

By Representative Hafner

1 A bill to be entitled
2 An act relating to assisted living facilities;
3 amending s. 400.402, F.S.; revising
4 definitions; providing additional definitions;
5 amending s. 400.407, F.S.; deleting an
6 additional license fee assessed against
7 facilities that provide limited mental health
8 services; amending s. 400.4075, F.S.; revising
9 requirements for a facility in obtaining a
10 limited mental health license; requiring
11 certain training for the facility administrator
12 and staff; requiring a facility that holds a
13 limited mental health license to maintain a
14 copy of the community living support plan and a
15 cooperative agreement for each mental health
16 resident and verify that such resident meets
17 certain requirements; amending s. 400.426,
18 F.S.; revising provisions to reflect the
19 transfer of certain duties to the Department of
20 Children and Family Services; providing that an
21 assessment completed through the Comprehensive
22 Assessment and Review for Long-Term Care
23 Services (CARES) Program fulfills certain
24 requirements for a medical examination;
25 requiring certain documentation for a mental
26 health resident who resides in an assisted
27 living facility that holds a limited mental
28 health license; providing for an evaluation of
29 a mental health resident in certain instances;
30 amending s. 394.455, F.S.; revising definitions
31 to reflect the transfer of duties to the

1 Department of Children and Family Services;
2 creating s. 394.4574, F.S.; providing
3 requirements under the Baker Act for the
4 Department of Children and Family Services with
5 respect to a mental health resident who resides
6 in an assisted living facility that holds a
7 limited mental health license; providing the
8 department with certain responsibilities
9 related to a mental health resident; amending
10 ss. 651.011 and 651.118, F.S.; correcting cross
11 references; providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Present subsections (9) through (26) of
16 section 400.402, Florida Statutes, are renumbered as
17 subsections (11) through (28), respectively, new subsections
18 (9) and (10) are added to said section, and renumbered
19 subsections (17) and (22) are amended, to read:

20 400.402 Definitions.--When used in this part, unless
21 the context otherwise requires, the term:

22 (9) "Community living support plan" means a written
23 document prepared by a mental health resident and the mental
24 health case manager of that resident in consultation with the
25 administrator of the facility or the administrator's designee.
26 A copy must be provided to the administrator of the assisted
27 living facility with a limited mental health license in which
28 the mental health resident lives. The plan must include
29 information about the supports, services, and special needs of
30 the resident, that enable the resident to live in the assisted
31 living facility.

1 (10) "Cooperative agreement" means a written statement
2 of understanding between a mental health care services
3 provider designated by the Department of Children and Family
4 Services and the administrator of the assisted living facility
5 with a limited mental health license in which a mental health
6 resident is living. The agreement specifies directions for
7 accessing emergency and after-hours care for the mental health
8 resident and a method for the staff of the facility to
9 recognize and respond to the signs and symptoms particular to
10 that mental health resident that indicate the need for
11 professional services. The cooperative agreement may be a
12 component of the community living support plan.

13 (17)(15) "Mental health resident" means an individual
14 who receives social security disability income due to a mental
15 disorder as determined by the Social Security Administration
16 or receives supplemental security income due to a mental
17 disorder as determined by the Social Security Administration
18 and receives optional state supplementation.+

19 ~~(a) Is a member of a specified population group having~~
20 ~~priority for district alcohol, drug abuse, and mental health~~
21 ~~services as provided in s. 394.75(4); and~~

22 ~~(b) Has been determined to be in need of primary care~~
23 ~~services as provided in s. 394.675(1)(a).~~

24 (22)(20) "Service plan" means a written plan,
25 developed and agreed upon by the resident and, if applicable,
26 the resident's representative or designee or the resident's
27 surrogate, guardian, or attorney in fact, if any, and the
28 administrator or designee representing the facility, which
29 addresses the unique physical and psychosocial needs,
30 abilities, and personal preferences of each resident receiving
31 extended congregate care services or mental health services.

1 The plan shall include a brief written description, in easily
2 understood language, of what services shall be provided, who
3 shall provide the services, when the services shall be
4 rendered, and the purposes and benefits of the services.

5 Section 2. Paragraph (b) of subsection (1), paragraph
6 (a) of subsection (3), and paragraphs (c) and (d) of
7 subsection (4) of section 400.407, Florida Statutes, are
8 amended to read:

9 400.407 License required; fee, display.--

10 (1)

11 (b)1. Any person found guilty of violating paragraph
12 (a) who, upon notification by the agency, fails, within 10
13 working days after receiving such notification, to apply for a
14 license commits a felony of the third degree, punishable as
15 provided in s. 775.082, s. 775.083, or s. 775.084.

16 2. Any person found to be in violation of paragraph
17 (a) due to a change in s. 400.402(3), (18), (24), or (25)
18 ~~(16)~~, ~~(22)~~, or ~~(23)~~ or a modification in department policy
19 pertaining to personal services as provided for in s.
20 400.402~~(16)~~ and who, upon notification by the agency, fails,
21 within 10 working days after receiving such notification, to
22 apply for a license commits a felony of the third degree,
23 punishable as provided in s. 775.082, s. 775.083, or s.
24 775.084.

25 3. Except as provided for in subparagraph 2., any
26 person who violates paragraph (a) who previously operated a
27 licensed facility or concurrently operates a licensed facility
28 and an unlicensed facility commits a felony of the third
29 degree, punishable as provided in s. 775.082, s. 775.083, or
30 s. 775.084.

31

1 4. Any person who fails to obtain a license after
2 agency notification may be fined for each day of noncompliance
3 pursuant to s. 400.419(1)(b).

4 5. When an owner has an interest in more than one
5 facility, and fails to license any one of these facilities,
6 the agency may revoke the license or impose a moratorium on
7 any or all of the licensed facilities until such time as the
8 delinquent facility is licensed.

9 6. If the agency determines that an owner is operating
10 or maintaining a facility without obtaining a license
11 authorizing such operation and determines that a condition
12 exists in the facility that poses a threat to the health,
13 safety, or welfare of a resident of the facility, the owner
14 commits neglect as defined in s. 415.102 and is subject to the
15 same actions and penalties specified in ss. 400.414 and
16 400.419 for a negligent act seriously affecting the health,
17 safety, or welfare of a resident of the facility.

18 (3) Any license granted by the agency shall state the
19 maximum resident capacity of the facility, the type of care
20 for which the license is granted, the date the license is
21 issued, the expiration date of the license, and any other
22 information deemed necessary by the agency. Licenses shall be
23 issued for one or more of the following categories of care:
24 standard, extended congregate care, limited nursing services,
25 or limited mental health services.

26 (a) A standard license shall be issued to facilities
27 providing one or more of the personal services identified in
28 s. 400.402~~(16)~~. Such facilities may also employ or contract
29 with a person licensed under chapter 464 to administer
30 medications and perform other tasks as specified in s.
31 400.4255.

1 (4)

2 (c) In addition to the total fee assessed under
3 paragraph (a), the agency shall require facilities that are
4 licensed to provide limited nursing services under this part
5 to pay an additional fee per licensed facility. The amount of
6 the biennial fee shall be \$200 per license, with an additional
7 fee of \$10 per resident based on the total licensed resident
8 capacity of the facility. The total biennial fee may ~~shall~~
9 not exceed \$2,000, no part of which shall be returned to the
10 facility. ~~Beginning July 1, 1990,~~The agency may adjust the
11 \$200 biennial license fee and the maximum total license fee
12 once each year by not more than the average rate of inflation
13 for the 12 months immediately preceding the increase.

14 ~~(d) In addition to the total fee assessed under~~
15 ~~paragraph (a), the agency shall require that facilities~~
16 ~~designated to provide limited mental health services under~~
17 ~~this part pay an additional fee per licensed facility. The~~
18 ~~biennial fee shall be \$200 per facility with an additional fee~~
19 ~~of \$10 per resident based on the capacity of the facility for~~
20 ~~limited mental health services. The total fee shall not~~
21 ~~exceed \$1,000, no part of which shall be returned to the~~
22 ~~facility. Beginning July 1, 1990, the agency may adjust the~~
23 ~~\$200 biennial license fee and the maximum total license fee~~
24 ~~once each year by not more than the average rate of inflation~~
25 ~~for the 12 months immediately preceding the increase.~~

26 Section 3. Section 400.4075, Florida Statutes, 1996
27 Supplement, is amended to read:

28 400.4075 Limited mental health license.--An assisted
29 living facility that serves three or more mental health
30 residents must obtain a limited mental health license.

31

1 (1) To obtain a limited mental health license, a
2 facility must hold a standard license as an assisted living
3 facility and must ensure that within 6 months after receiving
4 a limited mental health license, the facility administrator
5 and the staff of the facility who are in direct contact with
6 mental health residents complete training of no less than 6
7 hours related to their duties. This training will be provided
8 by or approved by the Department of Children and Family
9 Services. A limited mental health license shall be issued to
10 facilities that provide services to mental health residents
11 who meet the criteria of s. 400.402(15).

12 ~~(1) In order for services to be provided to mental~~
13 ~~health residents in a facility licensed under this part, the~~
14 ~~agency shall first determine that all requirements established~~
15 ~~in law and rule are met and shall specifically designate, on~~
16 ~~the facility's license, that services may be provided to~~
17 ~~mental health residents, and shall designate the number of~~
18 ~~such residents who may receive services. Such designation may~~
19 ~~be made at the time of initial licensure or biennial~~
20 ~~relicensure, or if requested in writing by a licensee under~~
21 ~~this part. Notification of approval or denial of such request~~
22 ~~shall be made within 90 days after receipt of such request and~~
23 ~~all necessary documentation. Existing facilities qualifying to~~
24 ~~provide services to such residents shall meet the licensing~~
25 ~~standards in this section and shall not have been subject to~~
26 ~~administrative sanctions which affect the health, safety, or~~
27 ~~welfare of residents for the previous 2 years or since initial~~
28 ~~licensure if the facility has been licensed for less than 2~~
29 ~~years.~~

30 (2) Facilities licensed to provide services to mental
31 health residents shall provide appropriate supervision and

1 ~~staffing, as defined by rule,~~to provide for the health,
2 safety, and welfare of such residents.

3 (3) A facility that has a limited mental health
4 license must:

5 (a) Have a copy of each mental health resident's
6 community living support plan and the cooperative agreement
7 with the mental health care services provider. The support
8 plan and the agreement may be combined.

9 (b) Have documentation that is provided by the
10 Department of Children and Family Services that each mental
11 health resident has been assessed and determined to be able to
12 live in the community in an assisted living facility with a
13 limited mental health license.

14 (c) Make the community living support plan available
15 for inspection by the resident, the resident's legal guardian,
16 the resident's health care surrogate, and other individuals
17 who have a lawful basis for reviewing this document.

18 (d) Assist the mental health resident in carrying out
19 the activities identified in the individual's community living
20 support plan.

21 ~~(3) In addition to the training as provided in s.~~
22 ~~400.452, staff in facilities that are authorized to provide~~
23 ~~services to mental health residents shall receive training, as~~
24 ~~defined by rule, on the special needs of such residents.~~

25 ~~(4) Facilities designated to provide services to~~
26 ~~mental health residents may not have more than the maximum~~
27 ~~resident capacity for the facility.~~

28 ~~(5) A mental health resident who receives services~~
29 ~~under this part shall meet the admission criteria established~~
30 ~~by the department for assisted living facilities. When a~~
31 ~~resident no longer meets the admission criteria for a facility~~

1 ~~licensed under this part, arrangements for relocating the~~
2 ~~person shall be made in accordance with s. 400.428(1)(k).~~

3 ~~(6) An assisted living facility serving mental health~~
4 ~~residents under this part shall have on file for each mental~~
5 ~~health resident a written mental health plan. The plan shall~~
6 ~~be open and available for inspection by the resident, the~~
7 ~~resident's legal guardian, if any, the resident's health care~~
8 ~~surrogate, if any, and all other entities or individuals~~
9 ~~having lawful access to such records. The department shall~~
10 ~~establish standards regarding the format and content of such~~
11 ~~plans.~~

12 ~~(7) Facilities licensed to provide services to mental~~
13 ~~health residents under this part shall be required to have a~~
14 ~~written agreement with the nearest publicly funded community~~
15 ~~facility as defined in s. 394.455 or a licensed mental health~~
16 ~~professional designated by the district alcohol, drug abuse,~~
17 ~~and mental health program office. The agreement shall specify~~
18 ~~the manner in which the clinical mental health services that~~
19 ~~are included in residents' mental health plans shall be~~
20 ~~accessed and delivered.~~

21 Section 4. Subsections (1), (4), (6), (7), and (8) of
22 section 400.426, Florida Statutes, 1996 Supplement, are
23 amended to read:

24 400.426 Appropriateness of placements; examinations of
25 residents.--

26 (1) The owner or administrator of a facility is
27 responsible for determining the appropriateness of admission
28 of an individual to the facility and for determining the
29 continued appropriateness of residence of an individual in the
30 facility. A determination shall be based upon an assessment
31 of the strengths, needs, and preferences of the resident, the

1 care and services offered or arranged for by the facility in
2 accordance with facility policy, and any limitations in law or
3 rule related to admission criteria or continued residency for
4 the type of license held by the facility under this part. A
5 resident may not be moved from one facility to another without
6 consultation with and agreement from the resident or, if
7 applicable, the resident's representative or designee or the
8 resident's family, guardian, surrogate, or attorney in fact.
9 In the case of a resident who has been placed by the
10 department or the Department of Children and Family Health and
11 ~~Rehabilitative~~ Services, the administrator must notify the
12 appropriate contact person in the applicable department.

13 (4) If ~~Where~~ possible, each resident shall have been
14 examined by a licensed physician or a licensed nurse
15 practitioner within 60 days before admission to the facility.
16 The signed and completed medical examination report shall be
17 submitted to the owner or administrator of the facility who
18 shall use ~~utilize~~ the information contained therein to assist
19 in the determination of the appropriateness of the resident's
20 admission and continued stay in the facility. The medical
21 examination report shall become a permanent part of the record
22 of the resident at the facility and shall be made available to
23 the agency during inspection or upon request. An assessment
24 that has been completed through the Comprehensive Assessment
25 and Review for Long-Term Care Services (CARES) Program
26 fulfills this requirement for a medical examination.

27 (6) Any resident accepted in a facility and placed by
28 the department or the Department of Children and Family Health
29 ~~and Rehabilitative~~ Services shall have been examined by
30 medical personnel within 30 days before placement in the
31 facility. The examination shall include an assessment of the

1 appropriateness of placement in a facility. The findings of
2 this ~~pursuant to such~~ examination shall be recorded on the
3 examination form provided by the agency. The completed form
4 shall accompany the resident and shall be submitted to the
5 facility owner or administrator. In the case of a mental
6 health resident, the Department of Children and Family
7 Services must provide documentation that the individual has
8 been assessed and determined to be able to live in the
9 community in an assisted living facility with a limited mental
10 health license. This documentation must be in the facility
11 within 30 days after the mental health resident has been
12 admitted to the facility.~~In addition, any resident placed by~~
13 ~~the department or the Department of Health and Rehabilitative~~
14 ~~Services who is a mental health resident shall also be~~
15 ~~evaluated by a mental health professional, as defined in s.~~
16 ~~394.455(2), (4), (20), (22), or (23), to assess the resident's~~
17 ~~appropriateness for placement in a facility.~~ The applicable
18 department shall provide to the facility administrator any
19 information about the resident that would help the
20 administrator meet his or her responsibilities under
21 subsection (1). Further, department personnel shall explain
22 to the facility operator any special needs of the resident and
23 advise the operator whom to call should problems arise. The
24 applicable department shall advise and assist the facility
25 administrator where the special needs of residents who are
26 recipients of optional state supplementation require such
27 assistance.

28 (7) The Department of Children and Family Health and
29 ~~Rehabilitative~~ Services may require an examination for
30 supplemental security income and optional state
31 supplementation recipients residing in facilities at any time

1 and shall provide the ~~such~~ examination whenever a resident's
2 condition requires it. Any facility administrator; personnel
3 of the agency, the department, or the Department of Children
4 and Family Health and Rehabilitative Services; or long-term
5 care ombudsman council member who believes a resident needs to
6 be evaluated shall notify the resident's case manager, who
7 shall take appropriate action. A report of the examination
8 findings shall be provided to the resident's case manager and
9 the facility administrator to help the administrator meet his
10 or her responsibilities under subsection (1).

11 (8) If, at any time after admission to a facility, a
12 resident appears to need care beyond that which the facility
13 is licensed to provide, the agency shall require the resident
14 to be physically examined by a licensed physician or licensed
15 nurse practitioner. This ~~or evaluated by an appropriate mental~~
16 ~~health professional, as defined in s. 394.455(2), (4), (20),~~
17 ~~(22), or (23);~~ such examination shall, to the extent possible,
18 be performed by the resident's preferred physician or nurse
19 practitioner ~~or mental health professional~~ and shall be paid
20 for by the resident with personal funds, except as provided in
21 s. 400.418(1)(b). Following this ~~Pursuant to such~~ examination,
22 the examining physician or licensed nurse practitioner shall
23 complete and sign a medical form provided by the agency. The
24 completed medical form shall be submitted to the agency within
25 30 days after ~~from~~ the date the facility owner or
26 administrator is notified by the agency that the physical
27 examination is required. After consultation with the
28 physician or licensed nurse practitioner who performed the
29 examination, a medical review team designated by the agency
30 shall then determine whether the resident is appropriately
31 residing in the facility. The medical review team shall base

1 its decision on a comprehensive review of the resident's
2 physical and functional status, including the resident's
3 preferences, and not on an isolated health-related problem. In
4 the case of a mental health resident, if the resident appears
5 to have needs in addition to those identified in the community
6 living support plan, the agency may require an evaluation by a
7 mental health professional, as determined by the Department of
8 Children and Family Services. A facility may ~~must~~ not be
9 required to retain a resident who requires more services or
10 care than the facility is able to provide in accordance with
11 its policies and criteria for admission and continued
12 residency. Members of the medical review team making the final
13 determination may ~~shall~~ not include the agency personnel who
14 initially questioned the appropriateness of a resident's
15 placement. Such determination is ~~shall be~~ final and binding
16 upon the facility and the resident. Any resident who is
17 determined by the medical review team to be inappropriately
18 residing in a facility shall be given 30 days' written notice
19 to relocate by the owner or administrator, unless the
20 resident's continued residence in the facility presents an
21 imminent danger to the health, safety, or welfare of the
22 resident or a substantial probability exists that death or
23 serious physical harm would result to the resident if allowed
24 to remain in the facility.

25 Section 5. Subsections (8) and (28) of section
26 394.455, Florida Statutes, 1996 Supplement, are amended to
27 read:

28 394.455 Definitions.--As used in this part, unless the
29 context clearly requires otherwise, the term:

30 (8) "Department" means the Department of Children and
31 Family ~~Health and Rehabilitative~~ Services.

1 (28) "Secretary" means the Secretary of Children and
2 Family ~~Health and Rehabilitative~~ Services.

3 Section 6. Section 394.4574, Florida Statutes, is
4 created to read:

5 394.4574 Department responsibilities for a mental
6 health resident who resides in an assisted living facility
7 that holds a limited mental health license.--

8 (1) "Mental health resident" for purposes of this
9 subsection, means an individual who receives social security
10 disability income due to a mental disorder as determined by
11 the Social Security Administration or receives supplemental
12 security income due to a mental disorder as determined by the
13 Social Security Administration and receives optional state
14 supplementation.

15 (2) The department must ensure that:

16 (a) A mental health resident has been assessed and
17 determined to be able to live in the community in an assisted
18 living facility with a limited mental health license.
19 Documentation verifying this information must be provided to
20 the administrator of the assisted living facility with a
21 limited mental health license in which the mental health
22 resident lives within 30 days after the mental health resident
23 is admitted to the assisted living facility with a limited
24 mental health license.

25 (b) A cooperative agreement, as required in s.
26 400.4075, is developed between the mental health care services
27 provider designated by the department for a mental health
28 resident, and the administrator of the assisted living
29 facility with a limited mental health license in which the
30 mental health resident is living. The Medicaid managed care
31 plan contractor shall be the mental health services provider

1 in the case of a mental health resident eligible for mental
2 health services through a Medicaid managed care plan.

3 (c) The community living support plan, as defined in
4 s. 400.402, has been prepared by a mental health resident and
5 a mental health case manager of that resident in consultation
6 with the administrator of the facility or the administrator's
7 designee. The plan must be provided to the administrator of
8 the assisted living facility with a limited mental health
9 license in which the mental health resident lives. The
10 community living support plan and the cooperative agreement
11 may be in one document.

12 (d) The assisted living facility with a limited mental
13 health license is provided with documentation that the
14 individual meets the definition of a mental health resident.

15 (e) The mental health services provider assigns a case
16 manager to each mental health resident who lives in an
17 assisted living facility with a limited mental health license.
18 The case manager is responsible for coordinating the
19 development of and implementation of the community living
20 support plan defined in s. 400.402. The plan must be updated
21 at least annually.

22 Section 7. Subsection (2) of section 651.011, Florida
23 Statutes, 1996 Supplement, is amended to read:

24 651.011 Definitions.--For the purposes of this
25 chapter, the term:

26 (2) "Continuing care" or "care" means furnishing
27 pursuant to an agreement shelter, food, and either nursing
28 care or personal services as defined in s. 400.402~~(16)~~,
29 whether such nursing care or personal services are provided in
30 the facility or in another setting designated by the agreement
31 for continuing care, to an individual not related by

1 consanguinity or affinity to the provider furnishing such
2 care, upon payment of an entrance fee. Other personal
3 services provided shall be designated in the continuing care
4 agreement. Agreements to provide continuing care include
5 agreements to provide care for any duration, including
6 agreements that are terminable by either party.

7 Section 8. Subsection (8) of section 651.118, Florida
8 Statutes, 1996 Supplement, is amended to read:

9 651.118 Agency for Health Care Administration;
10 certificates of need; sheltered beds; community beds.--

11 (8) A provider may petition the Agency for Health Care
12 Administration to use a designated number of sheltered nursing
13 home beds to provide extended congregate care as defined in s.
14 400.402~~(11)~~if the beds are in a distinct area of the nursing
15 home which can be adapted to meet the requirements for
16 extended congregate care. The provider may subsequently use
17 such beds as sheltered beds after notifying the agency of the
18 intended change.

19 Section 9. This act shall take effect upon becoming a
20 law.

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HOUSE SUMMARY

Revises licensure requirements and responsibilities for assisted living facilities that provide limited mental health services to mental health residents. Provides definitions. Eliminates an additional license fee for such facilities. Requires certain training for facility administrators and for staff who are in direct contact with such residents. Requires community living support plans and cooperative agreements for such residents, and verification that the resident meets certain requirements. Authorizes use of assessments of the Comprehensive Assessment and Review for Long-Term Care Services (CARES) Program to fulfill certain medical examination requirements. Specifies responsibilities of the Department of Children and Family Services for staff training and for resident assessment, placement, documentation, and evaluation.