CHAPTER 97-270

Committee Substitute for Senate Bill No. 238

An act relating to certificates of need; amending s. 408.032, F.S.; deleting the definition of the terms "health maintenance organization" and "major medical equipment" for purposes of the review for a certificate of need by the Agency for Health Care Administration; redefining the term "health care facility" to include a hospice and long-term care hospital; defining the terms "home health agency," "long-term care hospital," and "respite care"; amending s. 408.035, F.S., relating to review criteria; revising provisions; deleting reference to hospice and health maintenance organizations; adding replacement of facilities as reviewable activity; deleting a requirement to approve certain facility consolidations or divisions; amending s. 408.036, F.S., relating to health care projects that are subject to certificate-of-need review; requiring the review of certain replacement health care facilities; requiring the review of Medicare-certified home health agencies; providing an exception; eliminating certificate-of-need review for projects exceeding a specified expenditure threshold and for acquisition of major medical equipment; requiring certificate-of-need review of cost increases exceeding a specified threshold and for increase in number of psychiatric or rehabilitation beds; deleting a reference to expedited review of transfer of a certificate of need; modifying requirements relating to expedited review of cost overruns; eliminating the expedited review of donations, acquisition of land for health care facilities or health care provider offices, and termination of health care services; eliminating the expedited review of emergency projects and unforeseen major public health hazards; requiring expedited review of replacement of certain health care facilities; eliminating the exemption from review granted for certain facilities not directly used for health care services; eliminating expedited review of expenditures to address safety hazards, repair of facility or equipment resulting from certain occurrences, and replacement of major medical equipment; deleting an obsolete date relating to expansion of obstetric services; requiring expedited review of replacing or renovating health care facilities; exempting from review certain facilities establishing Medicare-certified home health agencies; exempting from review the establishment of Medicare-certified home health agencies contingent upon specified future actions; exempting from review inmate health care facilities, the termination of a health care service, delicensure of beds, adult inpatient diagnostic cardiac catheterization services contingent upon specified future actions, and certain expenditures for outpatient services; amending s. 408.037, F.S.; revising requirements for the detailed description and financial projection; requiring that an applicant for a certificate of need certify that it will license and operate the health care facility; requiring that certain applicants for a certificate of need be the licenseholder of the health care facility; deleting requirements with respect to the applicant's board of directors; amending s. 408.039, F.S.; revising the scope of review

cycles and requirements for an applicant with respect to letters of intent and administrative hearings; eliminating review of equipment from review cycles; eliminating a requirement that letters of intent be filed with local health councils; revising content requirements of letters of intent; revising publication requirements for letters of intent; providing a timeframe for submitting a final order; amending s. 408.040, F.S.; extending the length of time that a certificate of need remains effective; deleting authority to extend the time that a certificate of need remains valid; amending s. 408.042, F.S.; increasing the validity period of a certificate of need; amending s. 408.043, F.S.; deleting a provision providing for the validity of a certificate of need; providing that private accreditation is not required for issuance or maintenance of a certificate of need; amending s. 408.0455, F.S.; providing for continuation of certain rules and pending administrative or judicial proceedings; amending s. 408.702, F.S., relating to project monitoring and community health purchasing alliances; conforming cross references; amending ss. 400.602 and 641.60, F.S., relating to hospice licensure for certain entities and the Statewide Managed Care Ombudsman Committee; conforming cross-references; repealing ss. 408.0365 and 408.0366, F.S., relating to certain exemptions from certificate-of-need regulation; providing applicability; providing an effective date.

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

Section 1. Section 408.032, Florida Statutes, is amended to read:

408.032 Definitions.—As used in ss. 408.031-408.045, the term:

(1) "Agency" means the Agency for Health Care Administration.

(2)~~(1)~~ "Capital expenditure" means an expenditure, including an expenditure for a construction project undertaken by a health care facility as its own contractor, which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance, which is made to change~~; or an expenditure which exceeds the minimum as specified in s. 408.036(1)(c), changes~~ the bed capacity of the facility, or substantially change ~~changes~~ the services or service area of the health care facility, health service provider, or hospice, and which includes the cost of the studies, surveys, designs, plans, working drawings, specifications, initial financing costs, and other activities essential to acquisition, improvement, expansion, or replacement of the plant and equipment. ~~The agency shall, by rule, adjust the capital expenditure threshold annually using an appropriate inflation index.~~

(3)~~(2)~~ "Certificate of need" means a written statement issued by the agency evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice.

(4)~~(3)~~ "Commenced construction" means initiation of and continuous activities beyond site preparation associated with erecting or modifying a health care facility, including procurement of a building permit applying the

use of agency-approved construction documents, proof of an executed owner/contractor agreement or an irrevocable or binding forced account, and actual undertaking of foundation forming with steel installation and concrete placing.

~~(4) "Department" means the Agency for Health Care Administration.~~

(5) "District" means a health service planning district composed of the following counties:

District 1.—Escambia, Santa Rosa, Okaloosa, and Walton Counties.

District 2.—Holmes, Washington, Bay, Jackson, Franklin, Gulf, Gadsden, Liberty, Calhoun, Leon, Wakulla, Jefferson, Madison, and Taylor Counties.

District 3.—Hamilton, Suwannee, Lafayette, Dixie, Columbia, Gilchrist, Levy, Union, Bradford, Putnam, Alachua, Marion, Citrus, Hernando, Sumter, and Lake Counties.

District 4.—Baker, Nassau, Duval, Clay, St. Johns, Flagler, and Volusia Counties.

District 5.—Pasco and Pinellas Counties.

District 6.—Hillsborough, Manatee, Polk, Hardee, and Highlands Counties.

District 7.—Seminole, Orange, Osceola, and Brevard Counties.

District 8.—Sarasota, DeSoto, Charlotte, Lee, Glades, Hendry, and Collier Counties.

District 9.—Indian River, Okeechobee, St. Lucie, Martin, and Palm Beach Counties.

District 10.—Broward County.

District 11.—Dade and Monroe Counties.

(6) "Expedited review" means the process by which certain types of applications are not subject to the review cycle requirements contained in s. 408.039(1), and the letter of intent requirements contained in s. 408.039(2).

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

~~(8) "Health maintenance organization" means a health care provider organization defined and authorized in part I of chapter 641.~~

(8)~~(9)~~ "Health services" means diagnostic, curative, or rehabilitative services and includes alcohol treatment, drug abuse treatment, and mental health services.

(9) "Home health agency" means an organization, as defined in s. 400.462(4), that is certified or seeks certification as a Medicare home health service provider.

(10) "Hospice" or "hospice program" means a hospice as defined in part VI of chapter 400.

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

(12) "Institutional health service" means a health service which is provided by or through a health care facility and which entails an annual operating cost of $500,000 or more. The agency shall, by rule, adjust the annual operating cost threshold annually using an appropriate inflation index.

(13) "Intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who, because of their mental or physical condition, require health-related care and services above the level of room and board.

(14) "Intermediate care facility for the developmentally disabled" means a residential facility licensed under chapter 393 and certified by the Federal Government pursuant to the Social Security Act as a provider of Medicaid services to persons who are mentally retarded or who have a related condition.

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

~~(15) "Major medical equipment" means equipment which is used to provide medical and other health services, which has been approved for general usage by the United States Food and Drug Administration for less than 3 years and which costs in excess of $1 million. The agency shall, by rule, adjust the equipment threshold annually using an appropriate inflation index.~~

(16) "Multifacility project" means an integrated residential and health care facility consisting of independent living units, assisted living facility units, and nursing home beds certificated on or after January 1, 1987, where:

(a) The aggregate total number of independent living units and assisted living facility units exceeds the number of nursing home beds.

(b) The developer of the project has expended the sum of $500,000 or more on the certificated and noncertificated elements of the project combined, exclusive of land costs, by the conclusion of the 18th month of the life of the certificate of need.

(c) The total aggregate cost of construction of the certificated element of the project, when combined with other, noncertificated elements, is $10 million or more.

(d) All elements of the project are contiguous or immediately adjacent to each other and construction of all elements will be continuous.

(17) "Nursing home geographically underserved area" means:

(a) A county in which there is no existing or approved nursing home;

(b) An area with a radius of at least 20 miles in which there is no existing or approved nursing home; or

(c) An area with a radius of at least 20 miles in which all existing nursing homes have maintained at least a 95 percent occupancy rate for the most recent 6 months or a 90 percent occupancy rate for the most recent 12 months.

(18) "Respite care" means short-term care in a licensed health care facility which is personal or custodial and is provided for chronic illness, physical infirmity, or advanced age for the purpose of temporarily relieving family members of the burden of providing care and attendance.

(19)~~(18)~~ "Skilled nursing facility" means an institution, or a distinct part of an institution, which is primarily engaged in providing, to inpatients, skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(20)~~(19)~~ "Tertiary health service" means a health service which, due to its high level of intensity, complexity, specialized or limited applicability, and cost, should be limited to, and concentrated in, a limited number of hospitals to ensure the quality, availability, and cost-effectiveness of such service. Examples of such service include, but are not limited to, organ transplantation, specialty burn units, neonatal intensive care units, comprehensive rehabilitation, and medical or surgical services which are experimental or developmental in nature to the extent that the provision of such services is not yet contemplated within the commonly accepted course of diagnosis or treatment for the condition addressed by a given service. The agency shall establish by rule a list of all tertiary health services.

~~(20) "Agency" means the department or agency which has responsibility for health planning and health regulation.~~

(21) "Regional area" means any of those regional health planning areas established by the agency to which local and district health planning funds are directed to local health councils through the General Appropriations Act.

Section 2. Section 408.035, Florida Statutes, is amended to read:

408.035 Review criteria.—

(1) The agency shall determine the reviewability of applications and shall review applications for certificate-of-need determinations for health care facilities and health services~~, hospices, and health maintenance organizations~~ in context with the following criteria:

(a) The need for the health care facilities and health services ~~and hospices~~ being proposed in relation to the applicable district plan ~~and state health plan~~, except in emergency circumstances that ~~which~~ pose a threat to the public health.

(b) The availability, quality of care, efficiency, appropriateness, accessibility, extent of utilization, and adequacy of like and existing health care facilities and health services ~~and hospices~~ in the service district of the applicant.

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

(d) The availability and adequacy of other health care facilities and health services ~~and hospices~~ in the service district of the applicant, such as outpatient care and ambulatory or home care services, which may serve as alternatives for the health care facilities and health services to be provided by the applicant.

(e) Probable economies and improvements in service which ~~that~~ may be derived from operation of joint, cooperative, or shared health care resources.

(f) The need in the service district of the applicant for special equipment and services that ~~which~~ are not reasonably and economically accessible in adjoining areas.

(g) The need for research and educational facilities, including, but not limited to, institutional training programs and community training programs for health care practitioners and for doctors of osteopathy and medicine at the student, internship, and residency training levels.

(h) The availability of resources, including health manpower, management personnel, and funds for capital and operating expenditures, for project accomplishment and operation; the effects the project will have on clinical needs of health professional training programs in the service district; the extent to which the services will be accessible to schools for health professions in the service district for training purposes if such services are available in a limited number of facilities; the availability of alternative uses of such resources for the provision of other health services; and the extent to which the proposed services will be accessible to all residents of the service district.

(i) The immediate and long-term financial feasibility of the proposal.

(j) The special needs and circumstances of health maintenance organizations.

(k) The needs and circumstances of those entities that ~~which~~ provide a substantial portion of their services or resources, or both, to individuals not residing in the service district in which the entities are located or in adjacent service districts. Such entities may include medical and other health professions, schools, multidisciplinary clinics, and specialty services such as open-heart surgery, radiation therapy, and renal transplantation.

(l) The probable impact of the proposed project on the costs of providing health services proposed by the applicant, upon consideration of factors including, but not limited to, the effects of competition on the supply of health services being proposed and the improvements or innovations in the financing and delivery of health services which foster competition and service to promote quality assurance and cost-effectiveness.

(m) The costs and methods of the proposed construction, including the costs and methods of energy provision and the availability of alternative, less costly, or more effective methods of construction.

(n) The applicant's past and proposed provision of health care services to Medicaid patients and the medically indigent.

(o) The applicant's past and proposed provision of services that ~~which~~ promote a continuum of care in a multilevel health care system, which may include, but are ~~is~~ not limited to, acute care, skilled nursing care, home health care, and assisted living facilities.

(2) In cases of capital expenditure proposals for the provision of new health services to inpatients, the agency ~~department~~ shall also reference each of the following in its findings of fact:

(a) That less costly, more efficient, or more appropriate alternatives to such inpatient services are not available and the development of such alternatives has been studied and found not practicable.

(b) That existing inpatient facilities providing inpatient services similar to those proposed are being used in an appropriate and efficient manner.

(c) In the case of new construction or replacement construction, that alternatives to the ~~new~~ construction, for example, modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable.

(d) That patients will experience serious problems in obtaining inpatient care of the type proposed, in the absence of the proposed new service.

(e) In the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care services, that the addition will be consistent with the plans of other agencies of the state responsible for the provision and financing of long-term care, including home health services.

~~(3) For any application authorized by s. 381.706(2)(j) or (k) involving an approved facility based on a certificate-of-need application filed prior to December 31, 1984, the department shall approve such application unless the proposed consolidation or division would result in a facility or facilities not meeting the criterion of financial feasibility or unless the consolidation or division would result in beds or services being moved more than 15 miles from their original certificated location.~~

Section 3. Section 408.036, Florida Statutes, as amended by chapters 93-214, 94-206, and 95-418, Laws of Florida, is amended to read:

408.036 Projects subject to review.—

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

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

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

~~(c) A capital expenditure of $1 million or more by or on behalf of a health care facility or hospice for a purpose directly related to the furnishing of health services at such facility; provided that a certificate of need is not required for an expenditure to provide an outpatient health service, or to acquire equipment or refinance debt, for which a certificate of need is not otherwise required under this subsection. The department shall, by rule, adjust the capital expenditure threshold annually using an appropriate inflation index.~~

(c)~~(d)~~ The conversion from one type of health care facility to another, including the conversion from one level of care to another, in a skilled or intermediate nursing facility, if the conversion effects a change in the level of care of 10 beds or 10 percent of total bed capacity of the skilled or intermediate nursing facility within a 2-year period. If the nursing facility is certified for both skilled and intermediate nursing care, the provisions of this paragraph do not apply.

(d)~~(e)~~ Any increase ~~change~~ in licensed bed capacity.

(e)~~(f)~~ Subject to the provisions of paragraph (3)(i), the establishment of a Medicare-certified home health agency, the establishment of a hospice, or the direct provision of such services by a health care facility or health maintenance organization for those other than the subscribers of the health maintenance organization; except that this paragraph does not apply to the establishment of a Medicare-certified home health agency by a facility described in paragraph (3)(h).

(f)~~(g)~~ An acquisition by or on behalf of a health care facility or health maintenance organization, by any means, which acquisition would have required review if the acquisition had been by purchase~~, including an acquisition at less than fair market value if the fair market value is greater than the capital expenditure threshold~~.

(g)~~(h)~~ The establishment of inpatient institutional health services by a health care facility, or a substantial change in such services.~~, or the obligation of capital expenditures for the offering of, or a substantial change in, any such services which entails a capital expenditure in any amount, or an annual operating cost of $500,000 or more. The department shall, by rule,~~

~~adjust the annual operating cost threshold annually using an appropriate inflation index.~~

(h)~~(i)~~ The acquisition by any means of an existing health care facility by any person, unless the person provides the agency ~~department~~ with at least 30 days' written notice of the proposed acquisition, which notice is to include the services to be offered and the bed capacity of the facility, and unless the agency ~~department~~ does not determine, within 30 days after receipt of such notice, that the services to be provided and the bed capacity of the facility will be changed.

~~(j) The acquisition, by any means, of major medical equipment by a health maintenance organization or health care facility to the extent that the health maintenance organization or health care facility is not exempt under former s. 381.713(1).~~

(i)~~(k)~~ An increase in the cost of a project for which a certificate of need has been issued when the increase in cost exceeds 20 ~~the limits set forth in paragraph (c), paragraph (h), or s. 408.032, or 10~~ percent of the originally approved cost of the project, ~~whichever is less,~~ except that a cost overrun review is not necessary when the cost overrun is less than $20,000 ~~$10,000~~.

(j)~~(l)~~ An increase ~~A change~~ in the number of psychiatric or rehabilitation beds.

(k)~~(m)~~ The establishment of tertiary health services.

~~(n) A transfer of a certificate of need, in which case an expedited review must be conducted according to rule and in accordance with s. 408.042.~~

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

(a) Cost overruns, as defined in paragraph (1)(i) ~~unless such cost overruns are caused by a change in service or scope which the department determines are otherwise reviewable~~.

(b) Research, education, and training programs.

~~(c) Donations, when market value equals or exceeds the applicable capital expenditure thresholds for operating expenditures, or major medical equipment, as defined in this act.~~

~~(d) Acquisition of land which is to be used for the construction of a health care facility, or office facilities for health care providers.~~

~~(e) Termination of a health care service.~~

(c)~~(f)~~ Shared services contracts or projects.

(d)~~(g)~~ A transfer of a certificate of need.

~~(h) Emergency projects and unforeseen major public health hazards.~~

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

(f)~~(j)~~ Combination within one nursing home facility of the beds or services authorized by two or more certificates of need issued in the same planning subdistrict.

(g)~~(k)~~ Division into two or more nursing home facilities of beds or services authorized by one certificate of need issued in the same planning subdistrict. Such division shall not be approved if it would adversely affect the original certificate's approved cost.

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

The agency ~~department~~ shall develop rules to implement the provisions for expedited review, including time schedule, application content, and application processing.

(3) EXEMPTIONS.—Upon request, supported by such documentation as the agency ~~department~~ requires, the agency ~~department~~ shall grant an exemption from the provisions of subsection (1):

~~(a) For any expenditure by or on behalf of a health care facility for any part of the physical plant which is not to be directly used for providing health services or housing health care providers. This exemption applies to expenditures for parking facilities, meeting rooms, cafeterias, administrative data processing facilities, research buildings, landscaping, and similar projects, but does not apply to expenditures for office facilities for health care providers.~~

~~(b) For any expenditure to eliminate or prevent safety hazards as defined by federal, state, or local codes.~~

~~(c) For any expenditure to replace any part of a facility or equipment which is destroyed as a result of fire, civil disturbance, or storm or any other act of God.~~

~~(d) For any expenditure to acquire major medical equipment that is a substantially identical replacement for existing equipment being taken out of service.~~

(a)~~(e)~~ For the initiation or expansion of obstetric services ~~after July 1, 1988~~.

(b)~~(f)~~ For any expenditure to replace or renovate any part of a licensed health care ~~nursing~~ facility, provided that the number of licensed beds will not increase and, in the case of a replacement facility, the project site is the same as the facility being replaced.

(c)~~(g)~~ For providing respite care services. ~~As used in this paragraph, the term "respite care" means short-term care in a licensed health care facility which is personal or custodial in nature and is provided by reason of chronic illness, physical infirmity, or advanced age for the purpose of temporarily relieving family members of the burden of providing care and attendance in the home. In providing respite care, the health care facility must be the primary caregiver.~~ An individual may be admitted to a respite care program in a hospital without regard to inpatient requirements relating to admitting order and attendance of a member of a medical staff.

(d)~~(h)~~ For hospice services provided by a rural hospital, as defined in s. 395.602, or for swing beds in such rural hospital in a number that does not exceed one-half of its licensed beds.

(e)~~(i)~~ For the conversion of licensed acute care hospital beds to Medicare and Medicaid certified skilled nursing beds in a rural hospital as defined in s. 395.602, so long as the conversion of the beds does not involve the construction of new facilities. The total number of skilled nursing beds, including swing beds, may not exceed one-half of the total number of licensed beds in the rural hospital as of July 1, 1993. Certified skilled nursing beds designated under this paragraph, excluding swing beds, shall be included in the community nursing home bed inventory. A rural hospital which subsequently decertifies any acute care beds exempted under this paragraph shall notify the agency of the decertification, and the agency shall adjust the community nursing home bed inventory accordingly.

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

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

(h) For the establishment of a Medicare-certified home health agency by a facility certified under chapter 651; a retirement community, as defined in s. 400.404(2)(e); or a residential facility that serves only retired military personnel, their dependents, and the surviving dependents of deceased military personnel. Medicare-reimbursed home health services provided through such agency shall be offered exclusively to residents of the facility or retirement community or to residents of facilities or retirement communities owned, operated, or managed by the same corporate entity. Each visit made to deliver Medicare-reimbursable home health services to a home health patient who, at the time of service, is not a resident of the facility or retirement community shall be a deceptive and unfair trade practice and constitutes a violation of ss. 501.201-501.213.

(i) For the establishment of a Medicare-certified home health agency. This paragraph shall take effect 90 days after the adjournment sine die of the next regular session of the Legislature occurring after the legislative session in which the Legislature receives a report from the Director of Health Care Administration certifying that the federal Health Care Financing Administration has implemented a per-episode prospective pay system for Medicare-certified home health agencies.

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

(k) For an expenditure by or on behalf of a health care facility to provide a health service exclusively on an outpatient basis.

(l) For the termination of a health care service.

(m) For the delicensure of beds. An application submitted under this paragraph must identify the number, the classification, and the name of the facility in which the beds to be delicensed are located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. The agency shall not grant any exemption under this paragraph until the adoption of the rules required under this paragraph, or until March 1, 1998, whichever comes first. However, if final rules have not been adopted by March 1, 1998, the proposed rules governing the exemptions shall be used by the agency to grant exemptions under the provisions of this paragraph until final rules become effective.

A request for exemption under this subsection may be made at any time and is not subject to the batching requirements of this section.

Section 4. Section 408.037, Florida Statutes, is amended to read:

408.037 Application content.—

(1) An application for a certificate of need must ~~shall~~ contain:

(a)~~(1)~~ A detailed description of the proposed project and statement of its purpose and need in relation to ~~the applicant's long-range plan,~~ the local health plan~~,~~ and the state health plan.

(b)~~(2)~~ A statement of the financial resources needed by and available to the applicant to accomplish the proposed project. This statement must ~~shall~~ include:

1.~~(a)~~ A complete listing of all capital projects, including new health facility development projects and health facility acquisitions applied for, pending, approved, or underway in any state at the time of application, regardless of whether or not that state has a certificate-of-need program or a

capital expenditure review program pursuant to s. 1122 of the Social Security Act. The agency ~~department~~ may, by rule, require less-detailed information from major health care providers. This listing must ~~shall~~ include the applicant's actual or proposed financial commitment to those projects and an assessment of their impact on the applicant's ability to provide the proposed project.

2.~~(b)~~ A detailed listing of the needed capital expenditures, including sources of funds.

3.~~(c)~~ A detailed financial projection, including a statement of the projected revenue and expenses ~~for the period of construction and~~ for the first 2 years of operation after completion of the proposed project. This statement must ~~shall~~ include a detailed evaluation of the impact of the proposed project on the cost of other services provided by the applicant.

(c)~~(3)~~ An audited financial statement of the applicant. In an application submitted by an existing health care facility, health maintenance organization, or hospice, financial condition documentation must ~~shall~~ include, but need not be limited to, a balance sheet and a profit-and-loss statement of the 2 previous fiscal years' operation.

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

~~(4) A certified copy of a resolution by the board of directors of the applicant, or other governing authority if not a corporation, authorizing the filing of the application; authorizing the applicant to incur the expenditures necessary to accomplish the proposed project; certifying that if issued a certificate, the applicant shall accomplish the proposed project within the time allowed by law and at or below the costs contained in the application; and certifying that the applicant shall license and operate the facility.~~

Section 5. Subsections (1), (2), and (5) and paragraph (b) of subsection (4) of section 408.039, Florida Statutes, 1996 Supplement, are amended to read:

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

(1) REVIEW CYCLES.—The agency ~~department~~ by rule shall provide for applications to be submitted on a timetable or cycle basis; provide for review on a timely basis; and provide for all completed applications pertaining to similar types of services or~~,~~ facilities~~, or equipment~~ affecting the same service district to be considered in relation to each other no less often than two times a year.

(2) LETTERS OF INTENT.—

(a) At least 30 days prior to filing an application, a letter of intent shall be filed by the applicant with the agency ~~local health council and the department~~, respecting the development of a proposal subject to review. No letter of intent is required for expedited projects as defined by rule by the agency ~~department~~.

(b) The agency ~~department~~ shall provide a mechanism by which applications may be filed to compete with proposals described in filed letters of intent.

(c) Letters of intent must ~~shall~~ describe the proposal; specify the ~~with specificity, including proposed capital expenditures,~~ number of beds sought, if any; identify the~~,~~ services to be provided and the~~,~~ specific subdistrict location; and identify~~, identification of~~ the applicant~~, including the names of those with controlling interest in the applicant, and such other information as the department may by rule prescribe~~. ~~The letter of intent shall contain a certified copy of a resolution by the board of directors of the applicant, or other governing authority if not a corporation, authorizing the filing of the application described in the letter of intent; authorizing the applicant to incur the expenditures necessary to accomplish the proposed project; certifying that if issued a certificate, the applicant shall accomplish the proposed project within the time allowed by law and at or below the costs contained in the application; and certifying that the applicant shall license and operate the facility.~~

(d) Within 21 ~~14~~ days after filing a letter of intent, the agency ~~the applicant shall publish a notice of filing to be published in a newspaper of general circulation in the area affected by the proposal. The notice of filing shall be published once a week for 2 consecutive weeks on forms and in the format and content specified by the department by rule. Within 21 days after the filing, the department~~ shall publish notice of the filing of letters of intent in the Florida Administrative Weekly and notice that, if requested, a public hearing shall be held at the local level within 21 days after the application is deemed complete. Notices under this paragraph must ~~subsection shall~~ contain due dates applicable to the cycle for filing applications and for requesting a hearing.

(4) STAFF RECOMMENDATIONS.—

(b) Within 60 days after all the applications in a review cycle are determined to be complete, the department shall issue its State Agency Action Report and Notice of Intent to grant a certificate of need for the project in its entirety, to grant a certificate of need for identifiable portions of the project, or to deny a certificate of need. The State Agency Action Report shall set forth in writing its findings of fact and determinations upon which its decision is based. If a finding of fact or determination by the department is counter to the district plan of the local health council, the department shall provide in writing its reason for its findings, item by item, to the local health council and the Statewide Health Council. If the department intends to grant a certificate of need, the State Agency Action Report or the Notice of Intent shall also include any conditions which the department intends to attach to the certificate of need. The department shall designate by rule a senior staff person, other than the person who issues the final order, to issue State Agency Action Reports and Notices of Intent.

(5) ADMINISTRATIVE HEARINGS.—

(a) Within 21 days after publication of notice of the State Agency Action Report and Notice of Intent, any person authorized under paragraph (c) ~~(b)~~

to participate in a hearing may file a request for an administrative hearing; failure to file a request for hearing within 21 days of publication of notice shall constitute a waiver of any right to a hearing and a waiver of the right to contest the final decision of the agency ~~department~~. A copy of the request for hearing shall be served on the applicant.

(b) Hearings shall be held in Tallahassee unless the administrative law judge determines that changing the location will facilitate the proceedings. ~~In administrative proceedings challenging the issuance or denial of a certificate of need, only applicants considered by the department in the same batching cycle are entitled to a comparative hearing on their applications. Existing health care facilities may initiate or intervene in an administrative hearing upon a showing that an established program will be substantially affected by the issuance of any certificate of need to a competing proposed facility or program within the same district, provided that existing health care providers, other than the applicant, have no standing or right to initiate or intervene in an administrative hearing involving a health care project which is subject to certificate-of-need review solely on the basis of s. 408.036(1)(c).~~ The agency ~~department~~ shall assign proceedings requiring hearings to the Division of Administrative Hearings of the Department of Management Services within 10 days after the time has expired for requesting ~~run to request~~ a hearing. Except upon unanimous consent of the parties or upon the granting by the administrative law judge of a motion of continuance, hearings shall commence within 60 days after the administrative law judge has been assigned. All ~~non-state-agency~~ parties, except the agency, shall bear their own expense of preparing a transcript. In any application for a certificate of need which is referred to the Division of Administrative Hearings for hearing, the administrative law judge shall complete and submit to the parties a recommended order as provided in ss. 120.569 and 120.57. The recommended order shall be issued within 30 days after the receipt of the proposed recommended orders or the deadline for submission of such proposed recommended orders, whichever is earlier. The division shall adopt procedures for administrative hearings which shall maximize the use of stipulated facts and shall provide for the admission of prepared testimony.

(c) In administrative proceedings challenging the issuance or denial of a certificate of need, only applicants considered by the agency in the same batching cycle are entitled to a comparative hearing on their applications. Existing health care facilities may initiate or intervene in an administrative hearing upon a showing that an established program will be substantially affected by the issuance of any certificate of need to a competing proposed facility or program within the same district. ~~The department shall issue its final order within 45 days after receipt of the recommended order.~~

(d) The applicant's failure to strictly comply with the requirements of s. 408.037(1) or paragraph (2)(c) is not cause for dismissal of the application, unless the failure to comply impairs the fairness of the proceeding or affects the correctness of the action taken by the agency. ~~If the department fails to take action within the time specified in paragraph (4)(a) or paragraph (5)(c), or as otherwise agreed to by the applicant and the department, the applicant may take appropriate legal action to compel the department to act. When~~

~~making a determination on an application for a certificate of need, the department is specifically exempt from the time limitations provided in s. 120.60(1).~~

(e) The agency shall issue its final order within 45 days after receipt of the recommended order. If the agency fails to take action within such time, or as otherwise agreed to by the applicant and the agency, the applicant may take appropriate legal action to compel the agency to act. When making a determination on an application for a certificate of need, the agency is specifically exempt from the time limitations provided in s. 120.60(1).

Section 6. Paragraphs (a), (b), and (d) of subsection (2) of section 408.040, Florida Statutes, are amended to read:

408.040 Conditions and monitoring.—

(2)(a) Unless the applicant has commenced construction, if the project provides for construction, unless the applicant has incurred an enforceable capital expenditure commitment for a project, if the project does not provide for construction, or unless subject to paragraph (b), a certificate of need shall terminate 18 months ~~1 year~~ after the date of issuance, except in the case of a multifacility project, as defined in s. 408.032~~(17)~~, where the certificate of need shall terminate 2 years after the date of issuance. ~~The department may extend the period of validity of the certificate for an additional period of up to 6 months, upon a showing of good cause, as defined by rule, by the applicant for the extension.~~ The agency ~~department~~ shall monitor the progress of the holder of the certificate of need in meeting the timetable for project development specified in the application with the assistance of the local health council as specified in s. 408.033(1)(b)5., and may revoke the certificate of need, if the holder of the certificate is not meeting such timetable and is not making a good-faith ~~good faith~~ effort, as defined by rule, to meet it.

(b) A certificate of need issued to an applicant holding a provisional certificate of authority under chapter 651 shall terminate 1 year after the applicant receives a valid certificate of authority from the Department of Insurance. ~~The certificate-of-need validity period may be extended by the department for an additional period of up to 6 months upon a showing of good cause, as defined by rule, by the applicant for the extension.~~

(d) If an application is filed to consolidate two or more certificates as authorized by s. 408.036(2)(f)~~(j)~~ or to divide a certificate of need into two or more facilities as authorized by s. 408.036(2)(g)~~(k)~~, the validity period of the certificate or certificates of need to be consolidated or divided shall be extended for the period beginning upon submission of the application and ending when final agency action and any appeal from such action has been concluded. However, no such suspension shall be effected if the application is withdrawn by the applicant.

Section 7. Section 408.042, Florida Statutes, is amended to read:

408.042 Limitation on transfer.—The holder of a certificate of need shall not charge a price for the transfer of the certificate of need to another person

that exceeds the total amount of the actual costs incurred by the holder in obtaining the certificate of need. Such actual costs must be documented by an affidavit executed by the transferor under oath. A holder who violates this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, or by a fine not exceeding $10,000, or both. ~~Nothing in this section shall be construed to prevent or alter the value of a transfer or sale by an existing facility of a certificate of need obtained before June 17, 1987, when such facility is transferred with the certificate of need.~~

Section 8. Section 408.043, Florida Statutes, is amended to read:

408.043 Special provisions.—

(1) OSTEOPATHIC ACUTE CARE HOSPITALS.—When an application is made for a certificate of need to construct or to expand an osteopathic acute care hospital, the need for such hospital shall be determined on the basis of the need for and availability of osteopathic services and osteopathic acute care hospitals in the district. When a prior certificate of need to establish an osteopathic acute care hospital has been issued in a district, and the facility is no longer used for that purpose, the agency ~~department~~ may continue to count such facility and beds as an existing osteopathic facility in any subsequent application for construction of an osteopathic acute care hospital.

(2) HOSPICES.—When an application is made for a certificate of need to establish or to expand a hospice, the need for such hospice shall be determined on the basis of the need for and availability of hospice services in the community. The formula on which the certificate of need is based shall discourage regional monopolies and promote competition. The inpatient hospice care component of a hospice which is a freestanding facility, or a part of a facility, which is primarily engaged in providing inpatient care and related services and is not licensed as a health care facility shall also be required to obtain a certificate of need. Provision of hospice care by any current provider of health care is a significant change in service and therefore requires a certificate of need for such services.

~~(3) VALIDITY OF CERTIFICATE OF NEED.—A certificate of need issued by the department for nursing home facilities of 100 beds or more prior to February 14, 1986, is valid, provided that such facility has expended at least $50,000 in reliance upon such certificate of need, excluding legal fees, prior to the initiation of proceedings under the Administrative Procedure Act subsequent to February 14, 1986, contesting the validity of the certificate of need. If such nursing home certificate of need includes beds that have not yet been licensed as of June 17, 1987, such beds shall not be considered or utilized in the determination of need or included in the inventory of licensed or approved nursing home beds by the department, with respect to applications filed before June 17, 1987. This subsection shall only apply to nursing home beds. Nothing contained herein shall be construed to deny action pursuant to s. 120.69, or to eliminate any conditions of the certificate of need or time requirements to commence construction, including any authorized extensions.~~

(3)~~(4)~~ RURAL HEALTH NETWORKS.—Preference shall be given in the award of a certificate of need to members of certified rural health networks, as provided for in s. 381.0406, subject to the following conditions:

(a) Need must be shown pursuant to s. 408.035.

(b) The proposed project must:

1. Strengthen health care services in rural areas through partnerships between rural care providers; or

2. Increase access to inpatient health care services for Medicaid recipients or other low-income persons who live in rural areas.

(c) No preference shall be given under this section for the establishment of skilled nursing facility services by a hospital.

(4) PRIVATE ACCREDITATION NOT REQUIRED.—Accreditation by any private organization may not be a requirement for the issuance or maintenance of a certificate of need under ss. 408.031-408.045.

Section 9. Section 408.0455, Florida Statutes, is amended to read:

408.0455 ~~Effect of ss. 408.031-408.045;~~ Rules; ~~health councils and plans;~~ pending proceedings.—

~~(1) Nothing contained in ss. 408.031-408.045 is intended to repeal or modify any of the existing rules of the Department of Health and Rehabilitative Services, which shall remain in effect and shall be enforceable by the Agency for Health Care Administration; the existing composition of the local health councils and the Statewide Health Council; or the state health plan; or any of the local district health plans, unless, and only to the extent that, there is a direct conflict with the provisions of ss. 408.031-408.045.~~

~~(2)~~ The rules of the agency ~~Department of Health and Rehabilitative Services~~ in effect on June 30, 1997 ~~1992, which implement the provisions of former ss. 381.701-381.715~~, shall remain in effect and shall be enforceable by the agency ~~for Health Care Administration~~ with respect to ss. 408.031-408.045 until such rules are repealed or amended by the agency ~~for Health Care Administration~~, and no judicial or administrative proceeding pending on July 1, 1997 ~~1992~~, shall be abated as a result of the provisions of ss. 408.031-408.043(1) and (2); s. 408.044; or s. 408.045.

Section 10. Subsection (1) of section 408.702, Florida Statutes, is amended to read:

408.702 Community health purchasing alliance; establishment.—

(1) There is hereby created a community health purchasing alliance in each of the 11 health service planning districts established under s. 408.032~~(5)~~. Each alliance must be operated as a state-chartered, nonprofit private organization organized pursuant to chapter 617.

Section 11. Subsection (6) of section 400.602, Florida Statutes, is amended to read:

400.602 Licensure required; prohibited acts; exemptions; display, transferability of license.—

(6) Notwithstanding s. 400.601(3)~~(2)~~, at any time after July 1, 1995, any entity entitled to licensure under subsection (5) may obtain a license for up to two additional hospices in accordance with the other requirements of this part and upon receipt of any certificate of need that may be required under the provisions of ss. 408.031-408.045.

Section 12. Paragraph (c) of subsection (1) of section 641.60, Florida Statutes, 1996 Supplement, is amended to read:

641.60 Statewide Managed Care Ombudsman Committee.—

(1) As used in ss. 641.60-641.75:

(c) "District" means one of the health service planning districts as defined in s. 408.032~~(5)~~.

Section 13. Sections 408.0365 and 408.0366, Florida Statutes, are repealed.

Section 14. Subject to any final order of the Florida Supreme Court, ss. 408.036(1)(b) and 408.039(5)(c), Florida Statutes, as amended by this act, do not apply to any replacement application filed with the Agency for Health Care Administration prior to or pending a final hearing before the Division of Administrative Hearings as of April 1, 1997. It is the intent of the Legislature that the remaining provisions of this act do not apply to applications that have been filed prior to the effective date of this act.

Section 15. This act shall take effect July 1, 1997.

Approved by the Governor May 30, 1997.

Filed in Office Secretary of State May 30, 1997.