

CHAPTER 2014-110

Committee Substitute for Committee Substitute for House Bill No. 287

An act relating to certificates of need; amending s. 408.034, F.S.; decreasing the subdistrict average occupancy rate that the Agency for Health Care Administration is required to maintain as a goal of its nursing-home-bed-need methodology; conforming a provision to changes made by the act; authorizing an applicant to aggregate the need of geographically contiguous subdistricts within a district for a proposed community nursing home under certain circumstances; requiring the proposed nursing home site to be located in the subdistrict with the greater need under certain circumstances; recognizing an additional positive application factor for an applicant who voluntarily relinquishes certain nursing home beds; requiring the applicant to demonstrate that it meets certain requirements; amending s. 408.036, F.S.; providing that, under certain circumstances, replacement of a nursing home and relocation of a portion of a nursing home's licensed beds to another facility, or to establish a new facility, is a health-care-related project subject to expedited review; conforming a cross-reference; revising the requirements for projects that are exempted from applying for a certificate of need; creating s. 408.0436, F.S.; prohibiting the agency from approving a certificate-of-need application for new community nursing home beds under certain circumstances; defining the term "batching cycle"; providing for future repeal; repealing s. 408.0435, F.S., relating to the moratorium on the approval of certificates of need for additional community nursing home beds; providing an effective date.

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

Section 1. Subsection (5) of section 408.034, Florida Statutes, is amended, subsection (6) is renumbered as subsection (8), and new subsections (6) and (7) are added to that section, 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 92 ~~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.

(6) If nursing home bed need is determined to exist in geographically contiguous subdistricts within a district, an applicant may aggregate the subdistricts' need for a new community nursing home in one of the subdistricts. If need is aggregated from two subdistricts, the proposed nursing home site must be located in the subdistrict with the greater need as published by the agency in the Florida Administrative Register. However, if need is aggregated from more than two subdistricts, the location of the

proposed nursing home site must provide reasonable geographic access for residents in the respective subdistricts given the relative bed need in each subdistrict.

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

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

408.036 Projects subject to review; exemptions.—

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

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

(b) Replacement of a nursing home ~~within the same district~~, if 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.~~ If the proposed project site is outside the subdistrict where the replaced nursing home is located, the prior 6-month occupancy rate for licensed community nursing homes in the proposed subdistrict must be at least 85 percent in accordance with the agency's most recently published inventory.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The agency shall develop rules to implement the ~~provisions for~~ expedited review process, including time schedule, application content that ~~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):

~~(f) For the addition of nursing home beds licensed under chapter 400 in a number not exceeding 30 total beds or 25 percent of the number of beds licensed in the facility being replaced under paragraph (2)(b), paragraph (2)(c), or paragraph (p), whichever is less. For the creation of a single nursing home within a district by combining licensed beds from two or more licensed nursing homes within such district, regardless of subdistrict boundaries, if 50 percent of the beds in the created nursing home are transferred from the only nursing home in a county and its utilization data demonstrate that it had an occupancy rate of less than 75 percent for the 12-month period ending 90 days before the request for the exemption. This paragraph is repealed upon the expiration of the moratorium established in s. 408.0435(1).~~

(k) 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 licensed beds 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 certify that:

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 ~~96~~ percent.

c. ~~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.

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

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

Section 3. Section 408.0436, Florida Statutes, is created to read:

408.0436 Limitation on nursing home certificates of need.—Notwithstanding the establishment of need as provided in this chapter, the agency may not approve a certificate-of-need application for new community nursing home beds following the batching cycle in which the cumulative number of new community nursing home beds approved from July 1, 2014, to June 30, 2017, equals or exceeds 3,750. As used in this section, the term “batching cycle” means the grouping for comparative review of certificate-of-need applications submitted for beds, services, or programs having a like certificate-of-need methodology or licensing category in the same planning horizon and the same applicable district or subdistrict. This section is repealed July 1, 2017.

Section 4. Section 408.0435, Florida Statutes, is repealed.

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

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.