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CS/CS/HB 287

2014 Legislature

1
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; creating s.
26 408.0436, F.S.; prohibiting the agency from approving

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27 a certificate-of-need application for new community
 28 nursing home beds under certain circumstances;
 29 defining the term "batching cycle"; providing for
 30 future repeal; repealing s. 408.0435, F.S., relating
 31 to the moratorium on the approval of certificates of
 32 need for additional community nursing home beds;
 33 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, subsection (6) is renumbered as subsection
 39 (8), and new subsections (6) and (7) are added to that section,
 40 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

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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 subdistrict.

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),
 69 and (q) of subsection (3) of section 408.036, Florida Statutes,
 70 are 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~~

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79 a transfer.

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

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

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

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

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

109 a. The residential use area of the retirement community is
 110 deed-restricted as housing for older persons as defined in s.
 111 760.29(4)(b).

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

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

120 d. The retirement community has a population of at least
 121 8,000 residents within the county, based on a population data
 122 source accepted by the agency.

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

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131 2. No more than 120 community nursing home beds shall be
 132 approved for a qualified retirement community under each request
 133 ~~for application~~ for expedited review. Subsequent requests for
 134 expedited review under this process may ~~shall~~ not be made until
 135 2 years after construction of the facility has commenced or 1
 136 year after the beds approved through the initial request are
 137 licensed, whichever occurs first.

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

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

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

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

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

156 ~~7.8.~~ After verifying that the retirement community meets

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

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

178 a. A certificate-of-need ~~certificate-of-need~~ application
 179 submitted under ~~pursuant to~~ this paragraph must ~~shall~~ identify
 180 the intended site for the project within the retirement
 181 community and the anticipated costs for the project based on
 182 that site. The application must ~~shall~~ also include written

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183 evidence that the retirement community has determined that both
 184 the provider submitting the application and the project satisfy
 185 ~~proposed by that provider satisfies~~ its requirements for the
 186 project.

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

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

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

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

204 (f) For the addition of nursing home beds licensed under
 205 chapter 400 in a number not exceeding 30 total beds or 25
 206 percent of the number of beds licensed in the facility being
 207 replaced under paragraph (2) (b), paragraph (2) (c), or paragraph
 208 (p), whichever is less. ~~For the creation of a single nursing~~

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

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

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

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

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

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235 percent.

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

240 2. The timeframes and monitoring process specified in s.
 241 408.040(2)(a)-(c) apply to any exemption issued under this
 242 paragraph.

243 3. The agency shall count beds authorized under this
 244 paragraph as approved beds in the published inventory of nursing
 245 home beds until the beds are licensed.

246 (p) For replacement of a licensed nursing home on the same
 247 site, or within 5 ~~3~~ miles of the same site if within the same
 248 subdistrict, if the number of licensed beds does not increase
 249 except as permitted under paragraph (f).

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

258 Section 3. Section 408.0436, Florida Statutes, is created
 259 to read:

260 408.0436 Limitation on nursing home certificates of need.-

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261 Notwithstanding the establishment of need as provided in this
262 chapter, the agency may not approve a certificate-of-need
263 application for new community nursing home beds following the
264 batching cycle in which the cumulative number of new community
265 nursing home beds approved from July 1, 2014, to June 30, 2017,
266 equals or exceeds 3,750. As used in this section, the term
267 "batching cycle" means the grouping for comparative review of
268 certificate-of-need applications submitted for beds, services,
269 or programs having a like certificate-of-need methodology or
270 licensing category in the same planning horizon and the same
271 applicable district or subdistrict. This section is repealed
272 July 1, 2017.

273 Section 4. Section 408.0435, Florida Statutes, is
274 repealed.

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