1 A bill to be entitled
2 An act relating to certificates of need; amending s.
3 395.003, F.S.; prohibiting the Agency for Health Care
4 Administration from issuing or renewing a hospital's
5 license if more than a specified percentage of the
6 hospital's patients receive care and treatment classified
7 in specified diagnostic-related groups; providing an
8 exemption; authorizing the agency to adopt rules; amending
9 s. 408.032, F.S.; revising definitions relating to health
10 facilities and services; amending s. 408.033, F.S.;
11 requiring that local health councils serve counties in a
12 health service planning district; directing the local
13 health council to develop a plan for services at the local
14 level with the Department of Health; providing for the
15 costs of operating a local health council to come from
16 assessments imposed on selected health care facilities;
17 directing the department to enter into contracts with the
18 local health councils for certain services; amending s.
19 408.034, F.S.; conforming provisions to changes made by
20 the act; amending s. 408.035, F.S.; revising criteria for
21 reviewing an application for a certificate-of-need;
22 amending s. 408.036, F.S.; revising health-care-related
23 projects that are subject to the certificate-of-need
24 process; revising health-care-related projects that are
25 subject to an expedited certificate-of-need process;
26 revising the list of projects exempt from the certificate-
27 of-need process; requiring health care facilities and
28 providers to notify the agency of certain specified
29 activities; amending s. 408.0361, F.S.; requiring the

30 agency to adopt rules for licensure standards for adult
31 interventional cardiology services and burn units;
32 providing minimum criteria for inclusion in the rules;
33 providing that certain health care providers of adult
34 interventional cardiology services are exempt from
35 complying with the rules for 2 years following the date of
36 their next license renewal, but must meet the licensure
37 standards thereafter; requiring the agency to license two
38 levels of treatment for adult interventional cardiology
39 services; providing criteria for the two levels of
40 licensure; directing the Secretary of Health Care
41 Administration to appoint an advisory group to study the
42 issue of replacing certificate-of-need review of organ
43 transplant programs operating under ch. 408, F.S., with
44 licensure regulation of organ transplant programs under
45 ch. 395, F.S.; providing for membership; requiring the
46 advisory group to make certain recommendations; directing
47 the advisory group to submit a report to the Governor, the
48 secretary, and the Legislature by a specific date;
49 amending s. 408.038, F.S.; increasing fees for
50 certificate-of-need applications; amending s. 408.039,
51 F.S.; providing for an annual review cycle for
52 certificate-of-need applications; revising the review
53 procedures; amending s. 408.040, F.S.; providing for
54 conditions and monitoring for holders of a certificate of
55 need or an exemption certificate; providing that failure
56 to report to the agency constitutes noncompliance with
57 conditions of the certificate; amending s. 408.0455, F.S.;
58 providing that rules of the agency in effect on June 30,

59 2004, shall remain in effect until amended or repealed;
60 repealing s. 408.043(2), F.S., relating to special
61 provisions for hospice facilities; repealing s. 408.045,
62 F.S., relating to the use of a competitive sealed proposal
63 to obtain a certificate of need for an intermediate care
64 facility for the developmentally disabled; providing an
65 effective date.
66
67 WHEREAS, the Legislature finds that it is essential for the
68 public health and safety of this state that general hospitals be
69 available to serve the residents of this state, and
70 WHEREAS, the Legislature finds that over 60 general
71 hospitals have closed in this state and the Legislature is
72 concerned that more hospitals may close, and
73 WHEREAS, the Legislature finds that creating hospitals that
74 provide limited services will serve only paying patients and may
75 cause harm to the continued existence of general hospitals
76 serving broad populations of this state, and
77 WHEREAS, the Legislature finds that creating hospitals that
78 provide limited services may limit or eliminate competitive
79 alternatives in the health care service market; may result in
80 over-utilization of certain high-cost health care services, such
81 as cardiac, orthopedic, and cancer services; may increase costs
82 to the health care system; and may adversely affect the quality
83 of health care, NOW, THEREFORE,
84
85 Be It Enacted by the Legislature of the State of Florida:
86

87 Section 1. Subsection (9) is added to section 395.003,
88 Florida Statutes, to read:
89 395.003 Licensure; issuance, renewal, denial,
90 modification, suspension, and revocation.--
91 (9)(a) A hospital may not be licensed under this part, or
92 have its license renewed, if 65 percent or more of its
93 discharged patients, as reported to the Agency for Health Care
94 Administration under s. 408.061, received diagnosis, care, and
95 treatment within the following diagnostic-related groups:
96 1. Cardiac-related diseases and disorders classified as
97 DRGs 103-145, 478-479, 514-518, 525-527;
98 2. Orthopedic-related diseases and disorders classified as
99 DRGs 209-256, 471, 491, 496-503, 519-520;
100 3. Cancer-related diseases and disorders classified as
101 DRGs 64, 82, 172, 173, 199, 200, 203, 257-260, 274, 275, 303,
102 306, 307, 318, 319, 338, 344, 346, 347, 363, 366, 367, 400-414,
103 473, 492; or
104 4. Any combination of the above discharges.
105
106 The agency may not issue or renew a hospital's license if the
107 hospital's actual discharges in the most recent year for which
108 data is available, or the projected discharges over the next 12
109 months, meet the criteria of this subsection. The agency shall
110 revoke a hospital's license if the hospital fails to meet these
111 criteria during any year of operation.
112 (b) Hospitals licensed on or before June 1, 2004, shall be
113 exempt from the requirements in this subsection if the hospital
114 maintains the same ownership, facility street address, and range
115 of services provided on June 1, 2004.

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116 (c) The agency may adopt rules to administer this
117 subsection. However, the statutory requirements are applicable
118 on July 1, 2004. In any administrative proceeding challenging
119 the denial or revocation of a hospital's license under this
120 subsection, the hearing shall be based on the facts and law in
121 effect at the time of the agency's proposed agency action. Any
122 hospital may initiate or intervene in an administrative hearing
123 to deny or revoke the license of a competing hospital located
124 within the same district or service area on a showing that one
125 of the hospital's established programs will be substantially
126 affected if a license is issued to the competing hospital.
127 Section 2. Section 408.032, Florida Statutes, is amended
128 to read:
129 408.032 Definitions relating to Health Facility and
130 Services Development Act.--As used in ss. 408.031-408.045, the
131 term:
132 (1) "Agency" means the Agency for Health Care
133 Administration.
134 (2) "Capital expenditure" means an expenditure, including
135 an expenditure for a construction project undertaken by a health
136 care facility as its own contractor, which, under generally
137 accepted accounting principles, is not properly chargeable as an
138 expense of operation and maintenance, which is made to change
139 the bed capacity of the facility, or substantially change the
140 services or service area of the health care facility, health
141 service provider, or hospice, and which includes the cost of the
142 studies, surveys, designs, plans, working drawings,
143 specifications, initial financing costs, and other activities

144 essential to acquisition, improvement, expansion, or replacement
145 of the plant and equipment.
146 (3) "Certificate of need" means a written statement issued
147 by the agency evidencing community need for a new, converted,
148 expanded, or otherwise significantly modified health care
149 facility, health service, or hospice.
150 (4) "Commenced construction" means initiation of and
151 continuous activities beyond site preparation associated with
152 erecting or modifying a health care facility, including
153 procurement of a building permit applying the use of agency-
154 approved construction documents, proof of an executed
155 owner/contractor agreement or an irrevocable or binding forced
156 account, and actual undertaking of foundation forming with steel
157 installation and concrete placing.
158 (5) "District" means a health service planning district
159 composed of the following counties:
160 District 1.--Escambia, Santa Rosa, Okaloosa, and Walton
161 Counties.
162 District 2.--Holmes, Washington, Bay, Jackson, Franklin,
163 Gulf, Gadsden, Liberty, Calhoun, Leon, Wakulla, Jefferson,
164 Madison, and Taylor Counties.
165 District 3.--Hamilton, Suwannee, Lafayette, Dixie,
166 Columbia, Gilchrist, Levy, Union, Bradford, Putnam, Alachua,
167 Marion, Citrus, Hernando, Sumter, and Lake Counties.
168 District 4.--Baker, Nassau, Duval, Clay, St. Johns,
169 Flagler, and Volusia Counties.
170 District 5.--Pasco and Pinellas Counties.
171 District 6.--Hillsborough, Manatee, Polk, Hardee, and
172 Highlands Counties.

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173 District 7.--Seminole, Orange, Osceola, and Brevard
174 Counties.
175 District 8.--Sarasota, DeSoto, Charlotte, Lee, Glades,
176 Hendry, and Collier Counties.
177 District 9.--Indian River, Okeechobee, St. Lucie, Martin,
178 and Palm Beach Counties.
179 District 10.--Broward County.
180 District 11.--Dade and Monroe Counties.
181 (6) "Exemption" means the process by which a proposal that
182 would otherwise require a certificate of need may proceed
183 without a certificate of need.
184 (7) "Expedited review" means the process by which certain
185 types of applications are not subject to the review cycle
186 requirements contained in s. 408.039(1), and the letter of
187 intent requirements contained in s. 408.039(2).
188 (8) "Health care facility" means a hospital, long-term
189 care hospital, skilled nursing facility, hospice, or
190 intermediate care facility for the developmentally disabled. A
191 facility relying solely on spiritual means through prayer for
192 healing is not included as a health care facility.
193 (9) "Health services" means inpatient diagnostic,
194 curative, or comprehensive medical rehabilitative services and
195 includes mental health services. Obstetric services are not
196 health services for purposes of ss. 408.031-408.045.
197 (10) "Hospice" or "hospice program" means a hospice as
198 defined in part VI of chapter 400.
199 (11) "Hospital" means a health care facility licensed
200 under chapter 395.

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201 (12) "Intermediate care facility for the developmentally
202 disabled" means a residential facility licensed under chapter
203 393 and certified by the Federal Government under ~~pursuant to~~
204 the Social Security Act as a provider of Medicaid services to
205 persons who are mentally retarded or who have a related
206 condition.
207 (13) "Long-term care hospital" means a hospital licensed
208 under chapter 395 which meets the requirements of 42 C.F.R. s.
209 412.23(e) and seeks exclusion from the acute care Medicare
210 prospective payment system for inpatient hospital services.
211 (14) "Mental health services" means inpatient services
212 provided in a hospital licensed under chapter 395 and listed on
213 the hospital license as psychiatric beds for adults; psychiatric
214 beds for children and adolescents; intensive residential
215 treatment beds for children and adolescents; substance abuse
216 beds for adults; or substance abuse beds for children and
217 adolescents.
218 (15) "Nursing home geographically underserved area" means:
219 (a) A county in which there is no existing or approved
220 nursing home;
221 (b) An area with a radius of at least 20 miles in which
222 there is no existing or approved nursing home; or
223 (c) An area with a radius of at least 20 miles in which
224 all existing nursing homes have maintained at least a 95 percent
225 occupancy rate for the most recent 6 months or a 90 percent
226 occupancy rate for the most recent 12 months.
227 (16) "Skilled nursing facility" means an institution, or a
228 distinct part of an institution, which is primarily engaged in
229 providing, to inpatients, skilled nursing care and related

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230 services for patients who require medical or nursing care, or
231 rehabilitation services for the rehabilitation of injured,
232 disabled, or sick persons.
233 (17) "Tertiary health service" means a health service
234 which, due to its high level of intensity, complexity,
235 specialized or limited applicability, and cost, should be
236 limited to, and concentrated in, a limited number of hospitals
237 to ensure the quality, availability, and cost-effectiveness of
238 the ~~such~~ service. Examples of this ~~such~~ service include, but are
239 not limited to, pediatric cardiac catheterization, pediatric
240 open-heart surgery, organ transplantation, ~~specialty burn units,~~
241 neonatal intensive care units, ~~comprehensive rehabilitation,~~ and
242 medical or surgical services that ~~which~~ are experimental or
243 developmental in nature to the extent that providing the ~~the~~
244 ~~provision of such~~ services is not yet contemplated within the
245 commonly accepted course of diagnosis or treatment for the
246 condition addressed by a given service. The agency shall
247 establish by rule a list of all tertiary health services.
248 ~~(18) "Regional area" means any of those regional health~~
249 ~~planning areas established by the agency to which local and~~
250 ~~district health planning funds are directed to local health~~
251 ~~councils through the General Appropriations Act.~~
252 Section 3. Section 408.033, Florida Statutes, is amended
253 to read:
254 408.033 Local and state health planning.--
255 (1) LOCAL HEALTH COUNCILS.--
256 (a) Local health councils are ~~hereby~~ established as public
257 or private nonprofit agencies serving the counties of a district
258 ~~or regional area of the agency~~. The members of each council

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259 shall be appointed in an equitable manner by the county
260 commissions having jurisdiction in the respective district. Each
261 council shall be composed of a number of persons equal to 1 1/2
262 times the number of counties that ~~which~~ compose the district or
263 12 members, whichever is greater. Each county in a district
264 shall be entitled to at least one member on the council. The
265 balance of the membership of the council shall be allocated
266 among the counties of the district on the basis of population
267 rounded to the nearest whole number; except that in a district
268 composed of only two counties, no county shall have fewer than
269 four members. The appointees shall be representatives of health
270 care providers, health care purchasers, and nongovernmental
271 health care consumers, but not excluding elected government
272 officials. The members of the consumer group shall include a
273 representative number of persons over 60 years of age. A
274 majority of council members shall consist of health care
275 purchasers and health care consumers. The local health council
276 shall provide each county commission a schedule for appointing
277 council members to ensure that council membership complies with
278 the requirements of this paragraph. The members of the local
279 health council shall elect a chair. Members shall serve for
280 terms of 2 years and may be eligible for reappointment.
281 (b) Each local health council may:
282 1. Develop a district ~~or regional area~~ health plan that
283 permits each local health council to develop strategies and set
284 priorities for implementation based on its unique local health
285 needs. ~~The district or regional area health plan must contain~~
286 ~~preferences for the development of health services and~~
287 ~~facilities, which may be considered by the agency in its review~~

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288 ~~of certificate-of-need applications. The district health plan~~
289 ~~shall be submitted to the agency and updated periodically. The~~
290 ~~district health plans shall use a uniform format and be~~
291 ~~submitted to the agency according to a schedule developed by the~~
292 ~~agency in conjunction with the local health councils. The~~
293 ~~schedule must provide for the development of district health~~
294 ~~plans by major sections over a multiyear period. The elements~~
295 ~~of a district plan which are necessary to the review of~~
296 ~~certificate-of-need applications for proposed projects within~~
297 ~~the district may be adopted by the agency as a part of its~~
298 ~~rules.~~
299 2. Advise the agency on health care issues and resource
300 allocations.
301 3. Promote public awareness of community health needs,
302 emphasizing health promotion and cost-effective health service
303 selection.
304 4. Collect data and conduct analyses and studies related
305 to health care needs of the district, including the needs of
306 medically indigent persons, and assist the agency and other
307 state agencies in carrying out data collection activities that
308 relate to the functions in this subsection.
309 5. Monitor the onsite construction progress, if any, of
310 certificate-of-need approved projects and report council
311 findings to the agency on forms provided by the agency.
312 6. Advise and assist any regional planning councils within
313 each district that have elected to address health issues in
314 their strategic regional policy plans with the development of
315 the health element of the plans to address the health goals and
316 policies in the State Comprehensive Plan.

317 7. Advise and assist local governments within each
318 district on the development of an optional health plan element
319 of the comprehensive plan provided in chapter 163, to assure
320 compatibility with the health goals and policies in the State
321 Comprehensive Plan and district health plan. To facilitate the
322 implementation of this section, the local health council shall
323 annually provide the local governments in its service area, upon
324 request, with:
325 a. A copy and appropriate updates of the district health
326 plan;
327 b. A report of hospital and nursing home utilization
328 statistics for facilities within the local government
329 jurisdiction; and
330 c. Applicable agency rules and calculated need
331 methodologies for health facilities and services regulated under
332 s. 408.034 for the district served by the local health council.
333 8. Monitor and evaluate the adequacy, appropriateness, and
334 effectiveness, within the district, of local, state, federal,
335 and private funds distributed to meet the needs of the medically
336 indigent and other underserved population groups.
337 9. In conjunction with the Department of Health ~~Agency for~~
338 ~~Health Care Administration~~, plan for services at the local level
339 for persons infected with the human immunodeficiency virus.
340 10. Provide technical assistance to encourage and support
341 activities by providers, purchasers, consumers, and local,
342 regional, and state agencies in meeting the health care goals,
343 objectives, and policies adopted by the local health council.

344 11. Provide the agency with data required by rule for the
345 review of certificate-of-need applications and the projection of
346 need for health services and facilities in the district.
347 (c) Local health councils may conduct public hearings
348 under ~~pursuant to~~ s. 408.039(3)(b).
349 (d) Each local health council shall enter into a
350 memorandum of agreement with each regional planning council in
351 its district that elects to address health issues in its
352 strategic regional policy plan. In addition, each local health
353 council shall enter into a memorandum of agreement with each
354 local government that includes an optional health element in its
355 comprehensive plan. Each memorandum of agreement must specify
356 the manner in which each local government, regional planning
357 council, and local health council will coordinate its activities
358 to ensure a unified approach to health planning and
359 implementation efforts.
360 (e) Local health councils may employ personnel or contract
361 for staffing services with persons who possess appropriate
362 qualifications to carry out the councils' purposes. However,
363 these ~~such~~ personnel are not state employees.
364 (f) Personnel of the local health councils shall provide
365 an annual orientation to council members about council member
366 responsibilities. ~~The orientation shall include presentations~~
367 ~~and participation by agency staff.~~
368 (g) Each local health council is authorized to accept and
369 receive, in furtherance of its health planning functions, funds,
370 grants, and services from governmental agencies and from private
371 or civic sources and to perform studies related to local health
372 planning in exchange for such funds, grants, or services. Each

373 local health council shall, no later than January 30 of each
374 year, render an accounting of the receipt and disbursement of
375 such funds received by it to the Department of Health ~~agency~~.
376 The Department of Health ~~agency~~ shall consolidate all such
377 reports and submit such consolidated report to the Legislature
378 no later than March 1 of each year. ~~Funds received by a local~~
379 ~~health council pursuant to this paragraph shall not be deemed to~~
380 ~~be a substitute for, or an offset against, any funding provided~~
381 ~~pursuant to subsection (2).~~
382 (2) FUNDING.--
383 (a) The Legislature intends that the cost of local health
384 councils be borne ~~by application fees for certificates of need~~
385 ~~and~~ by assessments on selected health care facilities subject to
386 facility licensure by the Agency for Health Care Administration,
387 including abortion clinics, assisted living facilities,
388 ambulatory surgical centers, birthing centers, clinical
389 laboratories except community nonprofit blood banks and clinical
390 laboratories operated by practitioners for exclusive use
391 regulated under s. 483.035, home health agencies, hospices,
392 hospitals, intermediate care facilities for the developmentally
393 disabled, nursing homes, and multiphasic testing centers and by
394 assessments on organizations subject to certification by the
395 agency under ~~pursuant to~~ chapter 641, part III, including health
396 maintenance organizations and prepaid health clinics.
397 (b)1. A hospital licensed under chapter 395, a nursing
398 home licensed under chapter 400, and an assisted living facility
399 licensed under chapter 400 shall be assessed an annual fee based
400 on number of beds.

401 2. All other facilities and organizations listed in
402 paragraph (a) shall each be assessed an annual fee of $150.
403 3. Facilities operated by the Department of Children and
404 Family Services, the Department of Health, or the Department of
405 Corrections and any hospital that ~~which~~ meets the definition of
406 rural hospital under ~~pursuant to~~ s. 395.602 are exempt from the
407 assessment required in this subsection.
408 (c)1. The agency shall, by rule, establish fees for
409 hospitals and nursing homes based on an assessment of $2 per
410 bed. However, no ~~such~~ facility shall be assessed more than a
411 total of $500 under this subsection.
412 2. The agency shall, by rule, establish fees for assisted
413 living facilities based on an assessment of $1 per bed. However,
414 no ~~such~~ facility shall be assessed more than a total of $150
415 under this subsection.
416 3. The agency shall, by rule, establish an annual fee of
417 $150 for all other facilities and organizations listed in
418 paragraph (a).
419 (d) The agency shall, by rule, establish a facility
420 billing and collection process for the billing and collection of
421 the health facility fees authorized by this subsection.
422 (e) A health facility which is assessed a fee under this
423 subsection is subject to a fine of $100 per day for each day in
424 which the facility is late in submitting its annual fee up to
425 maximum of the annual fee owed by the facility. A facility
426 which refuses to pay the fee or fine is subject to the
427 forfeiture of its license.
428 (f) The agency shall deposit in the Health Care Trust Fund
429 all health care facility assessments that are assessed under

430 this subsection and ~~proceeds from the certificate-of-need~~
431 ~~application fees. The agency~~ shall transfer these funds to the
432 Department of Health for ~~an amount sufficient to maintain the~~
433 ~~aggregate~~ funding of ~~level for~~ the local health councils ~~as~~
434 ~~specified in the General Appropriations Act~~. The remaining
435 certificate-of-need application fees shall be used only for the
436 purpose of administering the certificate-of-need program ~~Health~~
437 ~~Facility and Services Development Act~~.
438 (3) DUTIES AND RESPONSIBILITIES OF THE AGENCY.--
439 (a) The agency~~, in conjunction with the local health~~
440 ~~councils,~~ is responsible for the coordinated planning of health
441 care services in the state.
442 (b) The agency shall develop and maintain a comprehensive
443 health care database for the purpose of health planning and for
444 certificate-of-need determinations. The agency or its
445 contractor is authorized to require the submission of
446 information from health facilities, health service providers,
447 and licensed health professionals which is determined by the
448 agency, through rule, to be necessary for meeting the agency's
449 responsibilities as established in this section.
450 ~~(c) The agency shall assist personnel of the local health~~
451 ~~councils in providing an annual orientation to council members~~
452 ~~about council member responsibilities.~~
453 (c)~~(d)~~ The Department of Health ~~agency~~ shall contract with
454 the local health councils for the services specified in
455 subsection (1). All contract funds shall be distributed
456 according to an allocation plan developed by the Department of
457 Health ~~agency that provides for a minimum and equal funding base~~
458 ~~for each local health council. Any remaining funds shall be~~

459 ~~distributed based on adjustments for workload. The agency may~~
460 ~~also make grants to or reimburse local health councils from~~
461 ~~federal funds provided to the state for activities related to~~
462 ~~those functions set forth in this section~~. The Department of
463 Health ~~agency~~ may withhold funds from a local health council or
464 cancel its contract with a local health council which does not
465 meet performance standards agreed upon by the Department of
466 Health ~~agency~~ and local health councils.
467 Section 4. Subsections (1) and (2) of section 408.034,
468 Florida Statutes, are amended to read:
469 408.034 Duties and responsibilities of agency; rules.--
470 (1) The agency is designated as the single state agency to
471 issue, revoke, or deny certificates of need and to issue,
472 revoke, or deny exemptions from certificate-of-need review in
473 accordance with ~~the district plans and~~ present and future
474 federal and state statutes. The agency is designated as the
475 state health planning agency for purposes of federal law.
476 (2) In the exercise of its authority to issue licenses to
477 health care facilities and health service providers, as provided
478 under chapters 393, 395, and parts II and VI of chapter 400, the
479 agency may not issue a license to any health care facility or~~,~~
480 health service provider that~~, hospice, or part of a health care~~
481 ~~facility which~~ fails to receive a certificate of need or an
482 exemption for the licensed facility or service.
483 Section 5. Section 408.035, Florida Statutes, is amended
484 to read:
485 408.035 Review criteria.--The agency shall determine the
486 reviewability of applications and shall review applications for

487 certificate-of-need determinations for health care facilities
488 and health services in context with the following criteria:
489 (1) The need for the health care facilities and health
490 services being proposed ~~in relation to the applicable district~~
491 ~~health plan~~.
492 (2) The availability, quality of care, accessibility, and
493 extent of utilization of existing health care facilities and
494 health services in the service district of the applicant.
495 (3) The ability of the applicant to provide quality of
496 care and the applicant's record of providing quality of care.
497 ~~(4) The need in the service district of the applicant for~~
498 ~~special health care services that are not reasonably and~~
499 ~~economically accessible in adjoining areas.~~
500 ~~(5) The needs of research and educational facilities,~~
501 ~~including, but not limited to, facilities with institutional~~
502 ~~training programs and community training programs for health~~
503 ~~care practitioners and for doctors of osteopathic medicine and~~
504 ~~medicine at the student, internship, and residency training~~
505 ~~levels.~~
506 (4)~~(6)~~ The availability of resources, including health
507 personnel, management personnel, and funds for capital and
508 operating expenditures, for project accomplishment and
509 operation.
510 (5)~~(7)~~ The extent to which the proposed services will
511 enhance access to health care for residents of the service
512 district.
513 (6)~~(8)~~ The immediate and long-term financial feasibility
514 of the proposal.

515 (7)~~(9)~~ The extent to which the proposal will foster
516 competition that promotes quality and cost-effectiveness.
517 (8)~~(10)~~ The costs and methods of the proposed
518 construction, including the costs and methods of energy
519 provision and the availability of alternative, less costly, or
520 more effective methods of construction.
521 (9)~~(11)~~ The applicant's past and proposed provision of
522 health care services to Medicaid patients and the medically
523 indigent.
524 (10)~~(12)~~ The applicant's designation as a Gold Seal
525 Program nursing facility under ~~pursuant to~~ s. 400.235, when the
526 applicant is requesting additional nursing home beds at that
527 facility.
528 Section 6. Section 408.036, Florida Statutes, is amended
529 to read:
530 408.036 Projects subject to review; exemptions.--
531 (1) APPLICABILITY.--Unless exempt under subsection (3),
532 all health-care-related projects, as described in paragraphs
533 (a)-(e) ~~(a)-(h)~~, are subject to review and must file an
534 application for a certificate of need with the agency. The
535 agency is exclusively responsible for determining whether a
536 health-care-related project is subject to review under ss.
537 408.031-408.045.
538 (a) The addition of community nursing home or ICF/DD beds
539 by new construction or alteration.
540 (b) The new construction or establishment of additional
541 health care facilities, including a replacement health care
542 facility when the proposed project site is not located on the
543 same site as, or within 1 mile of, the existing health care

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544 facility, if the number of beds in each licensed bed category
545 will not increase.
546 (c) The conversion from one type of health care facility
547 to another, including the conversion from a general hospital, a
548 specialty hospital, or long-term care hospital.
549 (d) An increase in the total licensed bed capacity of a
550 health care facility.
551 (d)(e) The establishment of a hospice or hospice inpatient
552 facility, except as provided in s. 408.043.
553 (f) The establishment of inpatient health services by a
554 health care facility, or a substantial change in such services.
555 (g) An increase in the number of beds for acute care,
556 nursing home care beds, specialty burn units, neonatal intensive
557 care units, comprehensive rehabilitation, mental health
558 services, or hospital-based distinct part skilled nursing units,
559 or at a long-term care hospital.
560 (e)(h) The establishment of tertiary health services.
561 (2) PROJECTS SUBJECT TO EXPEDITED REVIEW.--Unless exempt
562 under pursuant to subsection (3), projects subject to an
563 expedited review shall include, but not be limited to:
564 (a) Research, education, and training programs.
565 (b) Shared services contracts or projects.
566 (a)(c) A transfer of a certificate of need, except that,
567 when an existing hospital is acquired by a purchaser, all
568 certificates of need issued to the hospital which are not yet
569 operational are acquired by the purchaser without need for a
570 transfer.
571 (b) Replacement of a community nursing home or ICF/DD when
572 the proposed project site is located within the same district

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573 and the same planning area of the health care facility being
574 replaced, if the number of licensed beds in the proposed project
575 is the same as that of the facility being replaced.
576 ~~(d) A 50-percent increase in nursing home beds for a~~
577 ~~facility incorporated and operating in this state for at least~~
578 ~~60 years on or before July 1, 1988, which has a licensed nursing~~
579 ~~home facility located on a campus providing a variety of~~
580 ~~residential settings and supportive services. The increased~~
581 ~~nursing home beds shall be for the exclusive use of the campus~~
582 ~~residents. Any application on behalf of an applicant meeting~~
583 ~~this requirement shall be subject to the base fee of $5,000~~
584 ~~provided in s. 408.038.~~
585 ~~(e) Replacement of a health care facility when the~~
586 ~~proposed project site is located in the same district and within~~
587 ~~a 1-mile radius of the replaced health care facility.~~
588 ~~(f) The conversion of mental health services beds licensed~~
589 ~~under chapter 395 or hospital-based distinct part skilled~~
590 ~~nursing unit beds to general acute care beds; the conversion of~~
591 ~~mental health services beds between or among the licensed bed~~
592 ~~categories defined as beds for mental health services; or the~~
593 ~~conversion of general acute care beds to beds for mental health~~
594 ~~services.~~
595 ~~1. Conversion under this paragraph shall not establish a~~
596 ~~new licensed bed category at the hospital but shall apply only~~
597 ~~to categories of beds licensed at that hospital.~~
598 ~~2. Beds converted under this paragraph must be licensed~~
599 ~~and operational for at least 12 months before the hospital may~~
600 ~~apply for additional conversion affecting beds of the same type.~~
601

602 The agency shall develop rules to implement the provisions for
603 expedited review, including time schedule, application content
604 which may be reduced from the full requirements of s.
605 408.037(1), and application processing.
606 (3) EXEMPTIONS.--Upon request, the following projects are
607 subject to exemption from the provisions of subsection (1):
608 ~~(a) For replacement of a licensed health care facility on~~
609 ~~the same site, provided that the number of beds in each licensed~~
610 ~~bed category will not increase.~~
611 (a)~~(b)~~ For hospice services or for swing beds in a rural
612 hospital, as defined in s. 395.602, in a number that does not
613 exceed one-half of its licensed beds.
614 (b)~~(c)~~ For the conversion of licensed acute care hospital
615 beds to Medicare and Medicaid certified skilled nursing beds in
616 a rural hospital, as defined in s. 395.602, so long as the
617 conversion of the beds does not involve the construction of new
618 facilities. The total number of skilled nursing beds, including
619 swing beds, may not exceed one-half of the total number of
620 licensed beds in the rural hospital as of July 1, 1993.
621 Certified skilled nursing beds designated under this paragraph,
622 excluding swing beds, shall be included in the community nursing
623 home bed inventory. A rural hospital which subsequently
624 decertifies any acute care beds exempted under this paragraph
625 shall notify the agency of the decertification, and the agency
626 shall adjust the community nursing home bed inventory
627 accordingly.
628 (c)~~(d)~~ For the addition of nursing home beds at a skilled
629 nursing facility that is part of a retirement community that
630 provides a variety of residential settings and supportive

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631 services and that has been incorporated and operated in this
632 state for at least 65 years on or before July 1, 1994. All
633 nursing home beds must not be available to the public but must
634 be for the exclusive use of the community residents.
635 ~~(e) For an increase in the bed capacity of a nursing~~
636 ~~facility licensed for at least 50 beds as of January 1, 1994,~~
637 ~~under part II of chapter 400 which is not part of a continuing~~
638 ~~care facility if, after the increase, the total licensed bed~~
639 ~~capacity of that facility is not more than 60 beds and if the~~
640 ~~facility has been continuously licensed since 1950 and has~~
641 ~~received a superior rating on each of its two most recent~~
642 ~~licensure surveys.~~
643 (d)~~(f)~~ For an inmate health care facility built by or for
644 the exclusive use of the Department of Corrections as provided
645 in chapter 945. This exemption expires when the ~~such~~ facility is
646 converted to other uses.
647 ~~(g) For the termination of an inpatient health care~~
648 ~~service, upon 30 days' written notice to the agency.~~
649 ~~(h) For the delicensure of beds, upon 30 days' written~~
650 ~~notice to the agency. A request for exemption submitted under~~
651 ~~this paragraph must identify the number, the category of beds,~~
652 ~~and the name of the facility in which the beds to be delicensed~~
653 ~~are located.~~
654 (e)~~(i)~~ For the provision of adult inpatient diagnostic
655 cardiac catheterization services in a hospital.
656 1. In addition to any other documentation otherwise
657 required by the agency, a request for an exemption submitted
658 under this paragraph must comply with the following criteria:

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659 a. The applicant must certify it will not provide
660 therapeutic cardiac catheterization pursuant to the grant of the
661 exemption.
662 b. The applicant must certify it will meet and
663 continuously maintain the minimum licensure requirements adopted
664 by the agency governing such programs under ~~pursuant to~~
665 subparagraph 2.
666 c. The applicant must certify it will provide a minimum of
667 2 percent of its services to charity and Medicaid patients.
668 2. The agency shall adopt licensure requirements by rule
669 which govern the operation of adult inpatient diagnostic cardiac
670 catheterization programs established under ~~pursuant to~~ the
671 exemption provided in this paragraph. The rules shall ensure
672 that the ~~such~~ programs:
673 a. Perform only adult inpatient diagnostic cardiac
674 catheterization services authorized by the exemption and will
675 not provide therapeutic cardiac catheterization or any other
676 services not authorized by the exemption.
677 b. Maintain sufficient appropriate equipment and health
678 personnel to ensure quality and safety.
679 c. Maintain appropriate times of operation and protocols
680 to ensure availability and appropriate referrals in the event of
681 emergencies.
682 d. Maintain appropriate program volumes to ensure quality
683 and safety.
684 e. Provide a minimum of 2 percent of its services to
685 charity and Medicaid patients each year.
686 3.a. The exemption provided by this paragraph shall not
687 apply unless the agency determines that the program is in

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688 compliance with the requirements of subparagraph 1. and that the
689 program will, after beginning operation, continuously comply
690 with the rules adopted under ~~pursuant to~~ subparagraph 2. The
691 agency shall monitor the ~~such~~ programs to ensure compliance with
692 the requirements of subparagraph 2.
693 b.(I) The exemption for a program expires ~~shall expire~~
694 immediately when the program fails to comply with the rules
695 adopted under ~~pursuant to~~ sub-subparagraphs 2.a., b., and c.
696 (II) Beginning 18 months after a program first begins
697 treating patients, the exemption for a program expires ~~shall~~
698 ~~expire~~ when the program fails to comply with the rules adopted
699 under ~~pursuant to~~ sub-subparagraphs 2.d. and e.
700 (III) If the exemption for a program expires under
701 ~~pursuant to~~ sub-sub-subparagraph (I) or sub-sub-subparagraph
702 (II), the agency may ~~shall~~ not grant an exemption under ~~pursuant~~
703 ~~to~~ this paragraph for an adult inpatient diagnostic cardiac
704 catheterization program located at the same hospital until 2
705 years following the date of the determination by the agency that
706 the program failed to comply with the rules adopted under
707 ~~pursuant to~~ subparagraph 2.
708 (f)~~(j)~~ For mobile surgical facilities and related health
709 care services provided under contract with the Department of
710 Corrections or a private correctional facility operating under
711 ~~pursuant to~~ chapter 957.
712 (g)~~(k)~~ For state veterans' nursing homes operated by or on
713 behalf of the Florida Department of Veterans' Affairs in
714 accordance with part II of chapter 296 for which at least 50
715 percent of the construction cost is federally funded and for
716 which the Federal Government pays a per diem rate not to exceed

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717 one-half of the cost of the veterans' care in the ~~such~~ state
718 nursing homes. These beds shall not be included in the nursing
719 home bed inventory.

720 (h)~~(l)~~ For combination within one nursing home facility of
721 the beds or services authorized by two or more certificates of
722 need issued in the same planning subdistrict. An exemption
723 granted under this paragraph shall extend the validity period of
724 the certificates of need to be consolidated by the length of the
725 period beginning upon submission of the exemption request and
726 ending with issuance of the exemption. The longest validity
727 period among the certificates shall be applicable to each of the
728 combined certificates.

729 (i)~~(m)~~ For division into two or more nursing home
730 facilities of beds or services authorized by one certificate of
731 need issued in the same planning subdistrict. An exemption
732 granted under this paragraph shall extend the validity period of
733 the certificate of need to be divided by the length of the
734 period beginning upon submission of the exemption request and
735 ending with issuance of the exemption.

736 ~~(n) For the addition of hospital beds licensed under~~
737 ~~chapter 395 for acute care, mental health services, or a~~
738 ~~hospital-based distinct part skilled nursing unit in a number~~
739 ~~that may not exceed 10 total beds or 10 percent of the licensed~~
740 ~~capacity of the bed category being expanded, whichever is~~
741 ~~greater. Beds for specialty burn units, neonatal intensive care~~
742 ~~units, or comprehensive rehabilitation, or at a long-term care~~
743 ~~hospital, may not be increased under this paragraph.~~

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744 ~~1. In addition to any other documentation otherwise~~
745 ~~required by the agency, a request for exemption submitted under~~
746 ~~this paragraph must:~~
747 ~~a. Certify that the prior 12-month average occupancy rate~~
748 ~~for the category of licensed beds being expanded at the facility~~
749 ~~meets or exceeds 80 percent or, for a hospital-based distinct~~
750 ~~part skilled nursing unit, the prior 12-month average occupancy~~
751 ~~rate meets or exceeds 96 percent.~~
752 ~~b. Certify that any beds of the same type authorized for~~
753 ~~the facility under this paragraph before the date of the current~~
754 ~~request for an exemption have been licensed and operational for~~
755 ~~at least 12 months.~~
756 ~~2. The timeframes and monitoring process specified in s.~~
757 ~~408.040(2)(a)-(c) apply to any exemption issued under this~~
758 ~~paragraph.~~
759 ~~3. The agency shall count beds authorized under this~~
760 ~~paragraph as approved beds in the published inventory of~~
761 ~~hospital beds until the beds are licensed.~~
762 ~~(o) For the addition of acute care beds, as authorized by~~
763 ~~rule consistent with s. 395.003(4), in a number that may not~~
764 ~~exceed 10 total beds or 10 percent of licensed bed capacity,~~
765 ~~whichever is greater, for temporary beds in a hospital that has~~
766 ~~experienced high seasonal occupancy within the prior 12-month~~
767 ~~period or in a hospital that must respond to emergency~~
768 ~~circumstances.~~
769 (j)~~(p)~~ For the addition of nursing home beds licensed
770 under chapter 400 in a number not exceeding 10 total beds or 10
771 percent of the number of beds licensed in the facility being
772 expanded, whichever is greater.

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773 1. In addition to any other documentation required by the
774 agency, a request for exemption submitted under this paragraph
775 must:
776 a. Effective until June 30, 2001, certify that the
777 facility has not had any class I or class II deficiencies within
778 the 30 months preceding the request for addition.
779 b. Effective on July 1, 2001, certify that the facility
780 has been designated as a Gold Seal nursing home under s.
781 400.235.
782 c. Certify that the prior 12-month average occupancy rate
783 for the nursing home beds at the facility meets or exceeds 96
784 percent.
785 d. Certify that any beds authorized for the facility under
786 this paragraph before the date of the current request for an
787 exemption have been licensed and operational for at least 12
788 months.
789 2. The timeframes and monitoring process specified in s.
790 408.040(2)(a)-(c) apply to any exemption issued under this
791 paragraph.
792 3. The agency shall count beds authorized under this
793 paragraph as approved beds in the published inventory of nursing
794 home beds until the beds are licensed.
795 (k) For establishing a Level II neonatal intensive care
796 unit with at least 10 beds, upon documentation to the agency
797 that the applicant hospital had a minimum of 1,500 births during
798 the previous 12 months, or establishing a Level III neonatal
799 intensive care unit with at least 15 beds, upon documentation to
800 the agency that the applicant hospital has a Level II neonatal
801 intensive care unit of at least 10 beds and had a minimum of

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802 3,500 births during the previous 12 months, if the applicant
803 commits to providing services to Medicaid and charity care
804 patients at a level equal to or greater than the district
805 average. This commitment is subject to s. 408.040.
806 (l) For adding comprehensive medical rehabilitation or
807 mental health services or beds, if the applicant commits to
808 providing services to Medicaid or charity care patients at a
809 level equal to or greater than the district average. This
810 commitment is subject to s. 408.040.
811 ~~(q) For establishment of a specialty hospital offering a~~
812 ~~range of medical service restricted to a defined age or gender~~
813 ~~group of the population or a restricted range of services~~
814 ~~appropriate to the diagnosis, care, and treatment of patients~~
815 ~~with specific categories of medical illnesses or disorders,~~
816 ~~through the transfer of beds and services from an existing~~
817 ~~hospital in the same county.~~
818 ~~(r) For the conversion of hospital-based Medicare and~~
819 ~~Medicaid certified skilled nursing beds to acute care beds, if~~
820 ~~the conversion does not involve the construction of new~~
821 ~~facilities.~~
822 ~~(s)1. For an adult open-heart-surgery program to be~~
823 ~~located in a new hospital provided the new hospital is being~~
824 ~~established in the location of an existing hospital with an~~
825 ~~adult open-heart-surgery program, the existing hospital and the~~
826 ~~existing adult open-heart-surgery program are being relocated to~~
827 ~~a replacement hospital, and the replacement hospital will~~
828 ~~utilize a closed-staff model. A hospital is exempt from the~~
829 ~~certificate-of-need review for the establishment of an open-~~

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830 ~~heart-surgery program if the application for exemption submitted~~
831 ~~under this paragraph complies with the following criteria:~~
832 ~~a. The applicant must certify that it will meet and~~
833 ~~continuously maintain the minimum Florida Administrative Code~~
834 ~~and any future licensure requirements governing adult open-heart~~
835 ~~programs adopted by the agency, including the most current~~
836 ~~guidelines of the American College of Cardiology and American~~
837 ~~Heart Association Guidelines for Adult Open Heart Programs.~~
838 ~~b. The applicant must certify that it will maintain~~
839 ~~sufficient appropriate equipment and health personnel to ensure~~
840 ~~quality and safety.~~
841 ~~c. The applicant must certify that it will maintain~~
842 ~~appropriate times of operation and protocols to ensure~~
843 ~~availability and appropriate referrals in the event of~~
844 ~~emergencies.~~
845 ~~d. The applicant is a newly licensed hospital in a~~
846 ~~physical location previously owned and licensed to a hospital~~
847 ~~performing more than 300 open-heart procedures each year,~~
848 ~~including heart transplants.~~
849 ~~e. The applicant must certify that it can perform more~~
850 ~~than 300 diagnostic cardiac catheterization procedures per year,~~
851 ~~combined inpatient and outpatient, by the end of the third year~~
852 ~~of its operation.~~
853 ~~f. The applicant's payor mix at a minimum reflects the~~
854 ~~community average for Medicaid, charity care, and self-pay~~
855 ~~patients or the applicant must certify that it will provide a~~
856 ~~minimum of 5 percent of Medicaid, charity care, and self-pay to~~
857 ~~open-heart-surgery patients.~~

858 ~~g. If the applicant fails to meet the established criteria~~
859 ~~for open-heart programs or fails to reach 300 surgeries per year~~
860 ~~by the end of its third year of operation, it must show cause~~
861 ~~why its exemption should not be revoked.~~
862 ~~h. In order to ensure continuity of available services,~~
863 ~~the applicant of the newly licensed hospital may apply for this~~
864 ~~certificate-of-need before taking possession of the physical~~
865 ~~facilities. The effective date of the certificate-of-need will~~
866 ~~be concurrent with the effective date of the newly issued~~
867 ~~hospital license.~~
868 ~~2. By December 31, 2004, and annually thereafter, the~~
869 ~~agency shall submit a report to the Legislature providing~~
870 ~~information concerning the number of requests for exemption~~
871 ~~received under this paragraph and the number of exemptions~~
872 ~~granted or denied.~~
873 ~~3. This paragraph is repealed effective January 1, 2008.~~
874 ~~(t)1. For the provision of adult open-heart services in a~~
875 ~~hospital located within the boundaries of Palm Beach, Polk,~~
876 ~~Martin, St. Lucie, and Indian River Counties if the following~~
877 ~~conditions are met: The exemption must be based upon objective~~
878 ~~criteria and address and solve the twin problems of geographic~~
879 ~~and temporal access. A hospital shall be exempt from the~~
880 ~~certificate-of-need review for the establishment of an open-~~
881 ~~heart-surgery program when the application for exemption~~
882 ~~submitted under this paragraph complies with the following~~
883 ~~criteria:~~
884 ~~a. The applicant must certify that it will meet and~~
885 ~~continuously maintain the minimum licensure requirements adopted~~
886 ~~by the agency governing adult open-heart programs, including the~~

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887 ~~most current guidelines of the American College of Cardiology~~
888 ~~and American Heart Association Guidelines for Adult Open Heart~~
889 ~~Programs.~~
890 ~~b. The applicant must certify that it will maintain~~
891 ~~sufficient appropriate equipment and health personnel to ensure~~
892 ~~quality and safety.~~
893 ~~c. The applicant must certify that it will maintain~~
894 ~~appropriate times of operation and protocols to ensure~~
895 ~~availability and appropriate referrals in the event of~~
896 ~~emergencies.~~
897 ~~d. The applicant can demonstrate that it is referring 300~~
898 ~~or more patients per year from the hospital, including the~~
899 ~~emergency room, for cardiac services at a hospital with cardiac~~
900 ~~services, or that the average wait for transfer for 50 percent~~
901 ~~or more of the cardiac patients exceeds 4 hours.~~
902 ~~e. The applicant is a general acute care hospital that is~~
903 ~~in operation for 3 years or more.~~
904 ~~f. The applicant is performing more than 300 diagnostic~~
905 ~~cardiac catheterization procedures per year, combined inpatient~~
906 ~~and outpatient.~~
907 ~~g. The applicant's payor mix at a minimum reflects the~~
908 ~~community average for Medicaid, charity care, and self-pay~~
909 ~~patients or the applicant must certify that it will provide a~~
910 ~~minimum of 5 percent of Medicaid, charity care, and self-pay to~~
911 ~~open-heart-surgery patients.~~
912 ~~h. If the applicant fails to meet the established criteria~~
913 ~~for open-heart programs or fails to reach 300 surgeries per year~~
914 ~~by the end of its third year of operation, it must show cause~~
915 ~~why its exemption should not be revoked.~~

916 ~~2. By December 31, 2004, and annually thereafter, the~~
917 ~~Agency for Health Care Administration shall submit a report to~~
918 ~~the Legislature providing information concerning the number of~~
919 ~~requests for exemption received under this paragraph and the~~
920 ~~number of exemptions granted or denied.~~
921 (4) A request for exemption under subsection (3) may be
922 made at any time and is not subject to the batching requirements
923 of this section. The request shall be supported by such
924 documentation as the agency requires by rule. The agency shall
925 assess a fee of $250 for each request for exemption submitted
926 under subsection (3).
927 (5) NOTIFICATION.--Health care facilities and providers
928 must notify the agency of the following:
929 (a) Replacement of a health care facility when the
930 proposed project site is located in the same district and on the
931 existing health care facility site or within a 1-mile radius of
932 the replaced health care facility, if the number and type of
933 beds do not increase.
934 (b) The termination of a health care service, upon 30
935 days' written notice to the agency.
936 (c) The addition or delicensure of beds.
937
938 Notification under this subsection may be made at any time
939 before the action described, by electronic, facsimile, or
940 written means.
941 Section 7. Section 408.0361, Florida Statutes, is amended
942 to read:
943 408.0361 Diagnostic cardiac catheterization services
944 providers; compliance with guidelines and requirements.--

945 (1) Each provider of diagnostic cardiac catheterization
946 services shall comply with the requirements of s.
947 408.036(3)(e)2.a.-d. s. 408.036(3)(i)2.a.-d., and rules of the
948 agency for Health Care Administration governing the operation of
949 adult inpatient diagnostic cardiac catheterization programs,
950 including the most recent guidelines of the American College of
951 Cardiology and American Heart Association Guidelines for Cardiac
952 Catheterization and Cardiac Catheterization Laboratories.
953 (2) The agency shall adopt rules for licensure standards
954 for adult interventional cardiology services and burn units
955 licensed under chapter 395. The rules shall consider at a
956 minimum:
957 (a) Staffing;
958 (b) Equipment;
959 (c) Physical plant;
960 (d) Operating protocols;
961 (e) Provision of services to Medicaid and charity care
962 patients;
963 (f) Accreditation;
964 (g) Licensure period;
965 (h) Fees; and
966 (i) Enforcement of minimum standards.
967
968 Any provider holding a certificate of need on July 1, 2004, and
969 any provider in receipt of a notice of intent to grant a
970 certificate of need or a final order of the agency granting a
971 certificate of need for an adult interventional cardiology
972 service or burn unit shall be exempt from complying with the
973 rules for 2 years following the date of its next license

974 renewal. Thereafter, each provider must meet the licensure
975 standards for each license renewal.
976 (3) When adopting rules for adult interventional
977 cardiology services, the agency shall include rules that allow
978 for:
979 (a) The establishment of two hospital program licensure
980 levels: a Level I program authorizing the performance of adult
981 percutaneous cardiac intervention without on-site cardiac
982 surgery and a Level II program authorizing the performance of
983 percutaneous cardiac intervention with on-site cardiac surgery.
984 (b) A hospital seeking a Level I program, demonstration
985 that for the most recent 12-month period as reported to the
986 agency it has provided a minimum of 300 adult inpatient and
987 outpatient diagnostic cardiac catheterizations and that it has a
988 formalized, written transfer agreement with a hospital that has
989 a Level II program, including written transport protocols to
990 ensure safe and efficient transfer of a patient within 60
991 minutes.
992 (c) A hospital seeking a Level II program, demonstration
993 that for the most recent 12-month period as reported to the
994 agency that it has performed a minimum of 1,100 adult inpatient
995 and outpatient diagnostic cardiac catheterizations, or has
996 discharged at least 800 patients with the primary diagnosis of
997 ischemic heart disease.
998 (d) A demonstration of sufficient trained staff,
999 equipment, and operating procedures to assure patient quality
1000 and safety.

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1001 (e) The establishment of appropriate hours of operation
1002 and protocols to ensure availability and timely referral in the
1003 event of emergencies.
1004 (f) A demonstration of a plan to provide services to
1005 Medicaid and charity care patients.
1006 (4) After a hospital's cardiac interventional program has
1007 been operational for 12 consecutive months, and the risk-
1008 adjusted mortality for coronary bypass surgery for any
1009 successive 12-month period exceeds, by more than 1.75 times, the
1010 national risk-adjusted mortality rate for coronary bypass
1011 surgery, as reported to the American Society of Thoracic
1012 Surgeons, in the first 2 years of operation of the hospital's
1013 Level II program, or by more than 1.25 times the national risk
1014 adjusted mortality rate for coronary bypass surgery, as reported
1015 by the American Society of Thoracic Surgeons, in any successive
1016 12-month period after the second year of operation, the hospital
1017 shall perform a 30-day focused review of its Level II program
1018 with the intention of reducing the risk-adjusted mortality rate
1019 to reasonably acceptable levels. If mortality levels do not
1020 return to reasonably acceptable levels, the agency may initiate
1021 action up to and including suspension or revocation of licensure
1022 of the Level II program.
1023 Section 8. The Secretary of Health Care Administration
1024 shall appoint an advisory group to study the issue of replacing
1025 certificate-of-need review of organ transplant programs
1026 operating under chapter 408, Florida Statutes, with licensure
1027 regulation of organ transplant programs under chapter 395,
1028 Florida Statutes. The advisory group must include three
1029 representatives of organ transplant providers, one

1030 representative of an organ procurement organization, one
1031 representative of the Division of Health Quality Assurance, one
1032 representative of the Medicaid program, and one organ transplant
1033 patient advocate. The advisory group shall, at a minimum, make
1034 recommendations regarding access to organs, delivery of services
1035 to Medicaid and charity care patients, staff training, and
1036 resource requirements for organ transplant programs in a report
1037 submitted to the Governor, the Secretary of Health Care
1038 Administration, and the Legislature by July 1, 2005.
1039 Section 9. Section 408.038, Florida Statutes, is amended
1040 to read:
1041 408.038 Fees.--The agency shall assess fees on
1042 certificate-of-need applications. The ~~Such~~ fees shall be for
1043 the purpose of funding ~~the functions of the local health~~
1044 ~~councils and~~ the activities of the agency and shall be allocated
1045 as provided in s. 408.033. The fee shall be determined as
1046 follows:
1047 (1) A minimum base fee of $10,000 ~~$5,000~~.
1048 (2) In addition to the base fee of $10,000 ~~$5,000~~, 0.015
1049 of each dollar of proposed expenditure, except that a fee may
1050 not exceed $50,000 ~~$22,000~~.
1051 Section 10. Section 408.039, Florida Statutes, is amended
1052 to read:
1053 408.039 Review process.--The review process for
1054 certificates of need shall be as follows:
1055 (1) REVIEW CYCLES.--The agency by rule shall provide for
1056 applications to be submitted on a timetable or cycle basis;
1057 provide for review on a timely basis; and provide for all
1058 completed applications pertaining to similar types of services

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1059 or facilities affecting the same service district to be
1060 considered in relation to each other no less often than annually
1061 ~~two times a year~~.
1062 (2) LETTERS OF INTENT.--
1063 (a) At least 30 days before ~~prior to~~ filing an
1064 application, a letter of intent shall be filed by the applicant
1065 with the agency, respecting the development of a proposal
1066 subject to review. No letter of intent is required for
1067 expedited projects as defined by rule by the agency.
1068 (b) The agency shall provide a mechanism by which
1069 applications may be filed to compete with proposals described in
1070 filed letters of intent.
1071 (c) Letters of intent must describe the proposal; specify
1072 the number of beds sought, if any; identify the services to be
1073 provided and the specific subdistrict location; and identify the
1074 applicant.
1075 (d) Within 21 days after filing a letter of intent, the
1076 agency shall publish notice of the filing of letters of intent
1077 in the Florida Administrative Weekly and notice that, if
1078 requested, a public hearing shall be held at the local level
1079 within 21 days after the application is deemed complete. Notices
1080 under this paragraph must contain due dates applicable to the
1081 cycle for filing applications and for requesting a hearing.
1082 (3) APPLICATION PROCESSING.--
1083 (a) An applicant shall file an application with the
1084 agency, and shall furnish a copy of the application to ~~the local~~
1085 ~~health council and~~ the agency. Within 15 days after the
1086 applicable application filing deadline established by agency
1087 rule, the staff of the agency shall determine if the application

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1088 is complete. If the application is incomplete, the staff shall
1089 request specific information from the applicant necessary for
1090 the application to be complete; however, the staff may make only
1091 one ~~such~~ request. If the requested information is not filed with
1092 the agency within 21 days of the receipt of the staff's request,
1093 the application shall be deemed incomplete and deemed withdrawn
1094 from consideration.
1095 (b) Upon the request of any applicant or substantially
1096 affected person within 14 days after notice that an application
1097 has been filed, a public hearing may be held at the agency's
1098 discretion if the agency determines that a proposed project
1099 involves issues of great local public interest. The public
1100 hearing shall allow applicants and other interested parties
1101 reasonable time to present their positions and to present
1102 rebuttal information. A recorded verbatim record of the hearing
1103 shall be maintained. The public hearing shall be held at the
1104 local level within 21 days after the application is deemed
1105 complete.
1106 (4) STAFF RECOMMENDATIONS.--
1107 (a) The agency's review of and final agency action on
1108 applications shall be in accordance with ~~the district health~~
1109 ~~plan, and~~ statutory criteria, and the implementing
1110 administrative rules. In the application review process, the
1111 agency shall give a preference, as defined by rule of the
1112 agency, to an applicant that ~~which~~ proposes to develop a nursing
1113 home in a nursing home geographically underserved area.
1114 (b) Within 60 days after all the applications in a review
1115 cycle are determined to be complete, the agency shall issue its
1116 State Agency Action Report and Notice of Intent to grant a

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1117 certificate of need for the project in its entirety, to grant a
1118 certificate of need for identifiable portions of the project, or
1119 to deny a certificate of need. The State Agency Action Report
1120 shall set forth in writing its findings of fact and
1121 determinations upon which its decision is based. ~~If a finding of~~
1122 ~~fact or determination by the agency is counter to the district~~
1123 ~~health plan of the local health council, the agency shall~~
1124 ~~provide in writing its reason for its findings, item by item, to~~
1125 ~~the local health council.~~ If the agency intends to grant a
1126 certificate of need, the State Agency Action Report or the
1127 Notice of Intent shall also include any conditions which the
1128 agency intends to attach to the certificate of need. The agency
1129 shall designate by rule a senior staff person, other than the
1130 person who issues the final order, to issue State Agency Action
1131 Reports and Notices of Intent.
1132 (c) The agency shall publish its proposed decision set
1133 forth in the Notice of Intent in the Florida Administrative
1134 Weekly within 14 days after the Notice of Intent is issued.
1135 (d) If no administrative hearing is requested under
1136 ~~pursuant to~~ subsection (5), the State Agency Action Report and
1137 the Notice of Intent shall become the final order of the agency.
1138 The agency shall provide a copy of the final order to the
1139 appropriate local health council.
1140 (5) ADMINISTRATIVE HEARINGS.--
1141 (a) Within 21 days after publication of notice of the
1142 State Agency Action Report and Notice of Intent, any person
1143 authorized under paragraph (c) to participate in a hearing may
1144 file a request for an administrative hearing; failure to file a
1145 request for hearing within 21 days of publication of notice

1146 shall constitute a waiver of any right to a hearing and a waiver
1147 of the right to contest the final decision of the agency. A
1148 copy of the request for hearing shall be served on the
1149 applicant.
1150 (b) Hearings shall be held in Tallahassee unless the
1151 administrative law judge determines that changing the location
1152 will facilitate the proceedings. The agency shall assign
1153 proceedings requiring hearings to the Division of Administrative
1154 Hearings of the Department of Management Services within 10 days
1155 after the time has expired for requesting a hearing. Except
1156 upon unanimous consent of the parties or upon the granting by
1157 the administrative law judge of a motion of continuance,
1158 hearings shall commence within 60 days after the administrative
1159 law judge has been assigned. All parties, except the agency,
1160 shall bear their own expense of preparing a transcript. In any
1161 application for a certificate of need which is referred to the
1162 Division of Administrative Hearings for hearing, the
1163 administrative law judge shall complete and submit to the
1164 parties a recommended order as provided in ss. 120.569 and
1165 120.57. The recommended order shall be issued within 30 days
1166 after the receipt of the proposed recommended orders or the
1167 deadline for submission of the ~~such~~ proposed recommended orders,
1168 whichever is earlier. The division shall adopt procedures for
1169 administrative hearings which shall maximize the use of
1170 stipulated facts and shall provide for the admission of prepared
1171 testimony.
1172 (c) In administrative proceedings challenging the issuance
1173 or denial of a certificate of need, only applicants considered
1174 by the agency in the same batching cycle are entitled to a

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1175 comparative hearing on their applications. Existing health care
1176 facilities may initiate or intervene in an administrative
1177 hearing upon a showing that an established program will be
1178 substantially affected by the issuance of any certificate of
1179 need, whether reviewed under s. 408.036(1) or (2), to a
1180 competing proposed facility or program within the same district.
1181 (d) The applicant's failure to strictly comply with the
1182 requirements of s. 408.037(1) or paragraph (2)(c) is not cause
1183 for dismissal of the application, unless the failure to comply
1184 impairs the fairness of the proceeding or affects the
1185 correctness of the action taken by the agency.
1186 (e) The agency shall issue its final order within 45 days
1187 after receipt of the recommended order. If the agency fails to
1188 take action within this ~~such~~ time, or as otherwise agreed to by
1189 the applicant and the agency, the applicant may take appropriate
1190 legal action to compel the agency to act. When making a
1191 determination on an application for a certificate of need, the
1192 agency is specifically exempt from the time limitations provided
1193 in s. 120.60(1).
1194 (6) JUDICIAL REVIEW.--
1195 (a) A party to an administrative hearing for an
1196 application for a certificate of need has the right, within not
1197 more than 30 days after the date of the final order, to seek
1198 judicial review in the District Court of Appeal under ~~pursuant~~
1199 ~~to~~ s. 120.68. The agency shall be a party to this ~~in any such~~
1200 proceeding.
1201 (b) In the ~~such~~ judicial review, the court shall affirm
1202 the final order of the agency, unless the decision is arbitrary,
1203 capricious, or not in compliance with ss. 408.031-408.045.

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1204 (c) The court, in its discretion, may award reasonable
1205 attorney's fees and costs to the prevailing party if the court
1206 finds that there was a complete absence of a justiciable issue
1207 of law or fact raised by the losing party.
1208 Section 11. Section 408.040, Florida Statutes, is amended
1209 to read:
1210 408.040 Conditions and monitoring.--
1211 (1)(a) The agency may issue a certificate of need or an
1212 exemption predicated upon statements of intent expressed by an
1213 applicant in the application for a certificate of need or
1214 exemption. Any conditions imposed on a certificate of need or an
1215 exemption based on such statements of intent shall be stated on
1216 the face of the certificate of need or in the exemption
1217 approval.
1218 (b) The agency may consider, in addition to the other
1219 criteria specified in s. 408.035, a statement of intent by the
1220 applicant that a specified percentage of the annual patient days
1221 at the facility will be utilized by patients eligible for care
1222 under Title XIX of the Social Security Act. Any certificate of
1223 need issued to a nursing home in reliance upon an applicant's
1224 statements that a specified percentage of annual patient days
1225 will be utilized by residents eligible for care under Title XIX
1226 of the Social Security Act must include a statement that this
1227 ~~such~~ certification is a condition of issuance of the certificate
1228 of need. The certificate-of-need program shall notify the
1229 Medicaid program office and the Department of Elderly Affairs
1230 when it imposes conditions as authorized in this paragraph in an
1231 area in which a community diversion pilot project is
1232 implemented.

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1233 (c) A certificateholder or exemption holder may apply to
1234 the agency for a modification of conditions imposed under
1235 paragraph (a) or paragraph (b). If the holder of a certificate
1236 of need or exemption demonstrates good cause why the certificate
1237 or exemption should be modified, the agency shall reissue the
1238 certificate of need or exemption with such modifications as may
1239 be appropriate. The agency shall by rule define the factors
1240 constituting good cause for modification.
1241 (d) If the holder of a certificate of need or certificate-
1242 of-need exemption fails to comply with a condition upon which
1243 the issuance of the certificate or exemption was predicated, the
1244 agency shall ~~may~~ assess an administrative fine against the
1245 certificateholder or exemption holder in an amount not to exceed
1246 $1,000 per failure per day. Failure to annually report
1247 compliance with any condition upon which the issuance of the
1248 certificate or exemption was predicated constitutes
1249 noncompliance. In assessing the penalty, the agency shall take
1250 into account as mitigation the degree of noncompliance ~~relative~~
1251 ~~lack of severity of a particular failure~~. Proceeds of such
1252 penalties shall be deposited in the Public Medical Assistance
1253 Trust Fund.
1254 (2)(a) Unless the applicant has commenced construction, if
1255 the project provides for construction, unless the applicant has
1256 incurred an enforceable capital expenditure commitment for a
1257 project, if the project does not provide for construction, or
1258 unless subject to paragraph (b), a certificate of need shall
1259 terminate 18 months after the date of issuance. The agency shall
1260 monitor the progress of the holder of the certificate of need in
1261 meeting the timetable for project development specified in the

1262 application ~~with the assistance of the local health council as~~
1263 ~~specified in s. 408.033(1)(b)5.,~~ and may revoke the certificate
1264 of need, if the holder of the certificate is not meeting such
1265 timetable and is not making a good-faith effort, as defined by
1266 rule, to meet it.
1267 (b) A certificate of need issued to an applicant holding a
1268 provisional certificate of authority under chapter 651 shall
1269 terminate 1 year after the applicant receives a valid
1270 certificate of authority from the Office of Insurance Regulation
1271 of the Financial Services Commission.
1272 (c) The certificate-of-need validity period for a project
1273 shall be extended by the agency, to the extent that the
1274 applicant demonstrates to the satisfaction of the agency that
1275 good-faith commencement of the project is being delayed by
1276 litigation or by governmental action or inaction with respect to
1277 regulations or permitting precluding commencement of the
1278 project.
1279 (3) The agency shall require the submission of an executed
1280 architect's certification of final payment for each certificate-
1281 of-need project approved by the agency. Each project that
1282 involves construction shall submit such certification to the
1283 agency within 30 days following completion of construction.
1284 Section 12. Section 408.0455, Florida Statutes, is amended
1285 to read:
1286 408.0455 Rules; pending proceedings.--The rules of the
1287 agency in effect on June 30, 2004 ~~1997~~, shall remain in effect
1288 and shall be enforceable by the agency with respect to ss.
1289 408.031-408.045 until the ~~such~~ rules are repealed or amended by
1290 the agency~~, and no judicial or administrative proceeding pending~~

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1291 ~~on July 1, 1997, shall be abated as a result of the provisions~~
1292 ~~of ss. 408.031-408.043(1) and (2); s. 408.044; or s. 408.045~~.
1293 Section 13. <u>Subsection (2) of section 408.043, and section</u>
1294 <u>408.045, Florida Statutes, are repealed.</u>
1295 Section 14. This act shall take effect July 1, 2004.

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