

By Senator Harrell

25-01997-19

20191712__

1 A bill to be entitled
2 An act relating to hospital licensure; amending s.
3 395.003, F.S.; deleting an obsolete provision;
4 requiring hospitals licensed after a specified date to
5 participate in the Medicaid program as a provider of
6 medical assistance and provide a certain amount of
7 charity care; providing a separate calculation of
8 required charity care for such hospitals located in a
9 medically underserved area; authorizing such hospitals
10 to provide a certain donation the Agency for Health
11 Care Administration's Grants and Donations Trust Fund
12 in lieu of providing the required charity care;
13 requiring such hospitals to annually report compliance
14 to the agency; requiring the agency to impose a
15 specified administrative fine for noncompliance;
16 conforming cross-references; amending s. 395.0191,
17 F.S.; deleting a provision relating to certificates of
18 need for hospitals; amending s. 395.1055, F.S.;
19 deleting a provision requiring hospitals to submit
20 data to the agency in the certificate-of-need review
21 process; repealing s. 395.6025, F.S., relating to
22 rural hospital replacement facilities; amending s.
23 408.032, F.S.; revising the definition of the term
24 "health care facility" to exclude hospitals and long-
25 term care hospitals for purposes of the Health
26 Facility and Services Development Act; deleting the
27 definitions of the terms "hospital" and "long-term
28 care hospital"; amending s. 408.034; conforming a
29 provision to changes made by the act; amending ss.

25-01997-19

20191712__

30 408.035 and 408.036, F.S.; deleting provisions related
31 to the agency's consideration and review of
32 certificates of need for general hospitals, specialty
33 hospitals, and long-term care hospitals; amending ss.
34 408.037, and 408.039, F.S.; deleting provisions
35 relating to certificate of need applications for
36 general hospitals; amending s. 408.040, F.S.;
37 requiring the agency to assess a specified
38 administrative fine against the holder of a
39 certificate of need or the holder of an exemption that
40 fails to comply with specified conditions; amending s.
41 408.043, F.S.; deleting provisions relating to
42 certificates of need for osteopathic acute care
43 hospitals; amending s. 395.1065, F.S.; conforming a
44 cross-reference; providing an effective date.

45
46 Be It Enacted by the Legislature of the State of Florida:

47
48 Section 1. Present subsections (8), (9), and (10) of
49 section 395.003, Florida Statutes, are redesignated as
50 subsections (9), (10), and (11), respectively, paragraph (c) of
51 subsection (1) and present subsections (9) and (10) of that
52 section are amended, and a new subsection (8) is added to that
53 section, to read:

54 395.003 Licensure; denial, suspension, and revocation.—

55 (1)

56 ~~(c) Until July 1, 2006, additional emergency departments~~
57 ~~located off the premises of licensed hospitals may not be~~
58 ~~authorized by the agency.~~

25-01997-19

20191712__

59 (8) Applicable only to a hospital licensed on or after July
60 1, 2019:

61 (a) Each such hospital must participate in the Medicaid
62 program as a provider of medical assistance.

63 (b) Except as provided in paragraph (c), each such hospital
64 must provide charity care in an amount equal to or greater than
65 the applicable district average among licensed providers of
66 similar services. For purposes of this subsection, the term
67 "charity care" means uncompensated care delivered to uninsured
68 patients having incomes at or below 200 percent of the federal
69 poverty level when such services are preauthorized by the
70 licensee and not subject to collection procedures, and
71 "district" has the same meaning as in s. 408.032(5). The
72 valuation of charity care must be based on Medicaid
73 reimbursement rates.

74 (c) If such a hospital is located in a medically
75 underserved area, the amount of charity care required to be
76 provided by the hospital under paragraph (b) is equivalent in
77 percentage to the medically underserved area's Index of Medical
78 Underservice score as calculated by the federal Health Resources
79 and Services Administration within the Department of Health and
80 Human Services.

81 (d) In lieu of providing charity care under paragraph (b)
82 or paragraph (c), each such hospital may donate an amount
83 determined by the agency to be functionally equivalent to the
84 amounts required under those paragraphs to the agency's Grants
85 and Donations Trust Fund.

86 (e) Each such hospital shall annually report to the agency
87 its compliance with this subsection. Failure to report

25-01997-19

20191712__

88 compliance constitutes noncompliance. The agency shall assess an
89 administrative fine on a hospital that fails to comply with this
90 subsection in the amount of 1 percent of its net revenue for
91 each 0.5 percent of the required amount of charity care that was
92 not provided pursuant to paragraph (b) or paragraph (c) or the
93 required amount as determined by the agency pursuant to
94 paragraph (d).

95 (10)~~(9)~~ A hospital licensed as of June 1, 2004, is ~~shall be~~
96 exempt from subsection (9)~~(8)~~ as long as the hospital maintains
97 the same ownership, facility street address, and range of
98 services that were in existence on June 1, 2004. Any transfer of
99 beds, or other agreements that result in the establishment of a
100 hospital or hospital services within the intent of this section,
101 shall be subject to subsection (9)~~(8)~~. Unless the hospital is
102 otherwise exempt under subsection (9)~~(8)~~, the agency shall deny
103 or revoke the license of a hospital that violates any of the
104 criteria set forth in that subsection.

105 (11)~~(10)~~ The agency may adopt rules implementing the
106 licensure requirements set forth in subsection (9)~~(8)~~. Within 14
107 days after rendering its decision on a license application or
108 revocation, the agency shall publish its proposed decision in
109 the Florida Administrative Register. Within 21 days after
110 publication of the agency's decision, any authorized person may
111 file a request for an administrative hearing. In administrative
112 proceedings challenging the approval, denial, or revocation of a
113 license pursuant to subsection (9)~~(8)~~, the hearing must be based
114 on the facts and law existing at the time of the agency's
115 proposed agency action. Existing hospitals may initiate or
116 intervene in an administrative hearing to approve, deny, or

25-01997-19

20191712__

117 revoke licensure under subsection (9)~~(8)~~ based upon a showing
118 that an established program will be substantially affected by
119 the issuance or renewal of a license to a hospital within the
120 same district or service area.

121 Section 2. Subsection (10) of section 395.0191, Florida
122 Statutes, is amended to read:

123 395.0191 Staff membership and clinical privileges.—

124 ~~(10) Nothing herein shall be construed by the agency as~~
125 ~~requiring an applicant for a certificate of need to establish~~
126 ~~proof of discrimination in the granting of or denial of hospital~~
127 ~~staff membership or clinical privileges as a precondition to~~
128 ~~obtaining such certificate of need under the provisions of s.~~
129 ~~408.043.~~

130 Section 3. Paragraph (f) of subsection (1) of section
131 395.1055, Florida Statutes, is amended to read:

132 395.1055 Rules and enforcement.—

133 (1) The agency shall adopt rules pursuant to ss. 120.536(1)
134 and 120.54 to implement the provisions of this part, which shall
135 include reasonable and fair minimum standards for ensuring that:

136 (f) All hospitals submit ~~such data as necessary to conduct~~
137 ~~certificate of need reviews required under part I of chapter~~
138 ~~408. Such data shall include, but shall not be limited to,~~
139 ~~patient origin data,~~ hospital utilization data, type of service
140 reporting, and facility staffing data. The agency may not
141 collect data that identifies or could disclose the identity of
142 individual patients. The agency shall utilize existing uniform
143 statewide data sources when available and shall minimize
144 reporting costs to hospitals.

145 Section 4. Section 395.6025, Florida Statutes, is repealed.

25-01997-19

20191712__

146 Section 5. Subsections (8), (11), and (13) of section
147 408.032, Florida Statutes, are amended to read:

148 408.032 Definitions relating to Health Facility and
149 Services Development Act.—As used in ss. 408.031-408.045, the
150 term:

151 (8) "Health care facility" means a ~~hospital, long-term care~~
152 ~~hospital~~, skilled nursing facility, hospice, or intermediate
153 care facility for the developmentally disabled. A facility
154 relying solely on spiritual means through prayer for healing is
155 not included as a health care facility.

156 ~~(11) "Hospital" means a health care facility licensed under~~
157 ~~chapter 395.~~

158 ~~(13) "Long-term care hospital" means a hospital licensed~~
159 ~~under chapter 395 which meets the requirements of 42 C.F.R. s.~~
160 ~~412.23(e) and seeks exclusion from the acute care Medicare~~
161 ~~prospective payment system for inpatient hospital services.~~

162 Section 6. Subsection (2) of section 408.034, Florida
163 Statutes, is amended to read:

164 408.034 Duties and responsibilities of agency; rules.—

165 (2) In the exercise of its authority to issue licenses to
166 health care facilities and health service providers, as provided
167 under chapter ~~chapters~~ 393 and ~~395~~ and parts II, IV, and VIII of
168 chapter 400, the agency may not issue a license to any health
169 care facility or health service provider that fails to receive a
170 certificate of need or an exemption for the licensed facility or
171 service.

172 Section 7. Section 408.035, Florida Statutes, is amended to
173 read:

174 408.035 Review criteria.—

25-01997-19

20191712__

175 ~~(1)~~ The agency shall determine the reviewability of
176 applications and shall review applications for certificate-of-
177 need determinations for health care facilities and health
178 services in context with the following criteria, ~~except for~~
179 ~~general hospitals as defined in s. 395.002:~~

180 (1)~~(a)~~ The need for the health care facilities and health
181 services being proposed.

182 (2)~~(b)~~ The availability, quality of care, accessibility,
183 and extent of utilization of existing health care facilities and
184 health services in the service district of the applicant.

185 (3)~~(c)~~ The ability of the applicant to provide quality of
186 care and the applicant's record of providing quality of care.

187 (4)~~(d)~~ The availability of resources, including health
188 personnel, management personnel, and funds for capital and
189 operating expenditures, for project accomplishment and
190 operation.

191 (5)~~(e)~~ The extent to which the proposed services will
192 enhance access to health care for residents of the service
193 district.

194 (6)~~(f)~~ The immediate and long-term financial feasibility of
195 the proposal.

196 (7)~~(g)~~ The extent to which the proposal will foster
197 competition that promotes quality and cost-effectiveness.

198 (8)~~(h)~~ The costs and methods of the proposed construction,
199 including the costs and methods of energy provision and the
200 availability of alternative, less costly, or more effective
201 methods of construction.

202 (9)~~(i)~~ The applicant's past and proposed provision of
203 health care services to Medicaid patients and the medically

25-01997-19

20191712__

204 indigent.

205 (10)~~(j)~~ The applicant's designation as a Gold Seal Program
206 nursing facility pursuant to s. 400.235, when the applicant is
207 requesting additional nursing home beds at that facility.

208 ~~(2) For a general hospital, the agency shall consider only~~
209 ~~the criteria specified in paragraph (1)(a), paragraph (1)(b),~~
210 ~~except for quality of care in paragraph (1)(b), and paragraphs~~
211 ~~(1)(e), (g), and (i).~~

212 Section 8. Paragraph (c) of subsection (1) and paragraph
213 (a) of subsection (2) of section 408.036, Florida Statutes, are
214 amended to read:

215 408.036 Projects subject to review; exemptions.—

216 (1) APPLICABILITY.—Unless exempt under subsection (3), all
217 health-care-related projects, as described in paragraphs (a)-
218 (f), are subject to review and must file an application for a
219 certificate of need with the agency. The agency is exclusively
220 responsible for determining whether a health-care-related
221 project is subject to review under ss. 408.031-408.045.

222 (c) The conversion from one type of health care facility to
223 another,~~including the conversion from a general hospital, a~~
224 ~~specialty hospital, or a long-term care hospital.~~

225 (2) PROJECTS SUBJECT TO EXPEDITED REVIEW.—Unless exempt
226 pursuant to subsection (3), the following projects are subject
227 to expedited review:

228 (a) Transfer of a certificate of need,~~except that when an~~
229 ~~existing hospital is acquired by a purchaser, all certificates~~
230 ~~of need issued to the hospital which are not yet operational~~
231 ~~shall be acquired by the purchaser without need for a transfer.~~
232

25-01997-19

20191712__

233 The agency shall develop rules to implement the expedited review
234 process, including time schedule, application content that may
235 be reduced from the full requirements of s. 408.037(1), and
236 application processing.

237 Section 9. Section 408.037, Florida Statutes, is amended to
238 read:

239 408.037 Application content.—

240 (1) ~~Except as provided in subsection (2) for a general~~
241 ~~hospital,~~ An application for a certificate of need must contain:

242 (a) A detailed description of the proposed project and
243 statement of its purpose and need in relation to the district
244 health plan.

245 (b) A statement of the financial resources needed by and
246 available to the applicant to accomplish the proposed project.
247 This statement must include:

248 1. A complete listing of all capital projects, including
249 new health facility development projects and health facility
250 acquisitions applied for, pending, approved, or underway in any
251 state at the time of application, regardless of whether or not
252 that state has a certificate-of-need program or a capital
253 expenditure review program pursuant to s. 1122 of the Social
254 Security Act. The agency may, by rule, require less-detailed
255 information from major health care providers. This listing must
256 include the applicant's actual or proposed financial commitment
257 to those projects and an assessment of their impact on the
258 applicant's ability to provide the proposed project.

259 2. A detailed listing of the needed capital expenditures,
260 including sources of funds.

261 3. A detailed financial projection, including a statement

25-01997-19

20191712__

262 of the projected revenue and expenses for the first 2 years of
263 operation after completion of the proposed project. This
264 statement must include a detailed evaluation of the impact of
265 the proposed project on the cost of other services provided by
266 the applicant.

267 (c) An audited financial statement of the applicant or the
268 applicant's parent corporation if audited financial statements
269 of the applicant do not exist. In an application submitted by an
270 existing health care facility, health maintenance organization,
271 or hospice, financial condition documentation must include, but
272 need not be limited to, a balance sheet and a profit-and-loss
273 statement of the 2 previous fiscal years' operation.

274 ~~(2) An application for a certificate of need for a general~~
275 ~~hospital must contain a detailed description of the proposed~~
276 ~~general hospital project and a statement of its purpose and the~~
277 ~~needs it will meet. The proposed project's location, as well as~~
278 ~~its primary and secondary service areas, must be identified by~~
279 ~~zip code. Primary service area is defined as the zip codes from~~
280 ~~which the applicant projects that it will draw 75 percent of its~~
281 ~~discharges. Secondary service area is defined as the zip codes~~
282 ~~from which the applicant projects that it will draw its~~
283 ~~remaining discharges. If, subsequent to issuance of a final~~
284 ~~order approving the certificate of need, the proposed location~~
285 ~~of the general hospital changes or the primary service area~~
286 ~~materially changes, the agency shall revoke the certificate of~~
287 ~~need. However, if the agency determines that such changes are~~
288 ~~deemed to enhance access to hospital services in the service~~
289 ~~district, the agency may permit such changes to occur. A party~~
290 ~~participating in the administrative hearing regarding the~~

25-01997-19

20191712__

291 ~~issuance of the certificate of need for a general hospital has~~
292 ~~standing to participate in any subsequent proceeding regarding~~
293 ~~the revocation of the certificate of need for a hospital for~~
294 ~~which the location has changed or for which the primary service~~
295 ~~area has materially changed. In addition, the application for~~
296 ~~the certificate of need for a general hospital must include a~~
297 ~~statement of intent that, if approved by final order of the~~
298 ~~agency, the applicant shall within 120 days after issuance of~~
299 ~~the final order or, if there is an appeal of the final order,~~
300 ~~within 120 days after the issuance of the court's mandate on~~
301 ~~appeal, furnish satisfactory proof of the applicant's financial~~
302 ~~ability to operate. The agency shall establish documentation~~
303 ~~requirements, to be completed by each applicant, which show~~
304 ~~anticipated provider revenues and expenditures, the basis for~~
305 ~~financing the anticipated cash flow requirements of the~~
306 ~~provider, and an applicant's access to contingency financing. A~~
307 ~~party participating in the administrative hearing regarding the~~
308 ~~issuance of the certificate of need for a general hospital may~~
309 ~~provide written comments concerning the adequacy of the~~
310 ~~financial information provided, but such party does not have~~
311 ~~standing to participate in an administrative proceeding~~
312 ~~regarding proof of the applicant's financial ability to operate.~~
313 ~~The agency may require a licensee to provide proof of financial~~
314 ~~ability to operate at any time if there is evidence of financial~~
315 ~~instability, including, but not limited to, unpaid expenses~~
316 ~~necessary for the basic operations of the provider.~~

317 (2)~~(3)~~ The applicant must certify that it will license and
318 operate the health care facility. For an existing health care
319 facility, the applicant must be the licenseholder of the

25-01997-19

20191712__

320 facility.

321 Section 10. Paragraphs (c) and (d) of subsection (3),
322 paragraphs (b) and (c) of subsection (5), and paragraph (d) of
323 subsection (6) of section 408.039, Florida Statutes, are amended
324 to read:

325 408.039 Review process.—The review process for certificates
326 of need shall be as follows:

327 (3) APPLICATION PROCESSING.—

328 ~~(c) Except for competing applicants, in order to be~~
329 ~~eligible to challenge the agency decision on a general hospital~~
330 ~~application under review pursuant to paragraph (5) (c), existing~~
331 ~~hospitals must submit a detailed written statement of opposition~~
332 ~~to the agency and to the applicant. The detailed written~~
333 ~~statement must be received by the agency and the applicant~~
334 ~~within 21 days after the general hospital application is deemed~~
335 ~~complete and made available to the public.~~

336 ~~(d) In those cases where a written statement of opposition~~
337 ~~has been timely filed regarding a certificate of need~~
338 ~~application for a general hospital, the applicant for the~~
339 ~~general hospital may submit a written response to the agency.~~
340 ~~Such response must be received by the agency within 10 days of~~
341 ~~the written statement due date.~~

342 (5) ADMINISTRATIVE HEARINGS.—

343 (b) Hearings shall be held in Tallahassee unless the
344 administrative law judge determines that changing the location
345 will facilitate the proceedings. The agency shall assign
346 proceedings requiring hearings to the Division of Administrative
347 Hearings of the Department of Management Services within 10 days
348 after the time has expired for requesting a hearing. Except upon

25-01997-19

20191712__

349 unanimous consent of the parties or upon the granting by the
350 administrative law judge of a motion of continuance, hearings
351 shall commence within 60 days after the administrative law judge
352 has been assigned. ~~For an application for a general hospital,~~
353 ~~administrative hearings shall commence within 6 months after the~~
354 ~~administrative law judge has been assigned, and a continuance~~
355 ~~may not be granted absent a finding of extraordinary~~
356 ~~circumstances by the administrative law judge.~~ All parties,
357 except the agency, shall bear their own expense of preparing a
358 transcript. In any application for a certificate of need which
359 is referred to the Division of Administrative Hearings for
360 hearing, the administrative law judge shall complete and submit
361 to the parties a recommended order as provided in ss. 120.569
362 and 120.57. The recommended order shall be issued within 30 days
363 after the receipt of the proposed recommended orders or the
364 deadline for submission of such proposed recommended orders,
365 whichever is earlier. The division shall adopt procedures for
366 administrative hearings which shall maximize the use of
367 stipulated facts and shall provide for the admission of prepared
368 testimony.

369 (c) In administrative proceedings challenging the issuance
370 or denial of a certificate of need, only applicants considered
371 by the agency in the same batching cycle are entitled to a
372 comparative hearing on their applications. Existing health care
373 facilities may initiate or intervene in an administrative
374 hearing upon a showing that an established program will be
375 substantially affected by the issuance of any certificate of
376 need, whether reviewed under s. 408.036(1) or (2), to a
377 competing proposed facility or program within the same district.

25-01997-19

20191712__

378 ~~With respect to an application for a general hospital, competing~~
379 ~~applicants and only those existing hospitals that submitted a~~
380 ~~detailed written statement of opposition to an application as~~
381 ~~provided in this paragraph may initiate or intervene in an~~
382 ~~administrative hearing. Such challenges to a general hospital~~
383 ~~application shall be limited in scope to the issues raised in~~
384 ~~the detailed written statement of opposition that was provided~~
385 ~~to the agency. The administrative law judge may, upon a motion~~
386 ~~showing good cause, expand the scope of the issues to be heard~~
387 ~~at the hearing. Such motion shall include substantial and~~
388 ~~detailed facts and reasons for failure to include such issues in~~
389 ~~the original written statement of opposition.~~

390 (6) JUDICIAL REVIEW.—

391 ~~(d) The party appealing a final order that grants a general~~
392 ~~hospital certificate of need shall pay the appellee's attorney's~~
393 ~~fees and costs, in an amount up to \$1 million, from the~~
394 ~~beginning of the original administrative action if the appealing~~
395 ~~party loses the appeal, subject to the following limitations and~~
396 ~~requirements:~~

397 ~~1. The party appealing a final order must post a bond in~~
398 ~~the amount of \$1 million in order to maintain the appeal.~~

399 ~~2. Except as provided under s. 120.595(5), in no event~~
400 ~~shall the agency be held liable for any other party's attorney's~~
401 ~~fees or costs.~~

402 Section 11. Paragraph (d) of subsection (1) of section
403 408.040, Florida Statutes, is amended to read:

404 408.040 Conditions and monitoring.—

405 (1)

406 (d) If the holder of a certificate of need or the holder of

25-01997-19

20191712__

407 an exemption fails to comply with a condition that is unrelated
408 to the provision of charity care or the provision of care under
409 the Florida Medicaid program upon which the issuance of the
410 certificate or exemption was predicated, the agency may assess
411 an administrative fine against the certificateholder or
412 exemption holder in an amount not to exceed \$1,000 per failure
413 per day. If the holder of a certificate of need or the holder of
414 an exemption fails to comply with a condition related to the
415 provision of charity care or the provision of care under the
416 Florida Medicaid program upon which the issuance of the
417 certificate or exemption was predicated, the agency must assess
418 an administrative fine against the certificateholder or
419 exemption holder in the amount of \$2,500 per day for each
420 instance of noncompliance. Failure to annually report compliance
421 with any condition upon which the issuance of the certificate or
422 exemption was predicated constitutes noncompliance. In assessing
423 the penalty, the agency shall take into account as mitigation
424 the degree of noncompliance. Proceeds of such penalties shall be
425 deposited in the Public Medical Assistance Trust Fund.

426 Section 12. Subsection (1) of section 408.043, Florida
427 Statutes, is amended to read:

428 408.043 Special provisions.—

429 ~~(1) OSTEOPATHIC ACUTE CARE HOSPITALS. When an application~~
430 ~~is made for a certificate of need to construct or to expand an~~
431 ~~osteopathic acute care hospital, the need for such hospital~~
432 ~~shall be determined on the basis of the need for and~~
433 ~~availability of osteopathic services and osteopathic acute care~~
434 ~~hospitals in the district. When a prior certificate of need to~~
435 ~~establish an osteopathic acute care hospital has been issued in~~

25-01997-19

20191712__

436 ~~a district, and the facility is no longer used for that purpose,~~
437 ~~the agency may continue to count such facility and beds as an~~
438 ~~existing osteopathic facility in any subsequent application for~~
439 ~~construction of an osteopathic acute care hospital.~~

440 Section 13. Subsection (5) of section 395.1065, Florida
441 Statutes, is amended to read:

442 395.1065 Criminal and administrative penalties;
443 moratorium.—

444 (5) The agency shall impose a fine of \$500 for each
445 instance of the facility's failure to provide the information
446 required by rules adopted pursuant to s. 395.1055(1)(g) ~~s.~~
447 ~~395.1055(1)(h)~~.

448 Section 14. This act shall take effect July 1, 2019.