

By Senator Grimsley

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1                                   A bill to be entitled  
2       An act relating to certificates of need; amending s.  
3       408.034, F.S.; decreasing the subdistrict average  
4       occupancy rate that the Agency for Health Care  
5       Administration is required to maintain as a goal of  
6       its nursing-home-bed-need methodology; conforming a  
7       provision to changes made by the act; authorizing an  
8       applicant to aggregate the need of geographically  
9       contiguous subdistricts within a district for a  
10      proposed community nursing home under certain  
11      circumstances; requiring the proposed nursing home  
12      site to be located in the subdistrict with the greater  
13      need under certain circumstances; amending s. 408.036,  
14      F.S.; providing that, under certain circumstances,  
15      replacement of a nursing home is a health-care-related  
16      project subject to expedited review; conforming a  
17      cross-reference; revising the requirements for  
18      projects that are exempted from applying for a  
19      certificate of need; repealing s. 408.0435, F.S.,  
20      relating to the moratorium on the approval of  
21      certificates of need for additional community nursing  
22      home beds; providing an effective date.

23  
24   Be It Enacted by the Legislature of the State of Florida:

25  
26       Section 1. Subsection (5) of section 408.034, Florida  
27       Statutes, is amended, present subsection (6) of that section is  
28       redesignated as subsection (7), and a new subsection (6) is  
29       added to that section, to read:

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30 408.034 Duties and responsibilities of agency; rules.-

31 (5) The agency shall establish by rule a nursing-home-bed-  
32 need methodology that has a goal of maintaining a subdistrict  
33 average occupancy rate of 92 ~~94~~ percent ~~and that reduces the~~  
34 ~~community nursing home bed need for the areas of the state where~~  
35 ~~the agency establishes pilot community diversion programs~~  
36 ~~through the Title XIX aging waiver program.~~

37 (6) If nursing home bed need is determined to exist in  
38 geographically contiguous subdistricts within a district, an  
39 applicant may aggregate the subdistricts' need for a new  
40 community nursing home in one of the subdistricts. If need is  
41 aggregated from two subdistricts, the proposed nursing home site  
42 must be located in the subdistrict with the greater need as  
43 published by the agency in the Florida Administrative Register.  
44 However, if need is aggregated from more than two subdistricts,  
45 the location of the proposed nursing home site must provide  
46 reasonable geographic access for residents in the respective  
47 subdistricts given the relative bed need in each.

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

51 408.036 Projects subject to review; exemptions.-

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

55 (a) A transfer of a certificate of need, except that when  
56 an existing hospital is acquired by a purchaser, all  
57 certificates of need issued to the hospital which are not yet  
58 operational shall be acquired by the purchaser, ~~7~~ without need for

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59 a transfer.

60 (b) Replacement of a nursing home, if the proposed project  
61 site within the same district, if the proposed project site is  
62 located within a geographic area that contains at least 65  
63 percent of the facility's current residents and is within a 30-  
64 mile radius of the replaced nursing home.

65 (c) Replacement of a nursing home within the same district,  
66 if the proposed project site is outside a 30-mile radius of the  
67 replaced nursing home but within the same subdistrict or a  
68 geographically contiguous subdistrict. If the proposed project  
69 site is in the geographically contiguous subdistrict, the prior  
70 6-month occupancy rate for licensed community nursing homes for  
71 that subdistrict must be at least 85 percent in accordance with  
72 the agency's most recently published inventory.

73 (d)(e) Relocation of a portion of a nursing home's licensed  
74 beds to a facility within the same district, if the relocation  
75 is within a 30-mile radius of the existing facility and the  
76 total number of nursing home beds in the district does not  
77 increase.

78 (e)(d) The new construction of a community nursing home in  
79 a retirement community as further provided in this paragraph.

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

82 a. The residential use area of the retirement community is  
83 deed-restricted as housing for older persons as defined in s.  
84 760.29(4)(b).

85 b. The retirement community is located in a county in which  
86 25 percent or more of its population is age 65 and older.

87 c. The retirement community is located in a county that has

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88 a rate of no more than 16.1 beds per 1,000 persons age 65 years  
89 or older. The rate shall be determined by using the current  
90 number of licensed and approved community nursing home beds in  
91 the county per the agency's most recent published inventory.

92 d. The retirement community has a population of at least  
93 8,000 residents within the county, based on a population data  
94 source accepted by the agency.

95 e. The number of proposed community nursing home beds in an  
96 application does not exceed the projected bed need after  
97 applying the rate of 16.1 beds per 1,000 persons aged 65 years  
98 and older projected for the county 3 years into the future using  
99 the estimates adopted by the agency reduced by,~~after~~  
100 ~~subtracting~~ the agency's most recent published inventory of  
101 licensed and approved community nursing home beds in the county  
102 ~~per the agency's most recent published inventory.~~

103 2. No more than 120 community nursing home beds shall be  
104 approved for a qualified retirement community under each request  
105 ~~for application~~ for expedited review. Subsequent requests for  
106 expedited review under this process may ~~shall~~ not be made until  
107 2 years after construction of the facility has commenced or 1  
108 year after the beds approved through the initial request are  
109 licensed, whichever occurs first.

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

115 4. Each nursing home facility approved under this paragraph  
116 must ~~shall~~ be dually certified for participation in the Medicare

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117 and Medicaid programs.

118       5. Each nursing home facility approved under this paragraph  
119 must shall be at least 1 mile, as measured over publicly owned  
120 roadways, from an existing approved and licensed community  
121 nursing home, ~~measured over publicly owned roadways.~~

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

123       6.7. A retirement community requesting expedited review  
124 under this paragraph shall submit a written request to the  
125 agency for ~~an~~ expedited review. The request must shall include  
126 the number of beds to be added and provide evidence of  
127 compliance with the criteria specified in subparagraph 1.

128       ~~7.8.~~ After verifying that the retirement community meets  
129 the criteria for expedited review specified in subparagraph 1.,  
130 the agency shall publicly notice in the Florida Administrative  
131 Register that a request for an expedited review has been  
132 submitted by a qualifying retirement community and that the  
133 qualifying retirement community intends to make land available  
134 for the construction and operation of a community nursing home.  
135 The agency's notice must shall identify where potential  
136 applicants can obtain information describing the sales price of,  
137 or terms of the land lease for, the property on which the  
138 project will be located and the requirements established by the  
139 retirement community. The agency notice must shall also specify  
140 the deadline for submission of the any certificate-of-need  
141 application, which may shall not be earlier than the 91st day or  
142 ~~and not be~~ later than the 125th day after the date the notice  
143 appears in the Florida Administrative Register.

144       8.9. The qualified retirement community shall make land  
145 available to applicants it deems to have met its requirements

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146 for the construction and operation of a community nursing home  
147 but may ~~will~~ sell or lease the land only to the applicant that  
148 is issued a certificate of need by the agency under ~~the~~  
149 ~~provisions of~~ this paragraph.

150 a. A certificate of need application submitted under  
151 ~~pursuant to~~ this paragraph must ~~shall~~ identify the intended site  
152 for the project within the retirement community and the  
153 anticipated costs for the project based on that site. The  
154 application must ~~shall~~ also include written evidence that the  
155 retirement community has determined that both the provider  
156 submitting the application and the project satisfy ~~proposed by~~  
157 ~~that provider satisfies~~ its requirements for the project.

158 b. If the retirement community determines ~~community's~~  
159 ~~determination~~ that more than one provider satisfies its  
160 requirements for the project, it may notify ~~does not preclude~~  
161 ~~the retirement community from notifying~~ the agency of the  
162 provider it prefers.

163 ~~9.10.~~ The agency shall review each submitted application  
164 ~~submitted shall be reviewed by the agency.~~ If multiple  
165 applications are submitted for a ~~the~~ project ~~as~~ published  
166 pursuant to subparagraph 7. 8., ~~then~~ the agency shall review the  
167 competing applications ~~shall be reviewed by the agency.~~

168  
169 The agency shall develop rules to implement the ~~provisions for~~  
170 expedited review process, including time schedule, application  
171 content that ~~which~~ may be reduced from the full requirements of  
172 s. 408.037(1), and application processing.

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

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175 ~~(f) For the creation of a single nursing home within a~~  
176 ~~district by combining licensed beds from two or more licensed~~  
177 ~~nursing homes within such district, regardless of subdistrict~~  
178 ~~boundaries, if 50 percent of the beds in the created nursing~~  
179 ~~home are transferred from the only nursing home in a county and~~  
180 ~~its utilization data demonstrate that it had an occupancy rate~~  
181 ~~of less than 75 percent for the 12-month period ending 90 days~~  
182 ~~before the request for the exemption. This paragraph is repealed~~  
183 ~~upon the expiration of the moratorium established in s.~~  
184 ~~408.0435(1).~~

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

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

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

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

203 c. ~~Certify that~~ Any beds authorized for the facility under

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204 this paragraph before the date of the current request for an  
205 exemption have been licensed and operational for at least 12  
206 months.

207 2. The timeframes and monitoring process specified in s.  
208 408.040(2)(a)-(c) apply to any exemption issued under this  
209 paragraph.

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

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

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

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

225 Section 4. This act shall take effect July 1, 2014.