

By the Committee on Health Policy; and 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; recognizing an  
14      additional positive application factor for an  
15      applicant who voluntarily relinquishes certain nursing  
16      home beds; requiring the applicant to demonstrate that  
17      it meets certain requirements; amending s. 408.036,  
18      F.S.; providing that, under certain circumstances,  
19      replacement of a nursing home and relocation of a  
20      portion of a nursing home's licensed beds to another  
21      facility, or to establish a new facility, is a health-  
22      care-related project subject to expedited review;  
23      conforming a cross-reference; revising the  
24      requirements for projects that are exempted from  
25      applying for a certificate of need; repealing s.  
26      408.0435, F.S., relating to the moratorium on the  
27      approval of certificates of need for additional  
28      community nursing home beds; creating s. 408.0436,  
29      F.S.; prohibiting the agency from approving a

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30 certificate-of-need application for new community  
31 nursing home beds under certain circumstances;  
32 defining the term "batching cycle"; providing a  
33 repeal; providing an effective date.  
34

35 Be It Enacted by the Legislature of the State of Florida:  
36

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

41 408.034 Duties and responsibilities of agency; rules.—

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

48 (6) If nursing home bed need is determined to exist in  
49 geographically contiguous subdistricts within a district, an  
50 applicant may aggregate the subdistricts' need for a new  
51 community nursing home in one of the subdistricts. If need is  
52 aggregated from two subdistricts, the proposed nursing home site  
53 must be located in the subdistrict with the greater need as  
54 published by the agency in the Florida Administrative Register.  
55 However, if need is aggregated from more than two subdistricts,  
56 the location of the proposed nursing home site must provide  
57 reasonable geographic access for residents in the respective  
58 subdistricts given the relative bed need in each.

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59       (7) If nursing home bed need is determined to exist in a  
60 subdistrict, an additional positive application factor may be  
61 recognized in the application review process for an applicant  
62 who agrees to voluntarily relinquish licensed nursing home beds  
63 in one or more subdistricts where there is no calculated need.  
64 The applicant must demonstrate that it operates, controls, or  
65 has an agreement with another licensed community nursing home to  
66 ensure that beds are voluntarily relinquished if the application  
67 is approved and the applicant is licensed.

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

71       408.036 Projects subject to review; exemptions.—

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

75       (a) ~~A~~ Transfer of a certificate of need, except that when  
76 an existing hospital is acquired by a purchaser, all  
77 certificates of need issued to the hospital which are not yet  
78 operational shall be acquired by the purchaser, ~~without need for~~  
79 a transfer.

80       (b) Replacement of a nursing home ~~within the same district,~~  
81 if the proposed project site is ~~located within a geographic area~~  
82 ~~that contains at least 65 percent of the facility's current~~  
83 ~~residents and is~~ within a 30-mile radius of the replaced nursing  
84 home. If the proposed project site is outside the subdistrict  
85 where the replaced nursing home is located, the prior 6-month  
86 occupancy rate for licensed community nursing homes in the  
87 proposed subdistrict must be at least 85 percent in accordance

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88 with the agency's most recently published inventory.

89 (c) Replacement of a nursing home within the same district,  
90 if the proposed project site is outside a 30-mile radius of the  
91 replaced nursing home but within the same subdistrict or a  
92 geographically contiguous subdistrict. If the proposed project  
93 site is in the geographically contiguous subdistrict, the prior  
94 6-month occupancy rate for licensed community nursing homes for  
95 that subdistrict must be at least 85 percent in accordance with  
96 the agency's most recently published inventory.

97 (d)-(e) Relocation of a portion of a nursing home's licensed  
98 beds to another a facility or to establish a new facility within  
99 the same district or within a geographically contiguous  
100 district, if the relocation is within a 30-mile radius of the  
101 existing facility and the total number of nursing home beds in  
102 the state district does not increase.

103 (e)-(d) The New construction of a community nursing home in  
104 a retirement community as further provided in this paragraph.

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

107 a. The residential use area of the retirement community is  
108 deed-restricted as housing for older persons as defined in s.  
109 760.29(4) (b) .

110 b. The retirement community is located in a county in which  
111 25 percent or more of its population is age 65 and older.

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

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117 d. The retirement community has a population of at least  
118 8,000 residents within the county, based on a population data  
119 source accepted by the agency.

120 e. The number of proposed community nursing home beds in an  
121 application does not exceed the projected bed need after  
122 applying the rate of 16.1 beds per 1,000 persons aged 65 years  
123 and older projected for the county 3 years into the future using  
124 the estimates adopted by the agency reduced by,~~after~~  
125 ~~subtracting~~ the agency's most recently published inventory of  
126 licensed and approved community nursing home beds in the county  
127 ~~per the agency's most recent published inventory.~~

128 2. No more than 120 community nursing home beds shall be  
129 approved for a qualified retirement community under each request  
130 ~~for application~~ for expedited review. Subsequent requests for  
131 expedited review under this process may ~~shall~~ not be made until  
132 2 years after construction of the facility has commenced or 1  
133 year after the beds approved through the initial request are  
134 licensed, whichever occurs first.

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

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

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

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146 nursing home, ~~measured over publicly owned roadways.~~

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

148 6.7. A retirement community requesting expedited review  
149 under this paragraph shall submit a written request to the  
150 agency for ~~an~~ expedited review. The request must ~~shall~~ include  
151 the number of beds to be added and provide evidence of  
152 compliance with the criteria specified in subparagraph 1.

153 ~~7.8.~~ After verifying that the retirement community meets  
154 the criteria for expedited review specified in subparagraph 1.,  
155 the agency shall publicly notice in the Florida Administrative  
156 Register that a request for an expedited review has been  
157 submitted by a qualifying retirement community and that the  
158 qualifying retirement community intends to make land available  
159 for the construction and operation of a community nursing home.  
160 The agency's notice must ~~shall~~ identify where potential  
161 applicants can obtain information describing the sales price of,  
162 or terms of the land lease for, the property on which the  
163 project will be located and the requirements established by the  
164 retirement community. The agency notice must ~~shall~~ also specify  
165 the deadline for submission of the ~~any~~ certificate-of-need  
166 application, which may ~~shall~~ not be earlier than the 91st day or  
167 ~~and not be~~ later than the 125th day after the date the notice  
168 appears in the Florida Administrative Register.

169 8.9. The qualified retirement community shall make land  
170 available to applicants it deems to have met its requirements  
171 for the construction and operation of a community nursing home  
172 but may ~~will~~ sell or lease the land only to the applicant that  
173 is issued a certificate of need by the agency under ~~the~~  
174 ~~provisions of~~ this paragraph.

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175 a. A certificate-of-need ~~certificate of need~~ application  
176 submitted under ~~pursuant to~~ this paragraph must ~~shall~~ identify  
177 the intended site for the project within the retirement  
178 community and the anticipated costs for the project based on  
179 that site. The application must ~~shall~~ also include written  
180 evidence that the retirement community has determined that both  
181 the provider submitting the application and the project satisfy  
182 ~~proposed by that provider satisfies~~ its requirements for the  
183 project.

184 b. If the retirement community determines ~~community's~~  
185 ~~determination~~ that more than one provider satisfies its  
186 requirements for the project, it may notify ~~does not preclude~~  
187 ~~the retirement community from notifying~~ the agency of the  
188 provider it prefers.

189 ~~9.10.~~ The agency shall review each submitted application  
190 ~~submitted shall be reviewed by the agency.~~ If multiple  
191 applications are submitted for a ~~the~~ project ~~as~~ published  
192 pursuant to subparagraph 7. 8., ~~then~~ the agency shall review the  
193 competing applications shall be reviewed by the agency.

194  
195 The agency shall develop rules to implement the ~~provisions for~~  
196 expedited review process, including time schedule, application  
197 content that ~~which~~ may be reduced from the full requirements of  
198 s. 408.037(1), and application processing.

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

201 (f) For the addition of nursing home beds licensed under  
202 chapter 400 in a number not exceeding 30 total beds or 25  
203 percent of the number of beds licensed in the facility being

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204 replaced under paragraph (2)(b), paragraph (2)(c), or paragraph  
205 (p), whichever is less ~~For the creation of a single nursing home~~  
206 ~~within a district by combining licensed beds from two or more~~  
207 ~~licensed nursing homes within such district, regardless of~~  
208 ~~subdistrict boundaries, if 50 percent of the beds in the created~~  
209 ~~nursing home are transferred from the only nursing home in a~~  
210 ~~county and its utilization data demonstrate that it had an~~  
211 ~~occupancy rate of less than 75 percent for the 12-month period~~  
212 ~~ending 90 days before the request for the exemption. This~~  
213 ~~paragraph is repealed upon the expiration of the moratorium~~  
214 ~~established in s. 408.0435(1).~~

215 (k) For the addition of nursing home beds licensed under  
216 chapter 400 in a number not exceeding 10 total beds or 10  
217 percent of the number of beds licensed in the facility being  
218 expanded, whichever is greater; or, for the addition of nursing  
219 home beds licensed under chapter 400 at a facility that has been  
220 designated as a Gold Seal nursing home under s. 400.235 in a  
221 number not exceeding 20 total beds or 10 percent of the number  
222 of licensed beds in the facility being expanded, whichever is  
223 greater.

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

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

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



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233 c. ~~Certify that~~ Any beds authorized for the facility under  
234 this paragraph before the date of the current request for an  
235 exemption have been licensed and operational for at least 12  
236 months.

237 2. The timeframes and monitoring process specified in s.  
238 408.040(2)(a)-(c) apply to any exemption issued under this  
239 paragraph.

240 3. The agency shall count beds authorized under this  
241 paragraph as approved beds in the published inventory of nursing  
242 home beds until the beds are licensed.

243 (p) For replacement of a licensed nursing home on the same  
244 site, or within 5 ~~3~~ miles of the same site if within the same  
245 subdistrict, if the number of licensed beds does not increase  
246 except as allowed by paragraph (f).

247 (q) For consolidation or combination of licensed nursing  
248 homes or transfer of beds between licensed nursing homes within  
249 the same planning district ~~subdistrict~~, by ~~providers that~~  
250 ~~operate multiple~~ nursing homes with any shared controlled  
251 interest within that planning district ~~subdistrict~~, if there is  
252 no increase in the planning district ~~subdistrict~~ total number of  
253 nursing home beds and the site of the relocation is not more  
254 than 30 miles from the original location.

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

256 Section 4. Section 408.0436, Florida Statutes, is created  
257 to read:

258 408.0436 Limitation on nursing home certificates of need.-  
259 Notwithstanding the establishment of need as provided in this  
260 chapter, the agency may not approve a certificate-of-need  
261 application for new community nursing home beds following the

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262 batching cycle in which the cumulative number of new community  
263 nursing home beds approved from July 1, 2014, to June 30, 2019,  
264 equals or exceeds 5,000. As used in this section, the term  
265 "batching cycle" means the grouping for comparative review of  
266 certificate-of-need applications submitted for beds, services,  
267 or programs having a like certificate-of-need need methodology  
268 or licensing category in the same planning horizon and the same  
269 applicable district or subdistrict. This section is repealed on  
270 July 1, 2019.

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