expedited review under this process may ~~shall~~ not be made until
100 2 years after construction of the facility has commenced or 1
101 year after the beds approved through the initial request are
102 licensed, whichever occurs first.

103 3. The total number of community nursing home beds which
104 may be approved for any single deed-restricted community
105 pursuant to this paragraph may ~~shall~~ not exceed 240, regardless
106 of whether the retirement community is located in more than one
107 qualifying county.

108 4. Each nursing home facility approved under this paragraph
109 must ~~shall~~ be dually certified for participation in the Medicare
110 and Medicaid programs.

111 5. Each nursing home facility approved under this paragraph
112 must ~~shall~~ be at least 1 mile, as measured over publicly owned
113 roadways, from an existing approved and licensed community
114 nursing home, ~~measured over publicly owned roadways.~~

115 ~~6. Section 408.0435 does not apply to this paragraph.~~

116 ~~6.7.~~ A retirement community requesting expedited review
117 under this paragraph shall submit a written request to the
118 agency for ~~an~~ expedited review. The request must ~~shall~~ include
119 the number of beds to be added and provide evidence of
120 compliance with the criteria specified in subparagraph 1.

121 ~~7.8.~~ After verifying that the retirement community meets
122 the criteria for expedited review specified in subparagraph 1.,
123 the agency shall publicly notice in the Florida Administrative
124 Register that a request for an expedited review has been
125 submitted by a qualifying retirement community and that the
126 qualifying retirement community intends to make land available



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127 for the construction and operation of a community nursing home.
128 The agency's notice must ~~shall~~ identify where potential
129 applicants can obtain information describing the sales price of,
130 or terms of the land lease for, the property on which the
131 project will be located and the requirements established by the
132 retirement community. The agency notice must ~~shall~~ also specify
133 the deadline for submission of the any certificate-of-need
134 application, which may ~~shall~~ not be earlier than the 91st day or
135 ~~and not be~~ later than the 125th day after the date the notice
136 appears in the Florida Administrative Register.

137 8.9. The qualified retirement community shall make land
138 available to applicants it deems to have met its requirements
139 for the construction and operation of a community nursing home
140 but may ~~will~~ sell or lease the land only to the applicant that
141 is issued a certificate of need by the agency under ~~the~~
142 ~~provisions of~~ this paragraph.

143 a. A certificate-of-need ~~certificate-of-need~~ application
144 submitted under ~~pursuant to~~ this paragraph must ~~shall~~ identify
145 the intended site for the project within the retirement
146 community and the anticipated costs for the project based on
147 that site. The application must ~~shall~~ also include written
148 evidence that the retirement community has determined that both
149 the provider submitting the application and the project satisfy
150 ~~proposed by that provider satisfies~~ its requirements for the
151 project.

152 b. If the retirement community determines ~~community's~~
153 ~~determination~~ that more than one provider satisfies its
154 requirements for the project, it may notify ~~does not preclude~~
155 ~~the retirement community from notifying~~ the agency of the



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156 provider it prefers.

157 ~~9.10.~~ The agency shall review each submitted application
158 ~~submitted shall be reviewed by the agency.~~ If multiple
159 applications are submitted for a the project as published
160 pursuant to subparagraph 7. 8., then the agency shall review the
161 competing applications ~~shall be reviewed by the agency.~~

162
163 The agency shall develop rules to implement the ~~provisions for~~
164 expedited review process, including time schedule, application
165 content that which may be reduced from the full requirements of
166 s. 408.037(1), and application processing.

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

169 (f) For the addition of nursing home beds licensed under
170 chapter 400 in a number not exceeding 30 total beds or 25
171 percent of the number of beds licensed in the facility being
172 replaced under paragraph (2) (b), paragraph (2) (c), or paragraph
173 (p), whichever is less ~~For the creation of a single nursing home~~
174 ~~within a district by combining licensed beds from two or more~~
175 ~~licensed nursing homes within such district, regardless of~~
176 ~~subdistrict boundaries, if 50 percent of the beds in the created~~
177 ~~nursing home are transferred from the only nursing home in a~~
178 ~~county and its utilization data demonstrate that it had an~~
179 ~~occupancy rate of less than 75 percent for the 12-month period~~
180 ~~ending 90 days before the request for the exemption. This~~
181 ~~paragraph is repealed upon the expiration of the moratorium~~
182 ~~established in s. 408.0435(1).~~

183 (k) For the addition of nursing home beds licensed under
184 chapter 400 in a number not exceeding 10 total beds or 10



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185 percent of the number of beds licensed in the facility being
186 expanded, whichever is greater; or, for the addition of nursing
187 home beds licensed under chapter 400 at a facility that has been
188 designated as a Gold Seal nursing home under s. 400.235 in a
189 number not exceeding 20 total beds or 10 percent of the number
190 of licensed beds in the facility being expanded, whichever is
191 greater.

192 1. In addition to any other documentation required by the
193 agency, a request for exemption submitted under this paragraph
194 must certify that:

195 a. ~~Certify that~~ The facility has not had any class I or
196 class II deficiencies within the 30 months preceding the request
197 ~~for addition~~.

198 b. ~~Certify that~~ The prior 12-month average occupancy rate
199 for the nursing home beds at the facility meets or exceeds 94 ~~96~~
200 percent.

201 c. ~~Certify that~~ Any beds authorized for the facility under
202 this paragraph before the date of the current request for an
203 exemption have been licensed and operational for at least 12
204 months.

205 2. The timeframes and monitoring process specified in s.
206 408.040(2)(a)-(c) apply to any exemption issued under this
207 paragraph.

208 3. The agency shall count beds authorized under this
209 paragraph as approved beds in the published inventory of nursing
210 home beds until the beds are licensed.

211 (p) For replacement of a licensed nursing home on the same
212 site, or within 5 ~~3~~ miles of the same site, if the number of
213 licensed beds does not increase.



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214 (q) For consolidation or combination of licensed nursing
215 homes or transfer of beds between licensed nursing homes within
216 the same planning district subdistrict, by ~~providers that~~
217 ~~operate multiple~~ nursing homes with any shared controlled
218 interest within that planning district subdistrict, if there is
219 no increase in the planning district subdistrict total number of
220 nursing home beds and the site of the relocation is not more
221 than 30 miles from the original location.

222 Section 3. Section 408.0435, Florida Statutes, is repealed.

223 Section 4. Section 408.0436, Florida Statutes, is created
224 to read:

225 408.0436 Limitation on nursing home certificates of need.-
226 Notwithstanding the establishment of need as provided in this
227 chapter, the agency may not approve a certificate-of-need
228 application for new community nursing home beds following the
229 batching cycle in which the total number of new community
230 nursing home beds approved from July 1, 2014, to June 30, 2019,
231 equals or exceeds 5,000. As used in this section and provided in
232 rule 59C-1.002, Florida Administrative Code, the term "batching
233 cycle" means the grouping for comparative review of certificate-
234 of-need applications submitted for beds, services, or programs
235 having a like certificate-of-need need methodology or licensing
236 category in the same planning horizon and the same applicable
237 district or subdistrict. This section repeals on July 1, 2019.

238 Section 5. This act shall take effect July 1, 2014.

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

240 And the title is amended as follows:

241 Delete everything before the enacting clause
242 and insert:



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243 A bill to be entitled
244 An act relating to certificates of need; amending s.
245 408.034, F.S.; decreasing the subdistrict average
246 occupancy rate that the Agency for Health Care
247 Administration is required to maintain as a goal of
248 its nursing-home-bed-need methodology; conforming a
249 provision to changes made by the act; authorizing an
250 applicant to aggregate the need of geographically
251 contiguous subdistricts within a district for a
252 proposed community nursing home under certain
253 circumstances; requiring the proposed nursing home
254 site to be located in the subdistrict with the greater
255 need under certain circumstances; recognizing an
256 additional positive application factor for an
257 applicant who voluntarily relinquishes certain nursing
258 home beds; requiring the applicant to demonstrate that
259 it meets certain requirements; amending s. 408.036,
260 F.S.; providing that, under certain circumstances,
261 replacement of a nursing home and relocation of a
262 portion of a nursing home's licensed beds to another
263 facility, or to establish a new facility, is a health-
264 care-related project subject to expedited review;
265 conforming a cross-reference; revising the
266 requirements for projects that are exempted from
267 applying for a certificate of need; repealing s.
268 408.0435, F.S., relating to the moratorium on the
269 approval of certificates of need for additional
270 community nursing home beds; creating s. 408.0436,
271 F.S.; prohibiting the agency from approving a



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272 certificate-of-need application for new community
273 nursing home beds under certain circumstances;
274 defining the term "batching cycle"; providing a
275 repeal; providing an effective date.