CHAPTER 2004-298

Committee Substitute for Senate Bill No. 1062

An act relating to health care facilities; creating s. 400.0712, F.S.; authorizing the Agency for Health Care Administration to issue inactive licenses to nursing homes for all or a portion of their beds under certain circumstances; providing requirements for application for and issuance of such licenses; providing rulemaking authority; amending s. 400.071, F.S.; deleting a provision relating to issuance of inactive licenses, to conform; amending s. 400.021, F.S.; redefining the term "resident care plan," as used in part II of ch. 400, F.S.; amending s. 400.23, F.S.; providing that certain information from the agency must be promptly updated to reflect the most current agency actions; amending s. 400.211, F.S.; revising inservice training requirements for persons employed as nursing assistants in a nursing home facility; amending s. 400.235, F.S.; providing for financial stability for Gold Seal for certain nursing facilities; amending s. 400.441, F.S.; requiring facilities to conduct resident elopement prevention and response drills; providing documentation thereof; amending s. 400.619, F.S.; removing the requirement that certain moneys deposited into the Department of Elderly Affairs Administrative Trust Fund be used to offset the expenses of departmental training and education for adult family-care home providers; amending s. 408.034, F.S.; requiring the nursing-home-bed-need methodology established by the agency by rule to include a goal of maintaining a specified subdistrict average occupancy rate; amending s. 408.036, F.S., relating to health-care-related projects subject to review for a certificate of need; subjecting certain projects relating to replacement of a nursing home and relocation of nursing home beds to expedited review; revising requirements for certain projects relating to the addition of nursing home beds which are exempt from review; exempting from review certain projects relating to replacement of a licensed nursing home bed on the same site or nearby and consolidation or combination of licensed nursing homes or transfer of beds between licensed nursing homes within the same planning subdistrict; providing rulemaking authority; providing for assessment of exemption-request fees; amending s. 430.701, F.S.; authorizing the agency to seek federal approval prior to seeking a certain waiver relating to the long-term care diversion provider network; amending s. 52, ch. 2001-45, Laws of Florida; specifying nonapplication of a moratorium on certificates of need and authorizing approval of certain certificates of need for certain counties; specifying nonapplication of the moratorium for the addition of nursing home beds in certain counties; providing requirements and limitations; providing for repeal upon expiration of the moratorium; amending s. 651.118, F.S.; revising provisions relating to use of sheltered nursing home beds at a continuing care facility by persons who are not residents of the continuing care facility; amending s. 400.9905, F.S.; revising and providing definitions; amending s. 400.991, F.S.; revising health care clinic licensing requirements; requiring separate licenses for each mobile clinic; providing licensing requirements for

portable equipment providers; providing for retroactive effect; amending s. 400.9935, F.S.; providing that a chief financial officer may assume responsibility for clinic billings under certain circumstances; providing that an exemption is not transferable; authorizing a fee for a certificate of exemption; allowing the agency to deny or revoke a license; amending s. 400.995, F.S.; allowing the agency to deny the renewal of a license or to revoke or suspend a license; prohibiting extension of a temporary license under certain circumstances; requiring the Agency for Health Care Administration to refund certain application fees; providing exceptions for certain late filed applications; providing an effective date.

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

Section 1. Section 400.0712, Florida Statutes, is created to read:

400.0712 Application for inactive license.—

(1) As specified in this section, the agency may issue an inactive license to a nursing home facility for all or a portion of its beds. Any request by a licensee that a nursing home or portion of a nursing home become inactive must be submitted to the agency in the approved format. The facility may not initiate any suspension of services, notify residents, or initiate facility closure before receiving approval from the agency; and a facility that violates this provision shall not be issued an inactive license. Upon agency approval of an inactive license, the nursing home shall notify residents of any necessary discharge or transfer as provided in s. 400.0255.

(2) The agency may issue an inactive license to a nursing home that chooses to use an unoccupied contiguous portion of the facility for an alternative use to meet the needs of elderly persons through the use of less restrictive, less institutional services.

(a) An inactive license issued under this subsection may be granted for a period not to exceed 12 months but may be renewed annually by the agency for 12 months.

(b) A request to extend the inactive license must be submitted to the agency in the approved format and approved by the agency in writing.

(c) Nursing homes that receive an inactive license to provide alternative services shall not receive preference for participation in the Assisted Living for the Elderly Medicaid waiver.

(3) The agency may issue an inactive license to a nursing home that will be temporarily unable to provide services but is reasonably expected to resume services.

(a) An inactive license issued under this subsection may be issued for a period not to exceed 12 months and may be renewed by the agency for an additional 6 months upon demonstration of progress toward reopening.

(b) All licensure fees must be current and paid in full, and may be prorated as provided by agency rule, before the inactive license is issued.

(c) Reactivation of an inactive license requires that the applicant pay all licensure fees and be inspected by the agency to confirm that all of the requirements of this part and applicable rules are met.

(4) The agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to implement this section.

Section 2. Subsections (10), (11), and (12) of section 400.071, Florida Statutes, are amended to read:

400.071 Application for license.—

~~(10) The agency may issue an inactive license to a nursing home that will be temporarily unable to provide services but that is reasonably expected to resume services. Such designation may be made for a period not to exceed 12 months but may be renewed by the agency for up to 6 additional months. Any request by a licensee that a nursing home become inactive must be submitted to the agency and approved by the agency prior to initiating any suspension of service or notifying residents. Upon agency approval, the nursing home shall notify residents of any necessary discharge or transfer as provided in s. 400.0255.~~

(10)~~(11)~~ As a condition of licensure, each facility must establish and submit with its application a plan for quality assurance and for conducting risk management.

(11)~~(12)~~ The applicant must provide the agency with proof of a legal right to occupy the property before a license may be issued. Proof may include, but is not limited to, copies of warranty deeds, lease or rental agreements, contracts for deeds, or quitclaim deeds.

Section 3. Subsection (17) of section 400.021, Florida Statutes, is amended to read:

400.021 Definitions.—When used in this part, unless the context otherwise requires, the term:

(17) "Resident care plan" means a written plan developed, maintained, and reviewed not less than quarterly by a registered nurse, with participation from other facility staff and the resident or his or her designee or legal representative, which includes a comprehensive assessment of the needs of an individual resident; the type and frequency of services required to provide the necessary care for the resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being; a listing of services provided within or outside the facility to meet those needs; and an explanation of service goals. The resident care plan must be signed by the director of nursing or another registered nurse employed by the facility to whom institutional responsibilities have been delegated and by the resident, the resident's designee, or the resident's legal representative. The facility may not use an agency or temporary registered nurse to satisfy the foregoing

requirement and must document the institutional responsibilities that have been delegated to the registered nurse.

Section 4. Subsection (10) is added to section 400.23, Florida Statutes, to read:

400.23 Rules; evaluation and deficiencies; licensure status.—

(10) Agency records, reports, ranking systems, Internet information, and publications must be promptly updated to reflect the most current agency actions.

Section 5. Subsection (4) of section 400.211, Florida Statutes, is amended to read:

400.211 Persons employed as nursing assistants; certification requirement.—

(4) When employed by a nursing home facility for a 12-month period or longer, a nursing assistant, to maintain certification, shall submit to a performance review every 12 months and must receive regular inservice education based on the outcome of such reviews. The inservice training must:

(a) Be sufficient to ensure the continuing competence of nursing assistants and must meet the standard specified in s. 464.203(7), ~~must be at least 18 hours per year, and may include hours accrued under s. 464.203(8)~~;

(b) Include, at a minimum:

1. Techniques for assisting with eating and proper feeding;

2. Principles of adequate nutrition and hydration;

3. Techniques for assisting and responding to the cognitively impaired resident or the resident with difficult behaviors;

4. Techniques for caring for the resident at the end-of-life; and

5. Recognizing changes that place a resident at risk for pressure ulcers and falls; and

(c) Address areas of weakness as determined in nursing assistant performance reviews and may address the special needs of residents as determined by the nursing home facility staff.

Costs associated with this training may not be reimbursed from additional Medicaid funding through interim rate adjustments.

Section 6. Subsection (5) of section 400.235, Florida Statutes, is amended to read:

400.235 Nursing home quality and licensure status; Gold Seal Program.—

(5) Facilities must meet the following additional criteria for recognition as a Gold Seal Program facility:

(a) Had no class I or class II deficiencies within the 30 months preceding application for the program.

(b) Evidence financial soundness and stability according to standards adopted by the agency in administrative rule. Such standards must include, but not be limited to, criteria for the use of financial statements that are prepared in accordance with generally accepted accounting principles and that are reviewed or audited by certified public accountants. A nursing home that is part of the same corporate entity as a continuing care facility licensed under chapter 651 which meets the minimum liquid reserve requirements specified in s. 651.035 and is accredited by a recognized accrediting organization under s. 651.028 and rules of the Office of Insurance Regulation satisfies this requirement as long as the accreditation is not provisional. Facilities operated by a federal or state agency are deemed to be financially stable for purposes of applying for the Gold Seal.

(c) Participate in a consumer satisfaction process, and demonstrate that information is elicited from residents, family members, and guardians about satisfaction with the nursing facility, its environment, the services and care provided, the staff's skills and interactions with residents, attention to resident's needs, and the facility's efforts to act on information gathered from the consumer satisfaction measures.

(d) Evidence the involvement of families and members of the community in the facility on a regular basis.

(e) Have a stable workforce, as described in s. 400.141, as evidenced by a relatively low rate of turnover among certified nursing assistants and licensed nurses within the 30 months preceding application for the Gold Seal Program, and demonstrate a continuing effort to maintain a stable workforce and to reduce turnover of licensed nurses and certified nursing assistants.

(f) Evidence an outstanding record regarding the number and types of substantiated complaints reported to the State Long-Term Care Ombudsman Council within the 30 months preceding application for the program.

(g) Provide targeted inservice training provided to meet training needs identified by internal or external quality assurance efforts.

A facility assigned a conditional licensure status may not qualify for consideration for the Gold Seal Program until after it has operated for 30 months with no class I or class II deficiencies and has completed a regularly scheduled relicensure survey.

Section 7. Paragraph (a) of subsection (1) of section 400.441, Florida Statutes, is amended to read:

400.441 Rules establishing standards.—

(1) It is the intent of the Legislature that rules published and enforced pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results of such resident care may be demonstrated. Such rules shall also ensure a safe and sanitary environment that is residential and noninstitutional in design or nature. It is further intended that reasonable efforts be made to accommodate the needs and preferences of residents to enhance the quality of life in a facility. In order to provide safe and sanitary facilities and the highest quality of resident care accommodating the needs and preferences of residents, the department, in consultation with the agency, the Department of Children and Family Services, and the Department of Health, shall adopt rules, policies, and procedures to administer this part, which must include reasonable and fair minimum standards in relation to:

(a) The requirements for and maintenance of facilities, not in conflict with the provisions of chapter 553, relating to plumbing, heating, cooling, lighting, ventilation, living space, and other housing conditions, which will ensure the health, safety, and comfort of residents and protection from fire hazard, including adequate provisions for fire alarm and other fire protection suitable to the size of the structure. Uniform firesafety standards shall be established and enforced by the State Fire Marshal in cooperation with the agency, the department, and the Department of Health.

1. Evacuation capability determination.—

a. The provisions of the National Fire Protection Association, NFPA 101A, Chapter 5, 1995 edition, shall be used for determining the ability of the residents, with or without staff assistance, to relocate from or within a licensed facility to a point of safety as provided in the fire codes adopted herein. An evacuation capability evaluation for initial licensure shall be conducted within 6 months after the date of licensure. For existing licensed facilities that are not equipped with an automatic fire sprinkler system, the administrator shall evaluate the evacuation capability of residents at least annually. The evacuation capability evaluation for each facility not equipped with an automatic fire sprinkler system shall be validated, without liability, by the State Fire Marshal, by the local fire marshal, or by the local authority having jurisdiction over firesafety, before the license renewal date. If the State Fire Marshal, local fire marshal, or local authority having jurisdiction over firesafety has reason to believe that the evacuation capability of a facility as reported by the administrator may have changed, it may, with assistance from the facility administrator, reevaluate the evacuation capability through timed exiting drills. Translation of timed fire exiting drills to evacuation capability may be determined:

(I) Three minutes or less: prompt.

(II) More than 3 minutes, but not more than 13 minutes: slow.

(III) More than 13 minutes: impractical.

b. The Office of the State Fire Marshal shall provide or cause the provision of training and education on the proper application of Chapter 5, NFPA 101A, 1995 edition, to its employees, to staff of the Agency for Health Care

Administration who are responsible for regulating facilities under this part, and to local governmental inspectors. The Office of the State Fire Marshal shall provide or cause the provision of this training within its existing budget, but may charge a fee for this training to offset its costs. The initial training must be delivered within 6 months after July 1, 1995, and as needed thereafter.

c. The Office of the State Fire Marshal, in cooperation with provider associations, shall provide or cause the provision of a training program designed to inform facility operators on how to properly review bid documents relating to the installation of automatic fire sprinklers. The Office of the State Fire Marshal shall provide or cause the provision of this training within its existing budget, but may charge a fee for this training to offset its costs. The initial training must be delivered within 6 months after July 1, 1995, and as needed thereafter.

d. The administrator of a licensed facility shall sign an affidavit verifying the number of residents occupying the facility at the time of the evacuation capability evaluation.

2. Firesafety requirements.—

a. Except for the special applications provided herein, effective January 1, 1996, the provisions of the National Fire Protection Association, Life Safety Code, NFPA 101, 1994 edition, Chapter 22 for new facilities and Chapter 23 for existing facilities shall be the uniform fire code applied by the State Fire Marshal for assisted living facilities, pursuant to s. 633.022.

b. Any new facility, regardless of size, that applies for a license on or after January 1, 1996, must be equipped with an automatic fire sprinkler system. The exceptions as provided in section 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein, apply to any new facility housing eight or fewer residents. On July 1, 1995, local governmental entities responsible for the issuance of permits for construction shall inform, without liability, any facility whose permit for construction is obtained prior to January 1, 1996, of this automatic fire sprinkler requirement. As used in this part, the term "a new facility" does not mean an existing facility that has undergone change of ownership.

c. Notwithstanding any provision of s. 633.022 or of the National Fire Protection Association, NFPA 101A, Chapter 5, 1995 edition, to the contrary, any existing facility housing eight or fewer residents is not required to install an automatic fire sprinkler system, nor to comply with any other requirement in Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety requirements of NFPA 101, 1988 edition, that applies to this size facility, unless the facility has been classified as impractical to evacuate. Any existing facility housing eight or fewer residents that is classified as impractical to evacuate must install an automatic fire sprinkler system within the timeframes granted in this section.

d. Any existing facility that is required to install an automatic fire sprinkler system under this paragraph need not meet other firesafety requirements of Chapter 23, NFPA 101, 1994 edition, which exceed the provisions

of NFPA 101, 1988 edition. The mandate contained in this paragraph which requires certain facilities to install an automatic fire sprinkler system supersedes any other requirement.

e. This paragraph does not supersede the exceptions granted in NFPA 101, 1988 edition or 1994 edition.

f. This paragraph does not exempt facilities from other firesafety provisions adopted under s. 633.022 and local building code requirements in effect before July 1, 1995.

g. A local government may charge fees only in an amount not to exceed the actual expenses incurred by local government relating to the installation and maintenance of an automatic fire sprinkler system in an existing and properly licensed assisted living facility structure as of January 1, 1996.

h. If a licensed facility undergoes major reconstruction or addition to an existing building on or after January 1, 1996, the entire building must be equipped with an automatic fire sprinkler system. Major reconstruction of a building means repair or restoration that costs in excess of 50 percent of the value of the building as reported on the tax rolls, excluding land, before reconstruction. Multiple reconstruction projects within a 5-year period the total costs of which exceed 50 percent of the initial value of the building at the time the first reconstruction project was permitted are to be considered as major reconstruction. Application for a permit for an automatic fire sprinkler system is required upon application for a permit for a reconstruction project that creates costs that go over the 50-percent threshold.

i. Any facility licensed before January 1, 1996, that is required to install an automatic fire sprinkler system shall ensure that the installation is completed within the following timeframes based upon evacuation capability of the facility as determined under subparagraph 1.:

(I) Impractical evacuation capability, 24 months.

(II) Slow evacuation capability, 48 months.

(III) Prompt evacuation capability, 60 months.

The beginning date from which the deadline for the automatic fire sprinkler installation requirement must be calculated is upon receipt of written notice from the local fire official that an automatic fire sprinkler system must be installed. The local fire official shall send a copy of the document indicating the requirement of a fire sprinkler system to the Agency for Health Care Administration.

j. It is recognized that the installation of an automatic fire sprinkler system may create financial hardship for some facilities. The appropriate local fire official shall, without liability, grant two 1-year extensions to the timeframes for installation established herein, if an automatic fire sprinkler installation cost estimate and proof of denial from two financial institutions for a construction loan to install the automatic fire sprinkler system are submitted. However, for any facility with a class I or class II, or a history

of uncorrected class III, firesafety deficiencies, an extension must not be granted. The local fire official shall send a copy of the document granting the time extension to the Agency for Health Care Administration.

k. A facility owner whose facility is required to be equipped with an automatic fire sprinkler system under Chapter 23, NFPA 101, 1994 edition, as adopted herein, must disclose to any potential buyer of the facility that an installation of an automatic fire sprinkler requirement exists. The sale of the facility does not alter the timeframe for the installation of the automatic fire sprinkler system.

l. Existing facilities required to install an automatic fire sprinkler system as a result of construction-type restrictions in Chapter 23, NFPA 101, 1994 edition, as adopted herein, or evacuation capability requirements shall be notified by the local fire official in writing of the automatic fire sprinkler requirement, as well as the appropriate date for final compliance as provided in this subparagraph. The local fire official shall send a copy of the document to the Agency for Health Care Administration.

m. Except in cases of life-threatening fire hazards, if an existing facility experiences a change in the evacuation capability, or if the local authority having jurisdiction identifies a construction-type restriction, such that an automatic fire sprinkler system is required, it shall be afforded time for installation as provided in this subparagraph.

Facilities that are fully sprinkled and in compliance with other firesafety standards are not required to conduct more than one of the required fire drills between the hours of 11 p.m. and 7 a.m., per year. In lieu of the remaining drills, staff responsible for residents during such hours may be required to participate in a mock drill that includes a review of evacuation procedures. Such standards must be included or referenced in the rules adopted by the State Fire Marshal. Pursuant to s. 633.022(1)(b), the State Fire Marshal is the final administrative authority for firesafety standards established and enforced pursuant to this section. All licensed facilities must have an annual fire inspection conducted by the local fire marshal or authority having jurisdiction.

3. Resident elopement requirements.—Facilities are required to conduct a minimum of two resident elopement prevention and response drills per year. All administrators and direct care staff must participate in the drills which shall include a review of procedures to address resident elopement. Facilities must document the implementation of the drills and ensure that the drills are conducted in a manner consistent with the facility's resident elopement policies and procedures.

Section 8. Subsection (13) of section 400.619, Florida Statutes, is amended to read:

400.619 Licensure application and renewal.—

(13) All moneys collected under this section must be deposited into the Department of Elderly Affairs Administrative Trust Fund ~~and used to offset~~

~~the expenses of departmental training and education for adult family-care home providers~~.

Section 9. Subsection (5) of section 408.034, Florida Statutes, is amended to read:

408.034 Duties and responsibilities of agency; rules.—

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

Section 10. Paragraphs (g) and (h) are added to subsection (2) of section 408.036, Florida Statutes, paragraph (p) of subsection (3) is amended, paragraphs (u) and (v) are added to subsection (3) of said section, and subsection (4) is reenacted to read:

408.036 Projects subject to review; exemptions.—

(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:

(g) Replacement of a nursing home within the same district, provided the proposed project site is located within a geographic area that contains at least 65 percent of the facility's current residents and is within a 30-mile radius of the replaced nursing home.

(h) Relocation of a portion of a nursing home's licensed beds to a facility within the same district, provided the relocation is within a 30-mile radius of the existing facility and the total number of nursing home beds in the district does not increase.

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

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

(p) For the addition of nursing home beds licensed under chapter 400 in a number not exceeding 10 total beds or 10 percent of the number of beds licensed in the facility being expanded, whichever is greater, or for the addition of nursing home beds licensed under chapter 400 at a facility that has been designated as a Gold Seal nursing home under s. 400.235 in a number not exceeding 20 total beds or 10 percent of the number of beds licensed in the facility being expanded, whichever is greater.

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

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

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

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

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

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

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

(u) For replacement of a licensed nursing home on the same site, or within 3 miles of the same site, provided the number of licensed beds does not increase.

(v) For consolidation or combination of licensed nursing homes or transfer of beds between licensed nursing homes within the same planning subdistrict, by providers that operate multiple nursing homes within that planning subdistrict, provided there is no increase in the planning subdistrict total of nursing home beds and the relocation does not exceed 30 miles from the original location.

(4) A request for exemption under subsection (3) may be made at any time and is not subject to the batching requirements of this section. The request shall be supported by such documentation as the agency requires by rule. The agency shall assess a fee of $250 for each request for exemption submitted under subsection (3).

Section 11. Section 430.701, Florida Statutes, is amended to read:

430.701 Legislative findings and intent.—

(1) The Legislature finds that state expenditures for long-term care services continue to increase at a rapid rate and that Florida faces increasing pressure in its efforts to meet the long-term care needs of the public. It is the intent of the Legislature that the Department of Elderly Affairs, in consultation with the Agency for Health Care Administration, implement long-term care community diversion pilot projects to test the effectiveness of managed care and outcome-based reimbursement principles when applied to long-term care.

(2) The agency may seek federal approval in advance of its formal waiver application to limit the diversion provider network by freezing enrollment of providers at current levels when an area already has three or more

providers or, in an expansion area, when enrollment reaches a level of three providers. This subsection does not prevent the department from approving a provider to expand service to additional counties within a planning and service area for which the provider is already approved to serve.

Section 12. Section 52 of chapter 2001-45, Laws of Florida, as amended by section 1693 of chapter 2003-261, Laws of Florida, is amended to read:

Section 52. (1) Notwithstanding the establishment of need as provided for in chapter 408, Florida Statutes, no certificate of need for additional community nursing home beds shall be approved by the agency until July 1, 2006.

(2) The Legislature finds that the continued growth in the Medicaid budget for nursing home care has constrained the ability of the state to meet the needs of its elderly residents through the use of less restrictive and less institutional methods of long-term care. It is therefore the intent of the Legislature to limit the increase in Medicaid nursing home expenditures in order to provide funds to invest in long-term care that is community-based and provides supportive services in a manner that is both more cost-effective and more in keeping with the wishes of the elderly residents of this state.

(3) This moratorium on certificates of need shall not apply to sheltered nursing home beds in a continuing care retirement community certified by the former Department of Insurance or by the Office of Insurance Regulation pursuant to chapter 651, Florida Statutes.

(4)(a) The moratorium on certificates of need does not apply and a certificate of need for additional community nursing home beds may be approved for a county that meets the following circumstances:

1. The county has no community nursing home beds; and

2. The lack of community nursing home beds occurs because all nursing home beds in the county that were licensed on July 1, 2001, have subsequently closed.

(b) The certificate-of-need review for such circumstances shall be subject to the comparative review process consistent with the provisions of section 408.039, Florida Statutes, and the number of beds may not exceed the number of beds lost by the county after July 1, 2001.

This subsection shall be repealed upon the expiration of the moratorium established in subsection (1).

(5) The moratorium on certificates of need does not apply for the addition of nursing home beds licensed under chapter 400, Florida Statutes, to a nursing home located in a county having up to 50,000 residents, in a number not exceeding 10 total beds or 10 percent of the number of beds licensed in the facility being expanded, whichever is greater. In addition to any other documentation required by the agency, a request submitted under this subsection must:

(a) Certify that the facility has not had any class I or class II deficiencies within the 30 months preceding the request for addition.

(b) Certify that the prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent.

(c) For a facility that has been licensed for less than 24 months, certify that the prior 6-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and that the facility has not had any class I or class II deficiencies since its initial licensure.

This subsection shall be repealed upon the expiration of the moratorium established in subsection (1).

Section 13. Subsection (7) of section 651.118, Florida Statutes, is amended to read:

651.118 Agency for Health Care Administration; certificates of need; sheltered beds; community beds.—

(7) Notwithstanding the provisions of subsection (2), at the discretion of the continuing care provider, sheltered nursing home beds may be used for persons who are not residents of the continuing care facility and who are not parties to a continuing care contract for a period of up to 5 years after the date of issuance of the initial nursing home license. A provider whose 5-year period has expired or is expiring may request the Agency for Health Care Administration for an extension, not to exceed 30 percent of the total sheltered nursing home beds, if the utilization by residents of the nursing home facility in the sheltered beds will not generate sufficient income to cover nursing home facility expenses, as evidenced by one of the following:

(a) The nursing home facility has a net loss for the most recent fiscal year as determined under generally accepted accounting principles, excluding the effects of extraordinary or unusual items, as demonstrated in the most recently audited financial statement; or

(b) The nursing home facility would have had a pro forma loss for the most recent fiscal year, excluding the effects of extraordinary or unusual items, if revenues were reduced by the amount of revenues from persons in sheltered beds who were not residents, as reported on by a certified public accountant.

The agency shall be authorized to grant an extension to the provider based on the evidence required in this subsection. The agency may request a continuing care facility to use up to 25 percent of the patient days generated by new admissions of nonresidents during the extension period to serve Medicaid recipients for those beds authorized for extended use if there is a demonstrated need in the respective service area and if funds are available. A provider who obtains an extension is prohibited from applying for additional sheltered beds under the provision of subsection (2), unless additional residential units are built or the provider can demonstrate need by continuing care facility residents to the Agency for Health Care Administration. The

5-year limit does not apply to up to five sheltered beds designated for inpatient hospice care as part of a contractual arrangement with a hospice licensed under part VI of chapter 400. A continuing care facility that uses such beds after the 5-year period shall report such use to the Agency for Health Care Administration. For purposes of this subsection, "resident" means a person who, upon admission to the continuing care facility, initially resides in a part of the continuing care facility not licensed under part II of chapter 400.

Section 14. Subsections (3) and (4) of section 400.9905, Florida Statutes, are renumbered as subsections (4) and (5), respectively, and amended, and new subsections (3), (6), and (7) are added to said section, to read:

400.9905 Definitions.—

(3) "Chief financial officer" means an individual who has a bachelor's degree from an accredited university in accounting or finance, or a related field, and who is the person responsible for the preparation of a clinic's billing.

(4)~~(3)~~ "Clinic" means an entity at which health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider. For purposes of this part, the term does not include and the licensure requirements of this part do not apply to:

(a) Entities licensed or registered by the state under chapter 395; or entities licensed or registered by the state and providing only health care services within the scope of services authorized under their respective licenses granted under s. 383.30-383.335, chapter 390, chapter 394, ~~chapter 395,~~ chapter 397, this chapter except part XIII, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483 ~~chapter 480~~, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; or providers certified under 42 C.F.R. part 485, subpart B or subpart H, or any entity that provides neonatal or pediatric hospital-based healthcare services by licensed practitioners solely within a hospital licensed under chapter 395.

(b) Entities that own, directly or indirectly, entities licensed or registered by the state pursuant to chapter 395; or entities that own, directly or indirectly, entities licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses granted under s. 383.30-383.335, chapter 390, chapter 394, chapter 395, chapter 397, this chapter except part XIII, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483 ~~chapter 480~~, chapter 484, ~~or~~ chapter 651, end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U, or providers certified under 42 C.F.R. part 485, subpart B or subpart H, or any entity that provides neonatal or pediatric hospital-based healthcare services by licensed practitioners solely within a hospital licensed under chapter 395.

(c) Entities that are owned, directly or indirectly, by an entity licensed or registered by the state pursuant to chapter 395; or entities that are

owned, directly or indirectly, by an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses granted under s. 383.30-383.335, chapter 390, chapter 394, ~~chapter 395,~~ chapter 397, this chapter except part XIII, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483 ~~chapter 480~~, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; or providers certified under 42 C.F.R. part 485, subpart B or subpart H, or any entity that provides neonatal or pediatric hospital-based healthcare services by licensed practitioners solely within a hospital under chapter 395.

(d) Entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state pursuant to chapter 395; or entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses granted under s. 383.30-383.335, chapter 390, chapter 394, ~~chapter 395,~~ chapter 397, this chapter except part XIII, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483 ~~480~~, chapter 484, ~~or~~ chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; or providers certified under 42 C.F.R. part 485, subpart B or subpart H or any entity that provides neonatal or pediatric hospital-based healthcare services by licensed practitioners solely within a hospital licensed under chapter 395.

(e) An entity that is exempt from federal taxation under 26 U.S.C. s. 501(c)(3) or s. 501(c)(4) and any community college or university clinic, and any entity owned or operated by federal or state government, including agencies, subdivisions, or municipalities thereof.

(f) A sole proprietorship, group practice, partnership, or corporation that provides health care services by physicians covered by s. 627.419, that is directly supervised by one or more of such physicians, and that is wholly owned by one or more of those physicians or by a physician and the spouse, child, or sibling of that physician.

(g)~~(f)~~ A sole proprietorship, group practice, partnership, or corporation that provides health care services by licensed health care practitioners under chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, chapter 480, chapter 484, chapter 486, chapter 490, chapter 491, or part I, part III, part X, part XIII, or part XIV of chapter 468, or s. 464.012, which are wholly owned by one or more ~~a~~ licensed health care practitioners ~~practitioner~~, or the licensed health care practitioners set forth in this paragraph ~~practitioner~~ and the spouse, parent, ~~or~~ child, or sibling of a licensed health care practitioner, so long as one of the owners who is a licensed health care practitioner is supervising the business activities ~~services performed therein~~ and is legally responsible for the entity's compliance with all federal and state laws. However, a health care practitioner may not supervise services beyond the scope of the practitioner's license, except that, for the purposes of this part, a clinic owned by a licensee in s. 456.053(3)(b) that provides only services authorized pursuant to s. 456.053(3)(b) may be supervised by a licensee specified in s. 456.053(3)(b).

(h)~~(g)~~ Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

(i) Entities that provide only oncology or radiation therapy services by physicians licensed under chapter 458 or chapter 459.

(5)~~(4)~~ "Medical director" means a physician who is employed or under contract with a clinic and who maintains a full and unencumbered physician license in accordance with chapter 458, chapter 459, chapter 460, or chapter 461. However, if the clinic does not provide services pursuant to the respective physician practices acts listed in this subsection, it ~~is limited to providing health care services pursuant to chapter 457, chapter 484, chapter 486, chapter 490, or chapter 491 or part I, part III, part X, part XIII, or part XIV of chapter 468, the clinic~~ may appoint a Florida-licensed health care practitioner who does not provide services pursuant to the respective physician practices acts listed in this subsection ~~licensed under that chapter~~ to serve as a clinic director who is responsible for the clinic's activities. A health care practitioner may not serve as the clinic director if the services provided at the clinic are beyond the scope of that practitioner's license, except that a licensee specified in s. 456.053(3)(b) who provides only services authorized pursuant to s. 456.053(3)(b) may serve as clinic director of an entity providing services as specified in s. 456.053(3)(b).

(6) "Mobile clinic" means a movable or detached self-contained health care unit within or from which direct health care services are provided to individuals and which otherwise meets the definition of a clinic in subsection (4).

(7) "Portable equipment provider" means an entity that contracts with or employs persons to provide portable equipment to multiple locations performing treatment or diagnostic testing of individuals, that bills third-party payors for those services, and that otherwise meets the definition of a clinic in subsection (4).

Section 15. The creation of section 400.9905(4)(i), Florida Statutes, by this act is intended to clarify the legislative intent of this provision as it existed at the time the provisions initially took effect as sections 456.0375(1)(b) and 400.9905(4)(i), Florida Statutes, as created by this act, shall operate retroactively to October 1, 2001. Nothing in this section shall be construed as amending, modifying, limiting, or otherwise affecting in any way the legislative intent, scope, terms, prohibition, or requirements of section 456.053, Florida Statutes.

Section 16. Effective upon this act becoming a law and applicable retroactively to March 1, 2004, subsections (1), (2), and (3) and paragraphs (a) and (b) of subsection (7) of section 400.991, Florida Statutes, are amended to read:

400.991 License requirements; background screenings; prohibitions.—

(1)(a) Each clinic, as defined in s. 400.9905, must be licensed and shall at all times maintain a valid license with the agency. Each clinic location

shall be licensed separately regardless of whether the clinic is operated under the same business name or management as another clinic.

(b) Each mobile clinic must obtain a separate health care clinic license and ~~clinics~~ must provide to the agency, at least quarterly, its ~~their~~ projected street location ~~locations~~ to enable the agency to locate and inspect such clinic ~~clinics~~. A portable equipment provider must obtain a health care clinic license for a single administrative office and is not required to submit quarterly projected street locations.

(2) The initial clinic license application shall be filed with the agency by all clinics, as defined in s. 400.9905, on or before July ~~March~~ 1, 2004. A clinic license must be renewed biennially.

(3) Applicants that submit an application on or before July ~~March~~ 1, 2004, which meets all requirements for initial licensure as specified in this section shall receive a temporary license until the completion of an initial inspection verifying that the applicant meets all requirements in rules authorized in s. 400.9925. However, a clinic engaged in magnetic resonance imaging services may not receive a temporary license unless it presents evidence satisfactory to the agency that such clinic is making a good faith effort and substantial progress in seeking accreditation required under s. 400.9935.

(7) Each applicant for licensure shall comply with the following requirements:

(a) As used in this subsection, the term "applicant" means individuals owning or controlling, directly or indirectly, 5 percent or more of an interest in a clinic; the medical or clinic director, or a similarly titled person who is responsible for the day-to-day operation of the licensed clinic; the financial officer or similarly titled individual who is responsible for the financial operation of the clinic; and licensed health care practitioners ~~medical providers~~ at the clinic.

(b) Upon receipt of a completed, signed, and dated application, the agency shall require background screening of the applicant, in accordance with the level 2 standards for screening set forth in chapter 435. Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of this paragraph. Applicants who own less than 10 percent of a health care clinic are not required to submit fingerprints under this section.

Section 17. Paragraph (g) of subsection (1), subsection (9), and paragraph (b) of subsection (11) of section 400.9935, Florida Statutes, are amended to read:

400.9935 Clinic responsibilities.—

(1) Each clinic shall appoint a medical director or clinic director who shall agree in writing to accept legal responsibility for the following activities on behalf of the clinic. The medical director or the clinic director shall:

(g) Conduct systematic reviews of clinic billings to ensure that the billings are not fraudulent or unlawful. Upon discovery of an unlawful charge, the medical director or clinic director shall take immediate corrective action. If the clinic performs only the technical component of magnetic resonance imaging, static radiographs, computed tomography, or positron emission tomography and provides the professional interpretation of such services, in a fixed facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations or the Accreditation Association for Ambulatory Health Care and the American College of Radiology, and if, in the preceding quarter, the percentage of scans performed by that clinic that were billed to a personal injury protection insurance carrier was less than 15 percent, the chief financial officer of the clinic may, in a written acknowledgment provided to the agency, assume the responsibility for the conduct of the systematic reviews of clinic billings to ensure that the billings are not fraudulent or unlawful.

(9) Any person or entity providing health care services which is not a clinic, as defined under s. 400.9905, may voluntarily apply for a certificate of exemption from licensure under its exempt status with the agency on a form that sets forth its name or names and addresses, a statement of the reasons why it cannot be defined as a clinic, and other information deemed necessary by the agency. An exemption is not transferable. The agency may charge an applicant for a certificate of exemption in an amount equal to $100 or the actual cost of processing the certificate, whichever is less.

(11)

(b) The agency may deny ~~disallow~~ the application or revoke the license of any entity formed for the purpose of avoiding compliance with the accreditation provisions of this subsection and whose principals were previously principals of an entity that was unable to meet the accreditation requirements within the specified timeframes. The agency may adopt rules as to the accreditation of magnetic resonance imaging clinics.

Section 18. Subsections (1) and (3) of section 400.995, Florida Statutes, are amended, and a new subsection (10) is added to said section, to read:

400.995 Agency administrative penalties.—

(1) The agency may deny the application for a license renewal, revoke or suspend the license, and impose administrative fines ~~penalties against clinics~~ of up to $5,000 per violation for violations of the requirements of this part or rules of the agency. In determining if a penalty is to be imposed and in fixing the amount of the fine, the agency shall consider the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a patient will result or has resulted, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated.

(b) Actions taken by the owner, medical director, or clinic director to correct violations.

(c) Any previous violations.

(d) The financial benefit to the clinic of committing or continuing the violation.

(3) Any action taken to correct a violation shall be documented in writing by the owner, medical director, or clinic director of the clinic and verified through followup visits by agency personnel. The agency may impose a fine and, in the case of an owner-operated clinic, revoke or deny a clinic's license when a clinic medical director or clinic director knowingly ~~fraudulently~~ misrepresents actions taken to correct a violation.

(10) If the agency issues a notice of intent to deny a license application after a temporary license has been issued pursuant to s. 400.991(3), the temporary license shall expire on the date of the notice and may not be extended during any proceeding for administrative or judicial review pursuant to chapter 120.

Section 19. The Agency for Health Care Administration is directed to make refunds to applicants that submitted their health care clinic licensure fees and applications but were subsequently exempted from licensure by this act as follows:

(1) Seventy-five percent of the application fee if the temporary license has not been issued;

(2) Fifty percent of the application fee if the temporary license has been issued but the inspection has not been completed; or

(3) No refund if the inspection has been completed.

Section 20. Any person or entity defined as a clinic under section 400.9905, Florida Statutes, shall not be in violation of part XIII of chapter 400, Florida Statutes, due to failure to apply for a clinic license by March 1, 2004, as previously required by section 400.991, Florida Statutes. Payment to any such person or entity by an insurer or other person liable for payment to such person or entity may not be denied on the grounds that the person or entity failed to apply for or obtain a clinic license before March 1, 2004.

Section 21. This act shall take effect upon becoming a law.

Approved by the Governor June 15, 2004.

Filed in Office Secretary of State June 15, 2004.