

HB 287

2014

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:

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),  
 49 and (q) of subsection (3) of section 408.036, Florida Statutes,  
 50 are 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, ~~without need for~~  
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  
66 district, if the proposed project site is outside a 30-mile  
67 radius of the replaced nursing home but within the same  
68 subdistrict or a geographically contiguous subdistrict. If the  
69 proposed project site is in the geographically contiguous  
70 subdistrict, the prior 6-month occupancy rate for licensed  
71 community nursing homes for that subdistrict must be at least 85  
72 percent in accordance with the agency's most recently published  
73 inventory.

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

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

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

83            a. The residential use area of the retirement community is  
 84 deed-restricted as housing for older persons as defined in s.  
 85 760.29(4)(b).

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

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

94            d. The retirement community has a population of at least  
 95 8,000 residents within the county, based on a population data  
 96 source accepted by the agency.

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

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

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

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

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

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

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

130           ~~7.8.~~ After verifying that the retirement community meets

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

146 ~~8.9.~~ The qualified retirement community shall make land  
 147 available to applicants it deems to have met its requirements  
 148 for the construction and operation of a community nursing home  
 149 but may ~~will~~ sell or lease the land only to the applicant that  
 150 is issued a certificate of need by the agency under ~~the~~  
 151 ~~provisions of~~ this paragraph.

152 a. A certificate of need application submitted under  
 153 ~~pursuant to~~ this paragraph must ~~shall~~ identify the intended site  
 154 for the project within the retirement community and the  
 155 anticipated costs for the project based on that site. The  
 156 application must ~~shall~~ also include written evidence that the

157 retirement community has determined that both the provider  
158 submitting the application and the project satisfy ~~proposed by~~  
159 ~~that provider satisfies~~ its requirements for the project.

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

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

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

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

177 ~~(f) For the creation of a single nursing home within a~~  
178 ~~district by combining licensed beds from two or more licensed~~  
179 ~~nursing homes within such district, regardless of subdistrict~~  
180 ~~boundaries, if 50 percent of the beds in the created nursing~~  
181 ~~home are transferred from the only nursing home in a county and~~  
182 ~~its utilization data demonstrate that it had an occupancy rate~~

183 ~~of less than 75 percent for the 12-month period ending 90 days~~  
184 ~~before the request for the exemption. This paragraph is repealed~~  
185 ~~upon the expiration of the moratorium established in s.~~  
186 ~~408.0435(1).~~

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

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

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

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

205 c. ~~Certify that~~ Any beds authorized for the facility under  
206 this paragraph before the date of the current request for an  
207 exemption have been licensed and operational for at least 12  
208 months.



209           2. The timeframes and monitoring process specified in s.  
 210 408.040(2)(a)-(c) apply to any exemption issued under this  
 211 paragraph.

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

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

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

226           Section 3. Section 408.0435, Florida Statutes, is  
 227 repealed.

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