

CHAPTER 98-85

Committee Substitute for Senate Bill No. 250

An act relating to certificates of need; amending s. 400.071, F.S., relating to nursing home licensure; revising certain requirements for the Agency for Health Care Administration in issuing a certificate of need to a nursing home; deleting provisions expressing legislative preference for certificate-of-need applications that indicate intent to meet certain needs of Medicaid recipients with respect to nursing home services; amending s. 408.034, F.S.; specifying duties and responsibilities of the agency with respect to administering the certificate-of-need program; deleting a reference to the statewide health plan; making conforming and technical revisions; amending s. 408.036, F.S.; exempting from certificate-of-need regulation certain nursing home beds operated by or on behalf of the Department of Veterans' Affairs; excluding the exempted beds from the nursing home bed inventory; amending s. 408.040, F.S., relating to certificate-of-need conditions and monitoring of certificates of need; authorizing the Agency for Health Care Administration to condition issuance of a certificate of need for nursing home beds on an applicant's indication that it will provide a specified number of beds for Medicaid residents; requiring that such condition be stated on the certificate of need; directing the agency to notify the Medicaid program office and the Department of Elderly Affairs of conditions imposed in an area in which a community diversion pilot project is implemented; correcting references to reflect the transfer of the responsibility for administering the certificate-of-need program from the Department of Health and Rehabilitative Services to the Agency for Health Care Administration; establishing a workgroup to study and monitor market and regulatory developments that may affect certain nursing home bed allocations; requiring reports; providing for workgroup termination; providing an effective date.

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

Section 1. Subsection (7) of section 400.071, Florida Statutes, is amended to read:

400.071 Application for license.—

(7) The agency may not issue a license to a nursing home that fails to receive a certificate of need under the provisions of ss. 408.031-408.045. ~~The agency may consider, in addition to the other criteria specified in s. 408.035, the statement of intent by the applicant to designate a percentage of the beds of the facility for use by patients eligible for care under Title XIX of the Social Security Act, the percentage to be all or a portion of the need for such beds as identified in the local health plan. It is the intent of the Legislature that preference be given to an application which most closely meets the need for such beds.~~

Section 2. Section 408.034, Florida Statutes, is amended to read:

408.034 Duties and responsibilities of agency department; rules.—

(1) The agency department is designated as the single state agency to issue, revoke, or deny certificates of need and to issue, revoke, or deny exemptions from certificate-of-need review in accordance with the district plans, ~~the statewide health plan~~, and present and future federal and state statutes. The agency department is designated as the state health planning agency for purposes of federal law.

(2) In the exercise of its authority to issue licenses to health care facilities and health service providers, as provided under chapters 393, 395, and parts II, IV, and VI ~~I and V~~ of chapter 400, the agency department ~~may~~ shall not issue a license to any health care facility, health service provider, hospice, or part of a health care facility which fails to receive a certificate of need for the licensed facility or service.

(3) The agency department shall establish, by rule, uniform need methodologies for health services and health facilities. In developing uniform need methodologies, the agency department shall, at a minimum, consider the demographic characteristics of the population, the health status of the population, service use patterns, standards and trends, geographic accessibility, and market economics.

(4) The agency department shall establish by rule a nursing-home-bed-need nursing home bed need methodology ~~that~~ which reduces the community nursing home bed need for the areas of the state where the agency department establishes pilot community diversion programs through the Title XIX aging waiver program.

(5) The agency department may adopt rules necessary to implement ss. 408.031-408.045.

Section 3. Paragraph (o) is added to subsection (3) of section 408.036, Florida Statutes, to read:

408.036 Projects subject to review.—

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

(o) For state veterans' nursing homes operated by or on behalf of the Florida Department of Veterans' Affairs in accordance with part II of chapter 296 for which at least 50 percent of the construction cost is federally funded and for which the federal government pays a per diem rate not to exceed one-half of the cost of the veterans' care in such state nursing homes. These beds shall not be included in the nursing home bed inventory.

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 408.040, Florida Statutes, is amended to read:

408.040 Conditions and monitoring.—

(1)(a) The agency department may issue a certificate of need predicated upon statements of intent expressed by an applicant in the application for a certificate of need.

1. Any certificate of need issued for construction of a new hospital or for the addition of beds to an existing hospital shall include a statement of the number of beds approved by category of service, including rehabilitation or psychiatric service, for which the agency department has adopted by rule a specialty-bed-need methodology. All beds ~~that which~~ are approved, but are not covered by any specialty-bed-need methodology, shall be designated as general.

2. The agency may consider, in addition to the other criteria specified in s. 408.035, a statement of intent by the applicant to designate a percentage of the beds of the facility for use by patients eligible for care under Title XIX of the Social Security Act. Any certificate of need issued to a nursing home in reliance upon an applicant's statements to provide a specified number of beds for use by residents eligible for care under Title XIX of the Social Security Act must include a statement that such certification is a condition of issuance of the certificate of need. The certificate-of-need program shall notify the Medicaid program office and the Department of Elderly Affairs when it imposes conditions as authorized in this subparagraph in an area in which a community diversion pilot project is implemented.

(b) A certificateholder may apply to the agency for a modification of conditions imposed under paragraph (a). If the holder of a certificate of need demonstrates good cause why the certificate should be modified, the agency department shall reissue the certificate of need with such modifications as may be appropriate. The agency department shall by rule define the factors constituting good cause for modification.

(c)(b) If the holder of a certificate of need fails to comply with a condition upon which the issuance of the certificate was predicated, the agency department may assess an administrative fine against the certificateholder in an amount not to exceed \$1,000 per failure per day. In assessing the penalty, the agency department shall take into account as mitigation the relative lack of severity of a particular failure. Proceeds of such penalties shall be deposited in the Public Medical Assistance Trust Fund.

(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 after the date of issuance, except in the case of a multifacility project, as defined in s. 408.032, where the certificate of need shall terminate 2 years after the date of issuance. The agency 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 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.

(c) The certificate-of-need validity period for a project shall be extended by the agency department, to the extent that the applicant demonstrates to the satisfaction of the agency department that good faith commencement of the project is being delayed by litigation or by governmental action or inaction with respect to regulations or permitting precluding commencement of the project.

(d) If an application is filed to consolidate two or more certificates as authorized by s. 408.036(2)(f) or to divide a certificate of need into two or more facilities as authorized by s. 408.036(2)(g), 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.

(3) The agency department shall require the submission of an executed architect's certification of final payment for each certificate-of-need project approved by the agency department. Each project ~~that~~ which involves construction shall submit such certification to the agency department within 30 days following completion of construction.

Section 5. (1)(a) There is created an interagency workgroup located, for administrative purposes, within the Agency for Health Care Administration. The workgroup will meet on a regular basis, as determined by the agency.

(b) Workgroup participants shall be responsible for only the expenses that they generate individually through workgroup participation. However, the Agency for Health Care Administration shall be responsible for expenses incidental to the production of the workgroup reports, as required under subsection (4).

(2)(a) The workgroup will study and monitor developments that can ensure that a sufficient supply of nursing home beds is available to Medicaid recipients, identify alternatives to certificate-of-need conditions as a means of securing nursing home beds for Medicaid recipients, and recommend to the Medicaid program alternative approaches for obtaining nursing home beds for Medicaid recipients.

(b) The workgroup shall analyze the effects on the Medicaid nursing home bed supply caused by case-mix reimbursement, selective contracting with nursing home providers, and market changes resulting from Medicaid managed care in securing nursing home services.

(3) The workgroup will consist of nine members, allocated as follows: three representatives of the Agency for Health Care Administration, with one representative each from the Medicaid program, the certificate-of-need program, and the Division of Health Quality Assurance; one representative of the Department of Elderly Affairs; two representatives of the Florida Health Care Association; two representatives of the Florida Association of Homes for the Aging; and one representative of Florida Legal Services.

(4) The workgroup shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives an interim report of its findings by December 31, 1998, and a final report by December 31, 1999. The workgroup shall be abolished effective January 1, 2000.

Section 6. This act shall take effect July 1, 1998.

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.