

Amendment No. 2 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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Representative(s) Rubio offered the following:

Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause
and insert in lieu thereof:

Section 1. Section 408.036, Florida Statutes, is amended to read:

408.036 Projects subject to review.--

(1) LEGISLATIVE INTENT.--The Legislature finds that rising health care costs, combined with an increase in the uninsured and elderly population places government as the primary payor of all health services. The Legislature finds further that it is difficult for the health care industry to be a competitive market, when health regulations deter entrepreneurial market concepts that would allow the health care industry to independently develop ways in which to deliver quality health care outcomes in a more reasonable cost-effective manner. In addition, the Legislature finds that, increasingly, hospitals and doctors are competing for contracts to provide a full range of services in exchange for

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1 a negotiated fixed payment. This payment method makes it less
2 likely that the creation of excess hospitals and services will
3 occur, thereby limiting the possibility that additional cost
4 to the public is passed on to maintain these services; and,
5 therefore, limiting the need of regulatory oversight initiated
6 prior to the customary use of such contractual agreements. It
7 is therefore the intent of the Legislature to provide a more
8 competitive environment within the health care industry while
9 supporting the development of cutting-edge medical technology,
10 thereby maintaining access to quality health care services for
11 all citizens.

12 (2)(1) APPLICABILITY.--Unless exempt under subsection
13 (4)(3), all health-care-related projects, as described in
14 paragraphs (a)-(h), are subject to review and must file an
15 application for a certificate of need with the agency. The
16 agency is exclusively responsible for determining whether a
17 health-care-related project is subject to review under ss.
18 408.031-408.045.

19 (a) The addition of beds by new construction or
20 alteration.

21 (b) The new construction or establishment of
22 additional health care facilities, including a replacement
23 health care facility when the proposed project site is not
24 located on the same site as the existing health care facility.

25 (c) The conversion from one type of health care
26 facility to another.

27 (d) An increase in the total licensed bed capacity of
28 a health care facility.

29 (e) The establishment of a hospice or hospice
30 inpatient facility, except as provided in s. 408.043.

31 (f) The establishment of inpatient health services by

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1 a health care facility, or a substantial change in such
2 services.

3 (g) An increase in the number of beds for acute care,
4 nursing home care beds, specialty burn units, neonatal
5 intensive care units, comprehensive rehabilitation, mental
6 health services, or hospital-based distinct part skilled
7 nursing units, or at a long-term care hospital.

8 (h) The establishment of tertiary health services.

9 ~~(3)(2)~~ PROJECTS SUBJECT TO EXPEDITED REVIEW.--Unless
10 exempt pursuant to subsection~~(4)(3)~~, projects subject to an
11 expedited review shall include, but not be limited to:

12 (a) Research, education, and training programs.

13 (b) Shared services contracts or projects.

14 (c) A transfer of a certificate of need.

15 (d) A 50-percent increase in nursing home beds for a
16 facility incorporated and operating in this state for at least
17 60 years on or before July 1, 1988, which has a licensed
18 nursing home facility located on a campus providing a variety
19 of residential settings and supportive services. The
20 increased nursing home beds shall be for the exclusive use of
21 the campus residents. Any application on behalf of an
22 applicant meeting this requirement shall be subject to the
23 base fee of \$5,000 provided in s. 408.038.

24 (e) Replacement of a health care facility when the
25 proposed project site is located in the same district and
26 within a 1-mile radius of the replaced health care facility.

27 (f) The conversion of mental health services beds
28 licensed under chapter 395 or hospital-based distinct part
29 skilled nursing unit beds to general acute care beds; the
30 conversion of mental health services beds between or among the
31 licensed bed categories defined as beds for mental health

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1 services; or the conversion of general acute care beds to beds
2 for mental health services.

3 1. Conversion under this paragraph shall not establish
4 a new licensed bed category at the hospital but shall apply
5 only to categories of beds licensed at that hospital.

6 2. Beds converted under this paragraph must be
7 licensed and operational for at least 12 months before the
8 hospital may apply for additional conversion affecting beds of
9 the same type.

10

11 The agency shall develop rules to implement the provisions for
12 expedited review, including time schedule, application content
13 which may be reduced from the full requirements of s.
14 408.037(1), and application processing.

15 (4)~~(3)~~ EXEMPTIONS.--Upon request, the following
16 projects are subject to exemption from the provisions of
17 subsection(2)~~(1)~~:

18 (a) For replacement of a licensed health care facility
19 on the same site, provided that the number of beds in each
20 licensed bed category will not increase.

21 (b) For hospice services or for swing beds in a rural
22 hospital, as defined in s. 395.602, in a number that does not
23 exceed one-half of its licensed beds.

24 (c) For the conversion of licensed acute care hospital
25 beds to Medicare and Medicaid certified skilled nursing beds
26 in a rural hospital, as defined in s. 395.602, so long as the
27 conversion of the beds does not involve the construction of
28 new facilities. The total number of skilled nursing beds,
29 including swing beds, may not exceed one-half of the total
30 number of licensed beds in the rural hospital as of July 1,
31 1993. Certified skilled nursing beds designated under this

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1 paragraph, excluding swing beds, shall be included in the
2 community nursing home bed inventory. A rural hospital which
3 subsequently decertifies any acute care beds exempted under
4 this paragraph shall notify the agency of the decertification,
5 and the agency shall adjust the community nursing home bed
6 inventory accordingly.

7 (d) For the addition of nursing home beds at a skilled
8 nursing facility that is part of a retirement community that
9 provides a variety of residential settings and supportive
10 services and that has been incorporated and operated in this
11 state for at least 65 years on or before July 1, 1994. All
12 nursing home beds must not be available to the public but must
13 be for the exclusive use of the community residents.

14 (e) For an increase in the bed capacity of a nursing
15 facility licensed for at least 50 beds as of January 1, 1994,
16 under part II of chapter 400 which is not part of a continuing
17 care facility if, after the increase, the total licensed bed
18 capacity of that facility is not more than 60 beds and if the
19 facility has been continuously licensed since 1950 and has
20 received a superior rating on each of its two most recent
21 licensure surveys.

22 (f) For an inmate health care facility built by or for
23 the exclusive use of the Department of Corrections as provided
24 in chapter 945. This exemption expires when such facility is
25 converted to other uses.

26 (g) For the termination of an inpatient health care
27 service, upon 30 days' written notice to the agency.

28 (h) For the delicensure of beds, upon 30 days' written
29 notice to the agency. A request for exemption submitted under
30 this paragraph must identify the number, the category of beds,
31 and the name of the facility in which the beds to be

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1 delicensed are located.

2 (i) For the provision of adult inpatient diagnostic
3 cardiac catheterization services in a hospital.

4 1. In addition to any other documentation otherwise
5 required by the agency, a request for an exemption submitted
6 under this paragraph must comply with the following criteria:

7 a. The applicant must certify it will not provide
8 therapeutic cardiac catheterization pursuant to the grant of
9 the exemption.

10 b. The applicant must certify it will meet and
11 continuously maintain the minimum licensure requirements
12 adopted by the agency governing such programs pursuant to
13 subparagraph 2.

14 c. The applicant must certify it will provide a
15 minimum of 2 percent of its services to charity and Medicaid
16 patients.

17 2. The agency shall adopt licensure requirements by
18 rule which govern the operation of adult inpatient diagnostic
19 cardiac catheterization programs established pursuant to the
20 exemption provided in this paragraph. The rules shall ensure
21 that such programs:

22 a. Perform only adult inpatient diagnostic cardiac
23 catheterization services authorized by the exemption and will
24 not provide therapeutic cardiac catheterization or any other
25 services not authorized by the exemption.

26 b. Maintain sufficient appropriate equipment and
27 health personnel to ensure quality and safety.

28 c. Maintain appropriate times of operation and
29 protocols to ensure availability and appropriate referrals in
30 the event of emergencies.

31 d. Maintain appropriate program volumes to ensure

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1 quality and safety.

2 e. Provide a minimum of 2 percent of its services to
3 charity and Medicaid patients each year.

4 3.a. The exemption provided by this paragraph shall
5 not apply unless the agency determines that the program is in
6 compliance with the requirements of subparagraph 1. and that
7 the program will, after beginning operation, continuously
8 comply with the rules adopted pursuant to subparagraph 2. The
9 agency shall monitor such programs to ensure compliance with
10 the requirements of subparagraph 2.

11 b.(I) The exemption for a program shall expire
12 immediately when the program fails to comply with the rules
13 adopted pursuant to sub-subparagraphs 2.a., b., and c.

14 (II) Beginning 18 months after a program first begins
15 treating patients, the exemption for a program shall expire
16 when the program fails to comply with the rules adopted
17 pursuant to sub-subparagraphs 2.d. and e.

18 (III) If the exemption for a program expires pursuant
19 to sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the
20 agency shall not grant an exemption pursuant to this paragraph
21 for an adult inpatient diagnostic cardiac catheterization
22 program located at the same hospital until 2 years following
23 the date of the determination by the agency that the program
24 failed to comply with the rules adopted pursuant to
25 subparagraph 2.

26 (j) For mobile surgical facilities and related health
27 care services provided under contract with the Department of
28 Corrections or a private correctional facility operating
29 pursuant to chapter 957.

30 (k) For state veterans' nursing homes operated by or
31 on behalf of the Florida Department of Veterans' Affairs in

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1 accordance with part II of chapter 296 for which at least 50
2 percent of the construction cost is federally funded and for
3 which the Federal Government pays a per diem rate not to
4 exceed one-half of the cost of the veterans' care in such
5 state nursing homes. These beds shall not be included in the
6 nursing home bed inventory.

7 (l) For combination within one nursing home facility
8 of the beds or services authorized by two or more certificates
9 of need issued in the same planning subdistrict. An exemption
10 granted under this paragraph shall extend the validity period
11 of the certificates of need to be consolidated by the length
12 of the period beginning upon submission of the exemption
13 request and ending with issuance of the exemption. The
14 longest validity period among the certificates shall be
15 applicable to each of the combined certificates.

16 (m) For division into two or more nursing home
17 facilities of beds or services authorized by one certificate
18 of need issued in the same planning subdistrict. An exemption
19 granted under this paragraph shall extend the validity period
20 of the certificate of need to be divided by the length of the
21 period beginning upon submission of the exemption request and
22 ending with issuance of the exemption.

23 (n) For the addition of hospital beds licensed under
24 chapter 395 for acute care, mental health services, or a
25 hospital-based distinct part skilled nursing unit in a number
26 that may not exceed 10 total beds or 10 percent of the
27 licensed capacity of the bed category being expanded,
28 whichever is greater. Beds for specialty burn units, neonatal
29 intensive care units, or comprehensive rehabilitation, or at a
30 long-term care hospital, may not be increased under this
31 paragraph.

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1 1. In addition to any other documentation otherwise
2 required by the agency, a request for exemption submitted
3 under this paragraph must:

4 a. Certify that the prior 12-month average occupancy
5 rate for the category of licensed beds being expanded at the
6 facility meets or exceeds 80 percent or, for a hospital-based
7 distinct part skilled nursing unit, the prior 12-month average
8 occupancy rate meets or exceeds 96 percent.

9 b. Certify that any beds of the same type authorized
10 for the facility under this paragraph before the date of the
11 current request for an exemption have been licensed and
12 operational for at least 12 months.

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

16 3. The agency shall count beds authorized under this
17 paragraph as approved beds in the published inventory of
18 hospital beds until the beds are licensed.

19 (o) For the addition of acute care beds, as authorized
20 by rule consistent with s. 395.003(4), in a number that may
21 not exceed 10 total beds or 10 percent of licensed bed
22 capacity, whichever is greater, for temporary beds in a
23 hospital that has experienced high seasonal occupancy within
24 the prior 12-month period or in a hospital that must respond
25 to emergency circumstances.

26 (p) For the addition of nursing home beds licensed
27 under chapter 400 in a number not exceeding 10 total beds or
28 10 percent of the number of beds licensed in the facility
29 being expanded, whichever is greater.

30 1. In addition to any other documentation required by
31 the agency, a request for exemption submitted under this

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1 paragraph must:

2 a. Effective until June 30, 2001, certify that the
3 facility has not had any class I or class II deficiencies
4 within the 30 months preceding the request for addition.

5 b. Effective on July 1, 2001, certify that the
6 facility has been designated as a Gold Seal nursing home under
7 s. 400.235.

8 c. Certify that the prior 12-month average occupancy
9 rate for the nursing home beds at the facility meets or
10 exceeds 96 percent.

11 d. Certify that any beds authorized for the facility
12 under this paragraph before the date of the current request
13 for an exemption have been licensed and operational for at
14 least 12 months.

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

18 3. The agency shall count beds authorized under this
19 paragraph as approved beds in the published inventory of
20 nursing home beds until the beds are licensed.

21 (q) For establishment of a specialty hospital offering
22 a range of medical service restricted to a defined age or
23 gender group of the population or a restricted range of
24 services appropriate to the diagnosis, care, and treatment of
25 patients with specific categories of medical illnesses or
26 disorders, through the transfer of beds and services from an
27 existing hospital in the same county.

28 (r) For the provision of adult open heart surgery
29 services in a hospital.

30 1. In addition to any other documentation otherwise
31 required by the agency, a request for an exemption submitted

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1 under this paragraph must comply with the following criteria:

2 a. The applicant must certify it will not provide
3 pediatric open heart surgery pursuant to the grant of the
4 exemption.

5 b. The applicant must certify it will meet and
6 continuously maintain the minimum licensure requirements
7 adopted by the agency governing such programs pursuant to
8 subparagraph 2.

9 c. An applicant for an adult open heart surgery
10 program who meets the special circumstances in this section
11 shall, as a condition for approval, agree that the percentage
12 of admissions to its program which are Medicaid patients shall
13 be at least as great as the average percentage of Medicaid
14 patients admitted to open heart surgery programs in the
15 applicant's district; and shall also agree that the percentage
16 of admissions to its program which are charity patients shall
17 be at least as great as the average percentage of charity
18 patients admitted to open heart surgery programs in the
19 applicant's district.

20 2. The agency shall adopt licensure requirements by
21 rule which govern the adult open heart surgery programs
22 established pursuant to the exemption provided in this
23 paragraph. The rules shall ensure that such programs:

24 a. Perform only adult open heart surgery services
25 authorized by the exemption and will not provide any other
26 services not authorized by the exemption.

27 b. Maintain sufficient appropriate equipment and
28 health personnel to ensure quality and safety.

29 c. Maintain appropriate times of operation and
30 protocols to ensure availability and appropriate referrals in
31 the event of emergencies.

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1 d. Maintain appropriate program volumes to ensure
2 quality and safety.

3 e. An applicant for an adult open heart surgery
4 program who meets the special circumstances in this section
5 shall, as a condition for approval, agree that the percentage
6 of admissions to its program which are Medicaid patients shall
7 be at least as great as the average percentage of Medicaid
8 patients admitted to open heart surgery programs in the
9 applicant's district; and shall also agree that the percentage
10 of admissions to its program which are charity patients shall
11 be at least as great as the average percentage of charity
12 patients admitted to open heart surgery programs in the
13 applicant's district.

14 3.a. The exemption provided by this paragraph shall
15 not apply unless the agency determines that the program is in
16 compliance with the requirements of subparagraph 1 and,
17 moreover, that the program will, after beginning operation,
18 continuously comply with the rules adopted pursuant to
19 subparagraph 2. The agency shall monitor such programs to
20 ensure compliance with the requirements of subparagraph 2.

21 b.(I) The exemption for a program shall expire
22 immediately when the program fails to comply with the rules
23 adopted pursuant to sub-subparagraphs 2.a., b., and c.

24 (II) Beginning 18 months after a program first begins
25 treating patients, the exemption for a program shall expire
26 when the program fails to comply with the rules adopted
27 pursuant to sub-subparagraphs 2.d. and e.

28 (III) If the exemption for a program expires pursuant
29 to sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the
30 agency shall not grant an exemption pursuant to this paragraph
31 for an adult open heart surgery program located at the same

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1 hospital until 2 years following the date of the determination
2 by the agency that the program failed to comply with the rules
3 adopted pursuant to subparagraph 2.

4 (5)(4) REQUEST FOR EXEMPTION; FEE.--A request for
5 exemption under subsection(4)(3)may be made at any time and
6 is not subject to the batching requirements of this section.
7 The request shall be supported by such documentation as the
8 agency requires by rule. The agency shall assess a fee of \$250
9 for each request for exemption submitted under subsection(4)
10 ~~(3)~~.

11 (6) GRANDFATHER CLAUSE.--A facility authorized by the
12 state to provide open heart surgery prior to June 30, 2001,
13 shall continue to be authorized to provide such service on and
14 after the effective date of this act.

15 Section 2. Section 408.0361, Florida Statutes, is
16 amended to read:

17 408.0361 Diagnostic cardiac catheterization services
18 providers; compliance with guidelines and requirements.--Each
19 provider of diagnostic cardiac catheterization services shall
20 comply with the requirements of s. 408.036(4)(i)2.a.-d.

21 ~~(3)(n)2.a.-d.~~, and rules of the Agency for Health Care
22 Administration governing the operation of adult inpatient
23 diagnostic cardiac catheterization programs, including the
24 most recent guidelines of the American College of Cardiology
25 and American Heart Association Guidelines for Cardiac
26 Catheterization and Cardiac Catheterization Laboratories.

27 Section 3. Paragraph (c) of subsection (5) of section
28 408.039, Florida Statutes, is amended to read:

29 408.039 Review process.--The review process for
30 certificates of need shall be as follows:

31 (5) ADMINISTRATIVE HEARINGS.--

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1 (c) In administrative proceedings challenging the
2 issuance or denial of a certificate of need, only applicants
3 considered by the agency in the same batching cycle are
4 entitled to a comparative hearing on their applications.
5 Existing health care facilities may initiate or intervene in
6 an administrative hearing upon a showing that an established
7 program will be substantially affected by the issuance of any
8 certificate of need, whether reviewed under s. 408.036~~(2)(1)~~
9 or~~(3)(2)~~, to a competing proposed facility or program within
10 the same district.

11 Section 4. Section 15 of chapter 2000-318, Laws of
12 Florida, is amended to read:

13 Section 15.

14 (1)(a) There is created a certificate-of-need
15 workgroup staffed by the Agency for Health Care
16 Administration.

17 (b) Workgroup participants shall be responsible for
18 only the expenses that they generate individually through
19 workgroup participation. The agency shall be responsible for
20 expenses incidental to the production of any required data or
21 reports.

22 (2) The workgroup shall consist of 32 ~~30~~ members, 10
23 appointed by the Governor, 11 ~~10~~ appointed by the President of
24 the Senate, and 11 ~~10~~ appointed by the Speaker of the House of
25 Representatives. The workgroup chairperson shall be selected
26 by majority vote of a quorum present. Sixteen members shall
27 constitute a quorum. The membership shall include, but not be
28 limited to, representatives from health care provider
29 organizations, health care facilities, individual health care
30 practitioners, local health councils, and consumer
31 organizations, and persons with health care market expertise

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1 as a private-sector consultant.

2 (3) Appointment to the workgroup shall be as follows:

3 (a) The Governor shall appoint one representative each
4 from the hospital industry; nursing home industry; hospice
5 industry; local health councils; a consumer organization; and
6 three health care market consultants, one of whom is a
7 recognized expert on hospital markets, one of whom is a
8 recognized expert on nursing home or long-term-care markets,
9 and one of whom is a recognized expert on hospice markets; one
10 representative from the Medicaid program; and one
11 representative from a health care facility that provides a
12 tertiary service.

13 (b) The President of the Senate shall appoint a
14 representative of a for-profit hospital, a representative of a
15 not-for-profit hospital, a representative of a public
16 hospital, two representatives of the nursing home industry,
17 two representatives of the hospice industry, a representative
18 of a consumer organization, a representative from the
19 Department of Elderly Affairs involved with the implementation
20 of a long-term-care community diversion program, ~~and~~ a health
21 care market consultant with expertise in health care
22 economics, and a member of the Senate.

23 (c) The Speaker of the House of Representatives shall
24 appoint a representative from the Florida Hospital
25 Association, a representative of the Association of Community
26 Hospitals and Health Systems of Florida, a representative of
27 the Florida League of Health Systems, a representative of the
28 Florida Health Care Association, a representative of the
29 Florida Association of Homes for the Aging, three
30 representatives of Florida Hospices and Palliative Care, one
31 representative of local health councils, ~~and~~ one

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1 representative of a consumer organization, and a member of the
2 House.

3 (4) The workgroup shall develop a plan for the reform
4 or elimination of the certificate of need program, which shall
5 include recommendations for required legislative action and
6 agency rule making. Such plan shall be implemented not sooner
7 than the effective date of any rules necessary for its
8 implementation. In developing the plan, the workgroup shall
9 seek input from all classes of health care consumers, health
10 care providers and health care facilities subject to
11 certificate of need review. All agencies, including, but not
12 limited to, the Agency for Health Care Administration and the
13 Department of Elder Affairs, shall provide assistance to the
14 workgroup, upon request.~~The workgroup shall study issues~~
15 ~~pertaining to the certificate of need program, including the~~
16 ~~impact of trends in health care delivery and financing. The~~
17 ~~workgroup shall study issues relating to implementation of the~~
18 ~~certificate of need program.~~

19 (5) The workgroup shall meet at least annually, at the
20 request of the chairperson. The workgroup shall submit ~~an~~
21 ~~interim report by December 31, 2001, and a final report to the~~
22 Governor, the President of the Senate, and the Speaker of the
23 House of Representatives by January 7, by December 31, 2002.
24 The workgroup is abolished effective May 3, 2002 ~~July 1, 2003.~~

25 Section 5. This act shall take effect July 1, 2001.
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28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 remove from the title of the bill: the entire title
31

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1 and insert in lieu thereof:
2 A bill to be entitled
3 An act relating to certificate of need;
4 amending s. 408.036, F.S.; providing
5 legislative intent; exempting open heart
6 surgery programs from certificate-of-need
7 review; providing application and licensure
8 requirements; providing for rules of the Agency
9 for Health Care Administration; correcting
10 cross references; providing a grandfather
11 clause; amending ss. 408.0361 and 408.039,
12 F.S.; correcting cross references; amending s.
13 15 of ch. 2000-318, Laws of Florida; providing
14 for additional appointments to the workgroup;
15 amending the scope of responsibility for the
16 workgroup; providing new dates for final report
17 to the Governor and Legislature and termination
18 of the certificate-of-need workgroup; providing
19 an effective date.

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