

By the Committees on Children, Families, and Elder Affairs; and Health Policy; and Senators Grimsley and Diaz de la Portilla

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1 A bill to be entitled
2 An act relating to certificates of need; amending s.
3 408.034, F.S.; decreasing the subdistrict average
4 occupancy rate that the Agency for Health Care
5 Administration is required to maintain as a goal of
6 its nursing-home-bed-need methodology; conforming a
7 provision to changes made by the act; authorizing an
8 applicant to aggregate the need of geographically
9 contiguous subdistricts within a district for a
10 proposed community nursing home under certain
11 circumstances; requiring the proposed nursing home
12 site to be located in the subdistrict with the greater
13 need under certain circumstances; recognizing an
14 additional positive application factor for an
15 applicant who voluntarily relinquishes certain nursing
16 home beds; requiring the applicant to demonstrate that
17 it meets certain requirements; amending s. 408.036,
18 F.S.; providing that, under certain circumstances,
19 replacement of a nursing home and relocation of a
20 portion of a nursing home's licensed beds to another
21 facility, or to establish a new facility, is a health-
22 care-related project subject to expedited review;
23 conforming a cross-reference; revising the
24 requirements for projects that are exempted from
25 applying for a certificate of need; repealing s.
26 408.0435, F.S., relating to the moratorium on the
27 approval of certificates of need for additional
28 community nursing home beds; creating s. 408.0436,
29 F.S.; prohibiting the agency from approving a

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30 certificate-of-need application for new community
31 nursing home beds under certain circumstances;
32 defining the term "batching cycle"; providing a
33 repeal; providing an effective date.
34

35 Be It Enacted by the Legislature of the State of Florida:
36

37 Section 1. Subsection (5) of section 408.034, Florida
38 Statutes, is amended, present subsection (6) of that section is
39 redesignated as subsection (8), and a new subsection (6) and
40 subsection (7) are added to that section, to read:

41 408.034 Duties and responsibilities of agency; rules.—

42 (5) The agency shall establish by rule a nursing-home-bed-
43 need methodology that has a goal of maintaining a subdistrict
44 average occupancy rate of 92 94 percent ~~and that reduces the~~
45 ~~community nursing home bed need for the areas of the state where~~
46 ~~the agency establishes pilot community diversion programs~~
47 ~~through the Title XIX aging waiver program.~~

48 (6) If nursing home bed need is determined to exist in
49 geographically contiguous subdistricts within a district, an
50 applicant may aggregate the subdistricts' need for a new
51 community nursing home in one of the subdistricts. If need is
52 aggregated from two subdistricts, the proposed nursing home site
53 must be located in the subdistrict with the greater need as
54 published by the agency in the Florida Administrative Register.
55 However, if need is aggregated from more than two subdistricts,
56 the location of the proposed nursing home site must provide
57 reasonable geographic access for residents in the respective
58 subdistricts given the relative bed need in each.

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59 (7) If nursing home bed need is determined to exist in a
60 subdistrict, an additional positive application factor may be
61 recognized in the application review process for an applicant
62 who agrees to voluntarily relinquish licensed nursing home beds
63 in one or more subdistricts where there is no calculated need.
64 The applicant must demonstrate that it operates, controls, or
65 has an agreement with another licensed community nursing home to
66 ensure that beds are voluntarily relinquished if the application
67 is approved and the applicant is licensed.

68 Section 2. Subsection (2) and paragraphs (f), (k), (p), and
69 (q) of subsection (3) of section 408.036, Florida Statutes, are
70 amended to read:

71 408.036 Projects subject to review; exemptions.—

72 (2) PROJECTS SUBJECT TO EXPEDITED REVIEW.—Unless exempt
73 pursuant to subsection (3), the following projects are subject
74 to an expedited review ~~shall include, but not be limited to:~~

75 (a) ~~A~~ Transfer of a certificate of need, except that when
76 an existing hospital is acquired by a purchaser, all
77 certificates of need issued to the hospital which are not yet
78 operational shall be acquired by the purchaser, ~~without need for~~
79 a transfer.

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

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88 with the agency's most recently published inventory.

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

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

103 (e)-(d) The New construction of a community nursing home in
104 a retirement community as further provided in this paragraph.

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

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

110 b. The retirement community is located in a county in which
111 25 percent or more of its population is age 65 and older.

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

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117 d. The retirement community has a population of at least
118 8,000 residents within the county, based on a population data
119 source accepted by the agency.

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

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

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

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

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

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146 nursing home, ~~measured over publicly owned roadways.~~

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

148 6.7. A retirement community requesting expedited review
149 under this paragraph shall submit a written request to the
150 agency for ~~an~~ expedited review. The request must ~~shall~~ include
151 the number of beds to be added and provide evidence of
152 compliance with the criteria specified in subparagraph 1.

153 ~~7.8.~~ After verifying that the retirement community meets
154 the criteria for expedited review specified in subparagraph 1.,
155 the agency shall publicly notice in the Florida Administrative
156 Register that a request for an expedited review has been
157 submitted by a qualifying retirement community and that the
158 qualifying retirement community intends to make land available
159 for the construction and operation of a community nursing home.
160 The agency's notice must ~~shall~~ identify where potential
161 applicants can obtain information describing the sales price of,
162 or terms of the land lease for, the property on which the
163 project will be located and the requirements established by the
164 retirement community. The agency notice must ~~shall~~ also specify
165 the deadline for submission of the ~~any~~ certificate-of-need
166 application, which may ~~shall~~ not be earlier than the 91st day or
167 ~~and not be~~ later than the 125th day after the date the notice
168 appears in the Florida Administrative Register.

169 8.9. The qualified retirement community shall make land
170 available to applicants it deems to have met its requirements
171 for the construction and operation of a community nursing home
172 but may ~~will~~ sell or lease the land only to the applicant that
173 is issued a certificate of need by the agency under ~~the~~
174 ~~provisions of~~ this paragraph.

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175 a. A certificate-of-need ~~certificate-of-need~~ application
176 submitted under ~~pursuant to~~ this paragraph must ~~shall~~ identify
177 the intended site for the project within the retirement
178 community and the anticipated costs for the project based on
179 that site. The application must ~~shall~~ also include written
180 evidence that the retirement community has determined that both
181 the provider submitting the application and the project satisfy
182 ~~proposed by that provider satisfies~~ its requirements for the
183 project.

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

189 ~~9.10.~~ The agency shall review each submitted application
190 ~~submitted shall be reviewed by the agency.~~ If multiple
191 applications are submitted for a ~~the~~ project ~~as~~ published
192 pursuant to subparagraph 7. 8., ~~then~~ the agency shall review the
193 competing applications shall be reviewed by the agency.

194
195 The agency shall develop rules to implement the ~~provisions for~~
196 expedited review process, including time schedule, application
197 content that ~~which~~ may be reduced from the full requirements of
198 s. 408.037(1), and application processing.

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

201 (f) For the addition of nursing home beds licensed under
202 chapter 400 in a number not exceeding 30 total beds or 25
203 percent of the number of beds licensed in the facility being

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204 replaced under paragraph (2)(b), paragraph (2)(c), or paragraph
205 (p), whichever is less ~~For the creation of a single nursing home~~
206 ~~within a district by combining licensed beds from two or more~~
207 ~~licensed nursing homes within such district, regardless of~~
208 ~~subdistrict boundaries, if 50 percent of the beds in the created~~
209 ~~nursing home are transferred from the only nursing home in a~~
210 ~~county and its utilization data demonstrate that it had an~~
211 ~~occupancy rate of less than 75 percent for the 12-month period~~
212 ~~ending 90 days before the request for the exemption. This~~
213 ~~paragraph is repealed upon the expiration of the moratorium~~
214 ~~established in s. 408.0435(1).~~

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

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

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

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

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

237 2. The timeframes and monitoring process specified in s.
238 408.040(2)(a)-(c) apply to any exemption issued under this
239 paragraph.

240 3. The agency shall count beds authorized under this
241 paragraph as approved beds in the published inventory of nursing
242 home beds until the beds are licensed.

243 (p) For replacement of a licensed nursing home on the same
244 site, or within 5 ~~3~~ miles of the same site if within the same
245 subdistrict, if the number of licensed beds does not increase
246 except as allowed by paragraph (f).

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

255 Section 3. Section 408.0435, Florida Statutes, is repealed.

256 Section 4. Section 408.0436, Florida Statutes, is created
257 to read:

258 408.0436 Limitation on nursing home certificates of need.-
259 Notwithstanding the establishment of need as provided in this
260 chapter, the agency may not approve a certificate-of-need
261 application for new community nursing home beds following the

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262 batching cycle in which the cumulative number of new community
263 nursing home beds approved from July 1, 2014 to June 30, 2017,
264 equals or exceeds 3,750. As used in this section, the term
265 "batching cycle" means the grouping for comparative review of
266 certificate-of-need applications submitted for beds, services,
267 or programs having a like certificate-of-need methodology or
268 licensing category in the same planning horizon and the same
269 applicable district or subdistrict. This section is repealed
270 July 1, 2017.

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