CHAPTER 2019-136

Committee Substitute for House Bill No. 21

An act relating to hospital licensure; amending s. 395.0191, F.S.; deleting provisions relating to certificate of need applications; amending s. 395.1055, F.S.; revising the Agency for Health Care Administration's rulemaking authority with respect to minimum standards for hospitals; requiring hospitals that provide certain services to meet specified licensure requirements; conforming provisions to changes made by the act; amending s. 395.1065, F.S.; conforming a cross-reference; repealing s. 395.6025, F.S., relating to rural hospital replacement facilities; amending s. 408.032, F.S.; revising and deleting definitions; amending s. 408.033, F.S.; conforming provisions to changes made by the act; amending s. 408.034, F.S.; authorizing the agency to issue a license to a general hospital that has not been issued a certificate of need under certain circumstances; revising duties and responsibilities of the agency relating to issuance of licenses to health care facilities and health service providers; conforming provisions to changes made by the act; amending s. 408.035, F.S.; deleting provisions related to the agency's consideration and review of applications for certificates of need for general hospitals and health services; amending s. 408.036, F.S.; providing an exception to certificate of need review requirements for the construction or establishment of a general hospital and the conversion of a specialty hospital to a general hospital; revising health-care-related projects that are subject to agency review for a certificate of need and exemptions therefrom; deleting provisions requiring health care facilities and providers to provide certain notice to the agency upon termination of a health care service or the addition or delicensure of beds; conforming a provision to changes made by the act; repealing s. 408.0361, F.S., relating to cardiovascular services and burn unit licensure; amending ss. 408.037 and 408.039, F.S.; deleting provisions relating to certificate of need applications for general hospitals; amending s. 408.043, F.S.; deleting provisions relating to certificates of need for osteopathic acute care hospitals; amending s. 408.0455, F.S.; establishing that specified rules remain in effect for a specified purpose and until the agency has adopted certain rules; amending s. 408.808, F.S.; authorizing the agency to issue an inactive license to a certain hospital under certain circumstances; requiring the Office of Program Policy Analysis and Government Accountability to review specified requirements, statutes, and rules, and make recommendations to the Legislature by a specified date; providing effective dates.

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

Section 1. Subsection (10) of section 395.0191, Florida Statutes, is amended to read:

395.0191 Staff membership and clinical privileges.—

~~(10) Nothing herein shall be construed by the agency as requiring an applicant for a certificate of need to establish proof of discrimination in the granting of or denial of hospital staff membership or clinical privileges as a precondition to obtaining such certificate of need under the provisions of s. 408.043.~~

Section 2. Present subsection (12) of section 395.1055, Florida Statutes, is redesignated as subsection (15), a new subsection (12) and subsections (13) and (14) are added to that section, and paragraph (b) of subsection (9) of that section is amended, to read:

395.1055 Rules and enforcement.—

(9) The agency shall establish a technical advisory panel, pursuant to s. 20.052, to develop procedures and standards for measuring outcomes of pediatric cardiac catheterization programs and pediatric cardiovascular surgery programs.

(b) Voting members of the panel shall include: 3 at-large members, including 1 cardiologist who is board certified in caring for adults with congenital heart disease and 2 board-certified pediatric cardiologists, neither of whom may be employed by any of the hospitals specified in subparagraphs 1.-10. or their affiliates, each of whom is appointed by the Secretary of Health Care Administration, and 10 members, and an alternate for each member, each of whom is a pediatric cardiologist or a pediatric cardiovascular surgeon, each appointed by the chief executive officer of the following hospitals:

1. Johns Hopkins All Children's Hospital in St. Petersburg.

2. Arnold Palmer Hospital for Children in Orlando.

3. Joe DiMaggio Children's Hospital in Hollywood.

4. Nicklaus Children's Hospital in Miami.

5. St. Joseph's Children's Hospital in Tampa.

6. University of Florida Health Shands Hospital in Gainesville.

7. University of Miami Holtz Children's Hospital in Miami.

8. Wolfson Children's Hospital in Jacksonville.

9. Florida Hospital for Children in Orlando.

10. Nemours Children's Hospital in Orlando.

Appointments made under subparagraphs 1.-10. are contingent upon ~~the hospital's maintenance of pediatric certificates of need and~~ the hospital's compliance with this section and rules adopted thereunder, as determined by the Secretary of Health Care Administration. A member appointed under

subparagraphs 1.-10. whose hospital fails to ~~maintain such certificates or~~ comply with such standards may serve only as a nonvoting member until the hospital ~~restores such certificates or~~ complies with such standards.

(12) Each provider of diagnostic cardiac catheterization services shall comply with rules adopted by the agency which establish licensure standards governing the operation of adult inpatient diagnostic cardiac catheterization programs. The rules must ensure that such programs:

(a) Comply with the most recent guidelines of the American College of Cardiology and American Heart Association Guidelines for Cardiac Catheterization and Cardiac Catheterization Laboratories.

(b) Perform only adult inpatient diagnostic cardiac catheterization services and will not provide therapeutic cardiac catheterization or any other cardiology services.

(c) Maintain sufficient appropriate equipment and health care personnel to ensure quality and safety.

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

(e) Demonstrate a plan to provide services to Medicaid and charity care patients.

(13) Each provider of adult cardiovascular services or operator of a burn unit shall comply with rules adopted by the agency which establish licensure standards that govern the provision of adult cardiovascular services or the operation of a burn unit, as applicable. At a minimum, such rules must address staffing, equipment, physical plant, operating protocols, the provision of services to Medicaid and charity care patients, accreditation, licensure periods and fees, and enforcement of minimum standards.

(14) In establishing rules for adult cardiovascular services, the agency shall include provisions that allow for:

(a) The establishment of two hospital program licensure levels, a Level I program that authorizes the performance of adult percutaneous cardiac intervention without onsite cardiac surgery and a Level II program that authorizes the performance of percutaneous cardiac intervention with onsite cardiac surgery.

(b)1. For a hospital seeking a Level I program, demonstration that, for the most recent 12-month period as reported to the agency, the hospital has provided a minimum of 300 adult inpatient and outpatient diagnostic cardiac catheterizations or, for the most recent 12-month period, has discharged or transferred at least 300 patients with the principal diagnosis of ischemic heart disease and that it has a formalized, written transfer agreement with a hospital that has a Level II program, including written

transport protocols to ensure safe and efficient transfer of a patient within 60 minutes.

2.a. A hospital located more than 100 road miles from the closest Level II adult cardiovascular services program is not required to meet the diagnostic cardiac catheterization volume and ischemic heart disease diagnosis volume requirements in subparagraph 1. if the hospital demonstrates that it has, for the most recent 12-month period as reported to the agency, provided a minimum of 100 adult inpatient and outpatient diagnostic cardiac catheterizations or that, for the most recent 12-month period, it has discharged or transferred at least 300 patients with the principal diagnosis of ischemic heart disease.

b. A hospital located more than 100 road miles from the closest Level II adult cardiovascular services program does not need to meet the 60-minute transfer time protocol requirement in subparagraph 1. if the hospital demonstrates that it has a formalized, written transfer agreement with a hospital that has a Level II program. The agreement must include written transport protocols to ensure the safe and efficient transfer of a patient, taking into consideration the patient's clinical and physical characteristics, road and weather conditions, and viability of ground and air ambulance service to transfer the patient.

3. At a minimum, the rules for adult cardiovascular services must require nursing and technical staff to have demonstrated experience in handling acutely ill patients requiring intervention, based on the staff member's previous experience in dedicated cardiac interventional laboratories or surgical centers. If a staff member's previous experience is in a dedicated cardiac interventional laboratory at a hospital that does not have an approved adult open heart surgery program, the staff member's previous experience qualifies only if, at the time the staff member acquired his or her experience, the dedicated cardiac interventional laboratory:

a. Had an annual volume of 500 or more percutaneous cardiac intervention procedures.

b. Achieved a demonstrated success rate of 95 percent or greater for percutaneous cardiac intervention procedures.

c. Experienced a complication rate of less than 5 percent for percutaneous cardiac intervention procedures.

d. Performed diverse cardiac procedures, including, but not limited to, balloon angioplasty and stenting, rotational atherectomy, cutting balloon atheroma remodeling, and procedures relating to left ventricular support capability.

(c) For a hospital seeking a Level II program, demonstration that, for the most recent 12-month period as reported to the agency, the hospital has performed a minimum of 1,100 adult inpatient and outpatient cardiac

catheterizations, of which at least 400 must be therapeutic catheterizations, or, for the most recent 12-month period, has discharged at least 800 patients with the principal diagnosis of ischemic heart disease.

(d) Compliance with the most recent guidelines of the American College of Cardiology and the American Heart Association guidelines for staffing, physician training and experience, operating procedures, equipment, physical plant, and patient selection criteria, to ensure patient quality and safety.

(e) The establishment of appropriate hours of operation and protocols to ensure availability and timely referral in the event of emergencies.

(f) The demonstration of a plan to provide services to Medicaid and charity care patients.

Section 3. Effective July 1, 2021, paragraph (f) of subsection (1) of section 395.1055, Florida Statutes, is amended to read:

395.1055 Rules and enforcement.—

(1) The agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part, which shall include reasonable and fair minimum standards for ensuring that:

~~(f) All hospitals submit such data as necessary to conduct certificate-of-need reviews required under part I of chapter 408. Such data shall include, but shall not be limited to, patient origin data, hospital utilization data, type of service reporting, and facility staffing data. The agency may not collect data that identifies or could disclose the identity of individual patients. The agency shall utilize existing uniform statewide data sources when available and shall minimize reporting costs to hospitals.~~

Section 4. Effective July 1, 2021, subsection (5) of section 395.1065, Florida Statutes, is amended to read:

395.1065 Criminal and administrative penalties; moratorium.—

(5) The agency shall impose a fine of $500 for each instance of the facility's failure to provide the information required by rules adopted pursuant to s. 395.1055(1)(g) ~~s. 395.1055(1)(h)~~.

Section 5. Section 395.6025, Florida Statutes, is repealed.

Section 6. Subsections (3), (8), and (13) through (17) of section 408.032, Florida Statutes, are amended to read:

408.032 Definitions relating to Health Facility and Services Development Act.—As used in ss. 408.031-408.045, the term:

(3) "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.

(8) "Health care facility" means a hospital, ~~long-term care hospital,~~ skilled nursing facility, hospice, 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.

~~(13) "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 acute care Medicare prospective payment system for inpatient hospital services.~~

~~(14) "Mental health services" means inpatient services provided in a hospital licensed under chapter 395 and listed on the hospital license as psychiatric beds for adults; psychiatric beds for children and adolescents; intensive residential treatment beds for children and adolescents; substance abuse beds for adults; or substance abuse beds for children and adolescents.~~

(13)~~(15)~~ "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.

(14)~~(16)~~ "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.

~~(17) "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, pediatric cardiac catheterization, pediatric open-heart surgery, organ transplantation, 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.~~

Section 7. Effective July 1, 2021, subsection (8), and subsections (9) through (11), as amended by this act, of section 408.032, Florida Statutes, are amended to read:

408.032 Definitions relating to Health Facility and Services Development Act.—As used in ss. 408.031-408.045, the term:

(8) "Health care facility" means a ~~hospital,~~ skilled nursing facility, hospice, 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.

~~(9) "Health services" means inpatient diagnostic, curative, or comprehensive medical rehabilitative services and includes mental health services. Obstetric services are not health services for purposes of ss. 408.031-408.045.~~

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

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

(10)~~(12)~~ "Intermediate care facility for the developmentally disabled" means a residential facility licensed under part VIII of chapter 400.

(11)~~(13)~~ "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.

(12)~~(14)~~ "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.

Section 8. Effective July 1, 2021, paragraph (b) of subsection (1) of section 408.033, Florida Statutes, is amended to read:

408.033 Local and state health planning.—

(1) LOCAL HEALTH COUNCILS.—

(b) Each local health council may:

1. Develop a district area health plan that permits each local health council to develop strategies and set priorities for implementation based on its unique local health needs.

2. Advise the agency on health care issues and resource allocations.

3. Promote public awareness of community health needs, emphasizing health promotion and cost-effective health service selection.

4. Collect data and conduct analyses and studies related to health care needs of the district, including the needs of medically indigent persons, and assist the agency and other state agencies in carrying out data collection activities that relate to the functions in this subsection.

5. Monitor the onsite construction progress, if any, of certificate-of-need approved projects and report council findings to the agency on forms provided by the agency.

6. Advise and assist any regional planning councils within each district that have elected to address health issues in their strategic regional policy plans with the development of the health element of the plans to address the health goals and policies in the State Comprehensive Plan.

7. Advise and assist local governments within each district on the development of an optional health plan element of the comprehensive plan provided in chapter 163, to assure compatibility with the health goals and policies in the State Comprehensive Plan and district health plan. To facilitate the implementation of this section, the local health council shall annually provide the local governments in its service area, upon request, with:

a. A copy and appropriate updates of the district health plan;

b. A report of ~~hospital and~~ nursing home utilization statistics for facilities within the local government jurisdiction; and

c. Applicable agency rules and calculated need methodologies for health facilities and services regulated under s. 408.034 for the district served by the local health council.

8. Monitor and evaluate the adequacy, appropriateness, and effectiveness, within the district, of local, state, federal, and private funds distributed to meet the needs of the medically indigent and other underserved population groups.

9. In conjunction with the Department of Health, plan for services at the local level for persons infected with the human immunodeficiency virus.

10. Provide technical assistance to encourage and support activities by providers, purchasers, consumers, and local, regional, and state agencies in

meeting the health care goals, objectives, and policies adopted by the local health council.

11. Provide the agency with data required by rule for the review of certificate-of-need applications and the projection of need for health ~~services and~~ facilities in the district.

Section 9. Subsection (2) of section 408.034, Florida Statutes, is amended to read:

408.034 Duties and responsibilities of agency; rules.—

(2) In the exercise of its authority to issue licenses to health care facilities ~~and health service providers~~, as provided under chapters 393 and 395 and parts II, IV, and VIII of chapter 400, the agency may not issue a license to any health care facility ~~or health service provider~~ that fails to receive a certificate of need or an exemption for the licensed facility, except that the agency may issue a license to a general hospital that has not been issued a certificate of need ~~or service~~.

Section 10. Effective July 1, 2021, subsection (2), as amended by this act, and subsection (3) of section 408.034, Florida Statutes, are amended to read:

408.034 Duties and responsibilities of agency; rules.—

(2) In the exercise of its authority to issue licenses to health care facilities, as provided under chapter ~~chapters~~ 393 ~~and 395~~ and parts II, IV, and VIII of chapter 400, the agency may not issue a license to any health care facility that fails to receive a certificate of need or an exemption for the licensed facility~~, except that the agency may issue a license to a general hospital that has not been issued a certificate of need~~.

(3) The agency shall establish, by rule, uniform need methodologies for ~~health services and~~ health facilities. In developing uniform need methodologies, the agency 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.

Section 11. 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~~ in context with the following criteria~~, except for general hospitals as defined in s. 395.002~~:

(1)~~(a)~~ The need for the health care facilities ~~and health services~~ being proposed.

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

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

(4)~~(d)~~ The availability of resources, including health personnel, management personnel, and funds for capital and operating expenditures, for project accomplishment and operation.

(5)~~(e)~~ The extent to which the proposed services will enhance access to health care for residents of the service district.

(6)~~(f)~~ The immediate and long-term financial feasibility of the proposal.

(7)~~(g)~~ The extent to which the proposal will foster competition that promotes quality and cost-effectiveness.

(8)~~(h)~~ 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.

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

(10)~~(j)~~ The applicant's designation as a Gold Seal Program nursing facility pursuant to s. 400.235, when the applicant is requesting additional nursing home beds at that facility.

~~(2) For a general hospital, the agency shall consider only the criteria specified in paragraph (1)(a), paragraph (1)(b), except for quality of care in paragraph (1)(b), and paragraphs (1)(e), (g), and (i).~~

Section 12. Effective July 1, 2021, subsection (2) of section 408.035, Florida Statutes, as amended by this act, is amended to read:

408.035 Review criteria.—The agency shall determine the reviewability of applications and shall review applications for certificate-of-need determinations for health care facilities in context with the following criteria:

(2) The availability, quality of care, accessibility, and extent of utilization of existing health care facilities ~~and health services~~ in the service district of the applicant.

Section 13. Subsection (1) and paragraphs (i) through (q) of subsection (3) of section 408.036, Florida Statutes, are amended to read:

408.036 Projects subject to review; exemptions.—

(1) APPLICABILITY.—Unless exempt under subsection (3), all health-care-related projects, as described in this subsection ~~paragraphs (a)-(f)~~, are

subject to review and must file an application for a certificate of need with the agency. The agency 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 in community nursing homes or intermediate care facilities for the developmentally disabled by new construction or alteration.

(b) The new construction or establishment of additional health care facilities, except for the construction of or establishment of a general hospital or ~~including~~ a replacement health care facility when the proposed project site is ~~not~~ located on the same site as or within 1 mile of the existing health care facility~~,~~ if the number of beds in each licensed bed category will not increase.

(c) The conversion from one type of health care facility to another, including the conversion from a general hospital or~~,~~ a specialty hospital, except that the conversion of a specialty hospital to a general hospital is not subject to review ~~or a long-term care hospital~~.

(d) The establishment of a hospice or hospice inpatient facility, except as provided in s. 408.043.

~~(e) An increase in the number of beds for comprehensive rehabilitation.~~

~~(f) The establishment of tertiary health services, including inpatient comprehensive rehabilitation services.~~

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

~~(i) For the addition of hospital beds licensed under chapter 395 for comprehensive rehabilitation in a number that may not exceed 10 total beds or 10 percent of the licensed capacity, whichever is greater.~~

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

~~a. Certify that the prior 12-month average occupancy rate for the licensed beds being expanded meets or exceeds 80 percent.~~

~~b. Certify that the beds 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 hospital beds until the beds are licensed.~~

(i)~~(j)~~ 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. The facility has not had any class I or class II deficiencies within the 30 months preceding the request.

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

c. 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.

~~(k) For the establishment of:~~

~~1. A Level II neonatal intensive care unit with at least 10 beds, upon documentation to the agency that the applicant hospital had a minimum of 1,500 births during the previous 12 months;~~

~~2. A Level III neonatal intensive care unit with at least 15 beds, upon documentation to the agency that the applicant hospital has a Level II neonatal intensive care unit of at least 10 beds and had a minimum of 3,500 births during the previous 12 months; or~~

~~3. A Level III neonatal intensive care unit with at least 5 beds, upon documentation to the agency that the applicant hospital is a verified trauma center pursuant to s. 395.4001(15), and has a Level II neonatal intensive care unit,~~

~~if the applicant demonstrates that it meets the requirements for quality of care, nurse staffing, physician staffing, physical plant, equipment, emergency transportation, and data reporting found in agency certificate-of-need rules for Level II and Level III neonatal intensive care units and if the applicant commits to the provision of services to Medicaid and charity patients at a level equal to or greater than the district average. Such a commitment is subject to s. 408.040.~~

~~(l) For the addition of mental health services or beds if the applicant commits to providing services to Medicaid or charity care patients at a level equal to or greater than the district average. Such a commitment is subject to s. 408.040.~~

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

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

(l)~~(o)~~ For beds in state mental health treatment facilities defined in s. 394.455 and state mental health forensic facilities operated under chapter 916.

(m)~~(p)~~ For beds in state developmental disabilities centers as defined in s. 393.063.

(n)~~(q)~~ For the establishment of a health care facility or project that meets all of the following criteria:

1. The applicant was previously licensed within the past 21 days as a health care facility or provider that is subject to subsection (1).

2. The applicant failed to submit a renewal application and the license expired on or after January 1, 2015.

3. The applicant does not have a license denial or revocation action pending with the agency at the time of the request.

4. The applicant's request is for the same service type, district, service area, and site for which the applicant was previously licensed.

5. The applicant's request, if applicable, includes the same number and type of beds as were previously licensed.

6. The applicant agrees to the same conditions that were previously imposed on the certificate of need or on an exemption related to the applicant's previously licensed health care facility or project.

7. The applicant applies for initial licensure as required under s. 408.806 within 21 days after the agency approves the exemption request. If the applicant fails to apply in a timely manner, the exemption expires on the 22nd day following the agency's approval of the exemption.

~~Notwithstanding subparagraph 1., an applicant whose license expired between January 1, 2015, and the effective date of this act may apply for an exemption within 30 days of this act becoming law.~~

Section 14. Effective July 1, 2021, paragraphs (b), (c), (l), (m), and (n) of subsection (1), as amended by this act, and subsections (2) and (5) of section 408.036, Florida Statutes, are amended to read:

408.036 Projects subject to review; exemptions.—

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

(b) The new construction or establishment of additional health care facilities, except for ~~the construction of or establishment of a general hospital or~~ a replacement health care facility when the proposed project site is located on the same site as or within 1 mile of the existing health care facility if the number of beds in each licensed bed category will not increase.

(c) The conversion from one type of health care facility to another~~, including the conversion from a general hospital or a specialty hospital, except that the conversion of a specialty hospital to a general hospital is not subject to review~~.

~~(l) For beds in state mental health treatment facilities defined in s. 394.455 and state mental health forensic facilities operated under chapter 916.~~

(l)~~(m)~~ For beds in state developmental disabilities centers as defined in s. 393.063.

(m)~~(n)~~ For the establishment of a health care facility or project that meets all of the following criteria:

1. The applicant was previously licensed within the past 21 days as a health care facility or provider that is subject to subsection (1).

2. The applicant failed to submit a renewal application and the license expired on or after January 1, 2015.

3. The applicant does not have a license denial or revocation action pending with the agency at the time of the request.

4. The applicant's request is for the same service type, district, service area, and site for which the applicant was previously licensed.

5. The applicant's request, if applicable, includes the same number and type of beds as were previously licensed.

6. The applicant agrees to the same conditions that were previously imposed on the certificate of need or on an exemption related to the applicant's previously licensed health care facility or project.

7. The applicant applies for initial licensure as required under s. 408.806 within 21 days after the agency approves the exemption request. If the applicant fails to apply in a timely manner, the exemption expires on the 22nd day following the agency's approval of the exemption.

(2) PROJECTS SUBJECT TO EXPEDITED REVIEW.—Unless exempt pursuant to subsection (3), the following projects are subject to expedited review:

(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~~.

(5) NOTIFICATION.—Health care facilities and providers must provide to the agency notification of~~:~~

~~(a)~~ replacement of a health care facility when the proposed project site is located in the same district and on the existing site or within a 1-mile radius of the replaced health care facility, if the number and type of beds do not increase.

~~(b) The termination of a health care service, upon 30 days' written notice to the agency.~~

~~(c) The addition or delicensure of beds.~~ Notification ~~under this subsection~~ may be made by electronic, facsimile, or written means at any time before the described action has been taken.

Section 15. Section 408.0361, Florida Statutes, is repealed.

Section 16. Section 408.037, Florida Statutes, is amended to read:

408.037 Application content.—

(1) ~~Except as provided in subsection (2) for a general hospital,~~ An application for a certificate of need must contain:

(a) A detailed description of the proposed project and statement of its purpose and need in relation to the district health plan.

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

1. 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 may, by rule, require less-detailed information from major health care providers. This listing must 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. A detailed listing of the needed capital expenditures, including sources of funds.

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

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

~~(2) An application for a certificate of need for a general hospital must contain a detailed description of the proposed general hospital project and a statement of its purpose and the needs it will meet. The proposed project's location, as well as its primary and secondary service areas, must be identified by zip code. Primary service area is defined as the zip codes from which the applicant projects that it will draw 75 percent of its discharges. Secondary service area is defined as the zip codes from which the applicant projects that it will draw its remaining discharges. If, subsequent to issuance of a final order approving the certificate of need, the proposed location of the general hospital changes or the primary service area materially changes, the agency shall revoke the certificate of need. However, if the agency determines that such changes are deemed to enhance access to hospital services in the service district, the agency may permit such changes to occur. A party participating in the administrative hearing regarding the issuance of the certificate of need for a general hospital has standing to participate in any subsequent proceeding regarding the revocation of the certificate of need for a hospital for which the location has changed or for which the primary service area has materially changed. In addition, the application for the certificate of need for a general hospital must include a statement of intent that, if approved by final order of the agency, the applicant shall within 120 days after issuance of the final order or, if there is an appeal of the final order, within 120 days after the issuance of the court's mandate on appeal, furnish satisfactory proof of the applicant's financial ability to operate. The agency shall establish documentation requirements, to be completed by each applicant, which show anticipated provider revenues and expenditures, the basis for financing the anticipated cash-flow requirements of the provider, and an applicant's access to contingency financing. A party participating in the administrative hearing regarding the issuance of the certificate of need~~

~~for a general hospital may provide written comments concerning the adequacy of the financial information provided, but such party does not have standing to participate in an administrative proceeding regarding proof of the applicant's financial ability to operate. The agency may require a licensee to provide proof of financial ability to operate at any time if there is evidence of financial instability, including, but not limited to, unpaid expenses necessary for the basic operations of the provider.~~

(2)~~(3)~~ 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.

Section 17. Paragraphs (c) and (d) of subsection (3), paragraphs (b) and (c) of subsection (5), and paragraph (d) of subsection (6) of section 408.039, Florida Statutes, are amended to read:

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

(3) APPLICATION PROCESSING.—

~~(c) Except for competing applicants, in order to be eligible to challenge the agency decision on a general hospital application under review pursuant to paragraph (5)(c), existing hospitals must submit a detailed written statement of opposition to the agency and to the applicant. The detailed written statement must be received by the agency and the applicant within 21 days after the general hospital application is deemed complete and made available to the public.~~

~~(d) In those cases where a written statement of opposition has been timely filed regarding a certificate of need application for a general hospital, the applicant for the general hospital may submit a written response to the agency. Such response must be received by the agency within 10 days of the written statement due date.~~

(5) ADMINISTRATIVE HEARINGS.—

(b) Hearings shall be held in Tallahassee unless the administrative law judge determines that changing the location will facilitate the proceedings. The agency 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 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. ~~For an application for a general hospital, administrative hearings shall commence within 6 months after the administrative law judge has been assigned, and a continuance may not be granted absent a finding of extraordinary circumstances by the administrative law judge.~~ All 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, whether reviewed under s. 408.036(1) or (2), to a competing proposed facility or program within the same district. ~~With respect to an application for a general hospital, competing applicants and only those existing hospitals that submitted a detailed written statement of opposition to an application as provided in this paragraph may initiate or intervene in an administrative hearing. Such challenges to a general hospital application shall be limited in scope to the issues raised in the detailed written statement of opposition that was provided to the agency. The administrative law judge may, upon a motion showing good cause, expand the scope of the issues to be heard at the hearing. Such motion shall include substantial and detailed facts and reasons for failure to include such issues in the original written statement of opposition.~~

(6) JUDICIAL REVIEW.—

~~(d) The party appealing a final order that grants a general hospital certificate of need shall pay the appellee's attorney's fees and costs, in an amount up to $1 million, from the beginning of the original administrative action if the appealing party loses the appeal, subject to the following limitations and requirements:~~

~~1. The party appealing a final order must post a bond in the amount of $1 million in order to maintain the appeal.~~

~~2. Except as provided under s. 120.595(5), in no event shall the agency be held liable for any other party's attorney's fees or costs.~~

Section 18. Subsection (1) of 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 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.~~

Section 19. Section 408.0455, Florida Statutes, is amended to read:

408.0455 Rules; pending proceedings.—The rules of the agency in effect on June 30, 2004, shall remain in effect and shall be enforceable by the agency with respect to ss. 408.031-408.045 until such rules are repealed or amended by the agency. Rules 59C-1.039 through 59C-1.044, F.A.C., remain in effect for the sole purpose of maintaining licensure requirements for the applicable services until the agency has adopted rules for the corresponding services pursuant to s. 395.1055(1)(i), Florida Statutes 2018.

Section 20. Subsection (3) of section 408.808, Florida Statutes, is amended to read:

408.808 License categories.—

(3) INACTIVE LICENSE.—An inactive license may be issued to a hospital or a health care provider subject to the certificate-of-need provisions in part I of this chapter when the provider is currently licensed, does not have a provisional license, and will be temporarily unable to provide services but is reasonably expected to resume services within 12 months. Such designation may be made for a period not to exceed 12 months but may be renewed by the agency for up to 12 additional months upon demonstration by the licensee of the provider's progress toward reopening. However, if after 20 months in an inactive license status, a statutory rural hospital, as defined in s. 395.602, has demonstrated progress toward reopening, but may not be able to reopen prior to the inactive license expiration date, the inactive designation may be renewed again by the agency for up to 12 additional months. For purposes of such a second renewal, if construction or renovation is required, the licensee must have had plans approved by the agency and construction must have already commenced pursuant to s. 408.032(4); however, if construction or renovation is not required, the licensee must provide proof of having made an enforceable capital expenditure greater than 25 percent of the total costs associated with the hiring of staff and the purchase of equipment and supplies needed to operate the facility upon opening. A request by a licensee for an inactive license or to extend the previously approved inactive period must be submitted to the agency and must include a written justification for the inactive license with the beginning and ending dates of inactivity specified, a plan for the transfer of any clients to other providers, and the appropriate licensure fees. The agency may not accept a request that is submitted after initiating closure, after any suspension of service, or after notifying clients of closure or

suspension of service, unless the action is a result of a disaster at the licensed premises. For the purposes of this section, the term "disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or manmade, which renders the provider inoperable at the premises. Upon agency approval, the provider shall notify clients of any necessary discharge or transfer as required by authorizing statutes or applicable rules. The beginning of the inactive license period is the date the provider ceases operations. The end of the inactive license period shall become the license expiration date. All licensure fees must be current, must be paid in full, and may be prorated. Reactivation of an inactive license requires the approval of a renewal application, including payment of licensure fees and agency inspections indicating compliance with all requirements of this part, authorizing statutes, and applicable rules.

Section 21. The Office of Program Policy Analysis and Government Accountability shall review federal requirements and other states' licensure statutes and rules governing the provision of tertiary health services as defined in s. 408.032, Florida Statutes 2018, and shall make recommendations to the President of the Senate and the Speaker of the House of Representatives on best practices, including recommendations on minimum volume requirements, as applicable, regarding the establishment of licensure standards for such programs by November 1, 2019.

Section 22. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2019.

Approved by the Governor June 25, 2019.

Filed in Office Secretary of State June 25, 2019.