

By the Committee on Health Regulation

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1 A bill to be entitled
2 An act relating to assisted living facilities;
3 amending s. 429.07, F.S.; deleting the requirement for
4 an assisted living facility to obtain an additional
5 license in order to provide limited nursing services;
6 deleting the requirement for the Agency for Health
7 Care Administration to conduct quarterly monitoring
8 visits of facilities that hold a license to provide
9 extended congregate care services; deleting the
10 requirement for the Department of Elderly Affairs to
11 report annually on the status of and recommendations
12 related to extended congregate care; deleting the
13 requirement for the Agency for Health Care
14 Administration to conduct monitoring visits at least
15 twice a year to facilities providing limited nursing
16 services; increasing the licensure fees and the
17 maximum fee required for the standard license;
18 increasing the licensure fees for the extended
19 congregate care license; eliminating the license fee
20 for the limited nursing services license; transferring
21 from another provision of law the requirement that a
22 biennial survey of an assisted living facility include
23 specific actions to determine whether the facility is
24 adequately protecting residents' rights; providing
25 that an assisted living facility that has a class I
26 violation or a class II violation is subject to
27 monitoring visits; requiring a registered nurse to
28 participate in certain monitoring visits; amending s.
29 429.17, F.S.; deleting provisions related to the

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30 limited nursing services license; amending s. 429.19,
31 F.S.; clarifying that a monitoring fee may be assessed
32 in addition to an administrative fine; amending s.
33 429.255, F.S.; eliminating provisions authorizing the
34 use of volunteers to provide certain health-care-
35 related services in assisted living facilities;
36 authorizing assisted living facilities to provide
37 limited nursing services; requiring an assisted living
38 facility to be responsible for certain recordkeeping
39 and staff to be trained to monitor residents receiving
40 certain health-care-related services; repealing s.
41 429.28(3), F.S., relating to a requirement for a
42 biennial survey of an assisted living facility, to
43 conform to changes made by the act; amending s.
44 429.41, F.S., relating to rulemaking; conforming
45 provisions to changes made by the act; amending s.
46 429.54, F.S.; requiring licensed assisted living
47 facilities to electronically report certain data
48 semiannually to the Agency for Health Care
49 Administration in accordance with rules adopted by the
50 Department of Elderly Affairs; providing an effective
51 date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Subsections (3) and (4) of section 429.07,
56 Florida Statutes, are amended, and subsections (6) and (7) are
57 added to that section, to read:

58 429.07 License required; fee; inspections.-

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59 (3) In addition to the requirements of s. 408.806, each
60 license granted by the agency must state the type of care for
61 which the license is granted. Licenses shall be issued for one
62 or more of the following categories of care: standard, extended
63 congregate care, ~~limited nursing services~~, or limited mental
64 health.

65 (a) A standard license shall be issued to a facility
66 ~~facilities~~ providing one or more of the personal services
67 identified in s. 429.02. Such licensee facilities may also
68 employ or contract with a person ~~licensed under part I of~~
69 ~~chapter 464 to administer medications and perform other tasks as~~
70 specified in s. 429.255.

71 (b) An extended congregate care license shall be issued to
72 a licensee facilities providing, directly or through contract,
73 services beyond those authorized in paragraph (a), including
74 acts performed pursuant to part I of chapter 464 by persons
75 licensed thereunder, and supportive services defined by rule to
76 persons who otherwise would be disqualified from continued
77 residence in a facility licensed under this part.

78 1. In order for extended congregate care services to be
79 provided in a facility licensed under this part, the agency must
80 first determine that all requirements established in law and
81 rule are met and must specifically designate, on the ~~facility's~~
82 license, that such services may be provided and whether the
83 designation applies to all or part of a facility. Such
84 designation may be made at the time of initial licensure or
85 relicensure, or upon request in writing by a licensee under this
86 part and part II of chapter 408. Notification of approval or
87 denial of such request shall be made in accordance with part II

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88 of chapter 408. An existing licensee ~~facilities~~ qualifying to
89 provide extended congregate care services must have maintained a
90 standard license and ~~may~~ not have been subject to administrative
91 sanctions during the previous 2 years, or since initial
92 licensure if ~~the facility has been~~ licensed for less than 2
93 years, for any of the following reasons:

94 a. A class I or class II violation;

95 b. Three or more repeat or recurring class III violations
96 of identical or similar resident care standards as specified in
97 rule from which a pattern of noncompliance is found by the
98 agency;

99 c. Three or more class III violations that were not
100 corrected in accordance with the corrective action plan approved
101 by the agency;

102 d. Violation of resident care standards resulting in a
103 requirement to employ the services of a consultant pharmacist or
104 consultant dietitian;

105 e. Denial, suspension, or revocation of a license for
106 another facility under this part in which the applicant for an
107 extended congregate care license has at least 25 percent
108 ownership interest; or

109 f. Imposition of a moratorium pursuant to ~~this part or part~~
110 II of chapter 408 or initiation of injunctive proceedings.

111 2. A licensee ~~Facilities~~ that is ~~are~~ licensed to provide
112 extended congregate care services shall maintain a written
113 progress report for ~~on~~ each person who receives such services,
114 and the ~~which~~ report must describe ~~describes~~ the type, amount,
115 duration, scope, and outcome of services that are rendered and
116 the general status of the resident's health. ~~A registered nurse,~~

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117 ~~or appropriate designee, representing the agency shall visit~~
118 ~~such facilities at least quarterly to monitor residents who are~~
119 ~~receiving extended congregate care services and to determine if~~
120 ~~the facility is in compliance with this part, part II of chapter~~
121 ~~408, and rules that relate to extended congregate care. One of~~
122 ~~these visits may be in conjunction with the regular survey. The~~
123 ~~monitoring visits may be provided through contractual~~
124 ~~arrangements with appropriate community agencies. A registered~~
125 ~~nurse shall serve as part of the team that inspects such~~
126 ~~facility. The agency may waive one of the required yearly~~
127 ~~monitoring visits for a facility that has been licensed for at~~
128 ~~least 24 months to provide extended congregate care services,~~
129 ~~if, during the inspection, the registered nurse determines that~~
130 ~~extended congregate care services are being provided~~
131 ~~appropriately, and if the facility has no class I or class II~~
132 ~~violations and no uncorrected class III violations. Before such~~
133 ~~decision is made, the agency shall consult with the long-term~~
134 ~~care ombudsman council for the area in which the facility is~~
135 ~~located to determine if any complaints have been made and~~
136 ~~substantiated about the quality of services or care. The agency~~
137 ~~may not waive one of the required yearly monitoring visits if~~
138 ~~complaints have been made and substantiated.~~

139 3. Licensees ~~Facilities~~ that are licensed to provide
140 extended congregate care services shall:

141 a. Demonstrate the capability to meet unanticipated
142 resident service needs.

143 b. Offer a physical environment that promotes a homelike
144 setting, provides for resident privacy, promotes resident
145 independence, and allows sufficient congregate space as defined

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146 by rule.

147 c. Have sufficient staff available, taking into account the
148 physical plant and firesafety features of the building, to
149 assist with the evacuation of residents in an emergency, ~~as~~
150 ~~necessary~~.

151 d. Adopt and follow policies and procedures that maximize
152 resident independence, dignity, choice, and decisionmaking to
153 permit residents to age in place to the extent possible, so that
154 moves due to changes in functional status are minimized or
155 avoided.

156 e. Allow residents or, if applicable, a resident's
157 representative, designee, surrogate, guardian, or attorney in
158 fact to make a variety of personal choices, participate in
159 developing service plans, and share responsibility in
160 decisionmaking.

161 f. Implement the concept of managed risk.

162 g. Provide, either directly or through contract, the
163 services of a person licensed pursuant to part I of chapter 464.

164 h. In addition to the training mandated in s. 429.52,
165 provide specialized training as defined by rule for facility
166 staff.

167 4. Licensees ~~Facilities~~ licensed to provide extended
168 congregate care services are exempt from the criteria for
169 continued residency as set forth in rules adopted under s.
170 429.41. Licensees ~~Facilities~~ ~~so licensed~~ shall adopt their own
171 requirements within guidelines for continued residency set forth
172 by rule. However, such licensees ~~facilities~~ may not serve
173 residents who require 24-hour nursing supervision. Licensees
174 ~~Facilities~~ licensed to provide extended congregate care services

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175 shall provide each resident with a written copy of facility
176 policies governing admission and retention.

177 5. The primary purpose of extended congregate care services
178 is to allow residents, as they become more impaired, the option
179 of remaining in a familiar setting from which they would
180 otherwise be disqualified for continued residency. A licensee
181 ~~facility~~ licensed to provide extended congregate care services
182 may also admit an individual who exceeds the admission criteria
183 for a facility with a standard license, if the individual is
184 determined appropriate for admission to the extended congregate
185 care facility.

186 6. Before admission of an individual to a facility licensed
187 to provide extended congregate care services, the individual
188 must undergo a medical examination as provided in s. 429.26(4)
189 and the facility must develop a preliminary service plan for the
190 individual.

191 7. When a licensee ~~facility~~ can no longer provide or
192 arrange for services in accordance with the resident's service
193 plan and needs and the licensee's ~~facility's~~ policy, the
194 licensee ~~facility~~ shall make arrangements for relocating the
195 person in accordance with s. 429.28(1)(k).

196 8. Failure to provide extended congregate care services may
197 result in denial of extended congregate care license renewal.

198 ~~9. No later than January 1 of each year, the department, in~~
199 ~~consultation with the agency, shall prepare and submit to the~~
200 ~~Governor, the President of the Senate, the Speaker of the House~~
201 ~~of Representatives, and the chairs of appropriate legislative~~
202 ~~committees, a report on the status of, and recommendations~~
203 ~~related to, extended congregate care services. The status report~~

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204 ~~must include, but need not be limited to, the following~~
205 ~~information:~~

206 ~~a. A description of the facilities licensed to provide such~~
207 ~~services, including total number of beds licensed under this~~
208 ~~part.~~

209 ~~b. The number and characteristics of residents receiving~~
210 ~~such services.~~

211 ~~c. The types of services rendered that could not be~~
212 ~~provided through a standard license.~~

213 ~~d. An analysis of deficiencies cited during licensure~~
214 ~~inspections.~~

215 ~~e. The number of residents who required extended congregate~~
216 ~~care services at admission and the source of admission.~~

217 ~~f. Recommendations for statutory or regulatory changes.~~

218 ~~g. The availability of extended congregate care to state~~
219 ~~clients residing in facilities licensed under this part and in~~
220 ~~need of additional services, and recommendations for~~
221 ~~appropriations to subsidize extended congregate care services~~
222 ~~for such persons.~~

223 ~~h. Such other information as the department considers~~
224 ~~appropriate.~~

225 ~~(c) A limited nursing services license shall be issued to a~~
226 ~~facility that provides services beyond those authorized in~~
227 ~~paragraph (a) and as specified in this paragraph.~~

228 ~~1. In order for limited nursing services to be provided in~~
229 ~~a facility licensed under this part, the agency must first~~
230 ~~determine that all requirements established in law and rule are~~
231 ~~met and must specifically designate, on the facility's license,~~
232 ~~that such services may be provided. Such designation may be made~~

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233 ~~at the time of initial licensure or relicensure, or upon request~~
234 ~~in writing by a licensee under this part and part II of chapter~~
235 ~~408. Notification of approval or denial of such request shall be~~
236 ~~made in accordance with part II of chapter 408. Existing~~
237 ~~facilities qualifying to provide limited nursing services shall~~
238 ~~have maintained a standard license and may not have been subject~~
239 ~~to administrative sanctions that affect the health, safety, and~~
240 ~~welfare of residents for the previous 2 years or since initial~~
241 ~~licensure if the facility has been licensed for less than 2~~
242 ~~years.~~

243 ~~2. Facilities that are licensed to provide limited nursing~~
244 ~~services shall maintain a written progress report on each person~~
245 ~~who receives such nursing services, which report describes the~~
246 ~~type, amount, duration, scope, and outcome of services that are~~
247 ~~rendered and the general status of the resident's health. A~~
248 ~~registered nurse representing the agency shall visit such~~
249 ~~facilities at least twice a year to monitor residents who are~~
250 ~~receiving limited nursing services and to determine if the~~
251 ~~facility is in compliance with applicable provisions of this~~
252 ~~part, part II of chapter 408, and related rules. The monitoring~~
253 ~~visits may be provided through contractual arrangements with~~
254 ~~appropriate community agencies. A registered nurse shall also~~
255 ~~serve as part of the team that inspects such facility.~~

256 ~~3. A person who receives limited nursing services under~~
257 ~~this part must meet the admission criteria established by the~~
258 ~~agency for assisted living facilities. When a resident no longer~~
259 ~~meets the admission criteria for a facility licensed under this~~
260 ~~part, arrangements for relocating the person shall be made in~~
261 ~~accordance with s. 429.28(1)(k), unless the facility is licensed~~

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262 ~~to provide extended congregate care services.~~

263 (4) In accordance with s. 408.805, an applicant or licensee
264 shall pay a fee for each license application submitted under
265 this part, part II of chapter 408, and applicable rules. The
266 amount of the fee shall be established by rule.

267 (a) The biennial license fee required of a facility is \$356
268 ~~\$300~~ per license, with an additional fee of \$67.50 ~~\$50~~ per
269 resident based on the total licensed resident capacity of the
270 facility, except that no additional fee will be assessed for
271 beds designated for recipients of optional state supplementation
272 payments provided for in s. 409.212. The total fee may not
273 exceed \$18,500 ~~\$10,000~~.

274 (b) In addition to the total fee assessed under paragraph
275 (a), the agency shall require facilities that are licensed to
276 provide extended congregate care services under this part to pay
277 an additional fee per licensed facility. The amount of the
278 biennial fee shall be \$501 ~~\$400~~ per license, with an additional
279 fee of \$10 per resident based on the total licensed resident
280 capacity of the facility.

281 ~~(c) In addition to the total fee assessed under paragraph~~
282 ~~(a), the agency shall require facilities that are licensed to~~
283 ~~provide limited nursing services under this part to pay an~~
284 ~~additional fee per licensed facility. The amount of the biennial~~
285 ~~fee shall be \$250 per license, with an additional fee of \$10 per~~
286 ~~resident based on the total licensed resident capacity of the~~
287 ~~facility.~~

288 (6) In order to determine whether the licensee is
289 adequately protecting residents' rights as provided in s.
290 429.28, the biennial survey shall include private informal

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291 conversations with a sample of residents and consultation with
292 the ombudsman council in the planning and service area in which
293 the facility is located to discuss residents' experiences within
294 the facility.

295 (7) An assisted living facility that has been cited within
296 the previous 24-month period for a class I violation or a class
297 II violation, regardless of the status of any enforcement or
298 disciplinary action, is subject to periodic unannounced
299 monitoring to determine if the facility is in compliance with
300 this part, part II of chapter 408, and applicable rules.
301 Monitoring may occur through a desk review or onsite. If a cited
302 violation relates to providing or failing to provide nursing
303 care, a registered nurse must participate in at least two onsite
304 monitoring visits within a 12-month period.

305 Section 2. Subsections (1) and (5) of section 429.17,
306 Florida Statutes, are amended to read:

307 429.17 Expiration of license; renewal; conditional
308 license.-

309 (1) ~~Limited nursing,~~ Extended congregate care, and limited
310 mental health licenses shall expire at the same time as the
311 facility's standard license, regardless of when issued.

312 (5) When an extended congregate care ~~or limited nursing~~
313 license is requested during a facility's biennial license
314 period, the fee shall be prorated in order to permit the
315 additional license to expire at the end of the biennial license
316 period. The fee shall be calculated as of the date the
317 additional license application is received by the agency.

318 Section 3. Subsection (7) of section 429.19, Florida
319 Statutes, is amended to read:

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320 429.19 Violations; imposition of administrative fines;
321 grounds.-

322 (7) In addition to any administrative fines imposed, the
323 agency may assess a survey or monitoring fee, equal to the
324 lesser of one half of the facility's biennial license and bed
325 fee or \$500, to cover the cost of conducting initial complaint
326 investigations that result in the finding of a violation that
327 was the subject of the complaint or monitoring visits ~~conducted~~
328 ~~under s. 429.28(3)(c)~~ to verify the correction of the
329 violations, or to monitor the health, safety, or security of
330 residents under s. 429.07(7).

331 Section 4. Section 429.255, Florida Statutes, is amended to
332 read:

333 429.255 Use of personnel; emergency care.-

334 (1) (a) Persons under contract to the facility or ~~facility~~
335 ~~staff, or volunteers,~~ who are licensed according to part I of
336 chapter 464, ~~or~~ those persons exempt under s. 464.022(1), and
337 others as defined by rule, may administer medications to
338 residents, take residents' vital signs, manage individual weekly
339 pill organizers for residents who self-administer medication,
340 give prepackaged enemas ordered by a physician, observe
341 residents, document observations on the appropriate resident's
342 record, report observations to the resident's physician, and
343 contract or allow residents or a resident's representative,
344 designee, surrogate, guardian, or attorney in fact to contract
345 with a third party, provided residents meet the criteria for
346 appropriate placement as defined in s. 429.26. Persons under
347 contract to the facility or facility staff who are licensed
348 according to part I of chapter 464 may provide limited nursing

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349 services. Nursing assistants certified pursuant to part II of
350 chapter 464 may take residents' vital signs as directed by a
351 licensed nurse or physician. The licensee is responsible for
352 maintaining documentation of services provided under this
353 paragraph as required by rule and ensuring that staff are
354 adequately trained to monitor residents receiving these
355 services.

356 (b) All staff in facilities licensed under this part shall
357 exercise their professional responsibility to observe residents,
358 to document observations on the appropriate resident's record,
359 and to report the observations to the resident's physician.
360 However, the owner or administrator of the facility shall be
361 responsible for determining that the resident receiving services
362 is appropriate for residence in the facility.

363 (c) In an emergency situation, licensed personnel may carry
364 out their professional duties pursuant to part I of chapter 464
365 until emergency medical personnel assume responsibility for
366 care.

367 (2) In facilities licensed to provide extended congregate
368 care, persons under contract to the facility or facility staff,
369 ~~or volunteers,~~ who are licensed according to part I of chapter
370 464, ~~or~~ those persons exempt under s. 464.022(1), or those
371 persons certified as nursing assistants pursuant to part II of
372 chapter 464, may also perform all duties within the scope of
373 their license or certification, as approved by the facility
374 administrator and pursuant to this part.

375 (3) Facility staff may withhold or withdraw cardiopulmonary
376 resuscitation if presented with an order not to resuscitate
377 executed pursuant to s. 401.45. The department shall adopt rules

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378 providing for the implementation of such orders. Facility staff
379 and facilities shall not be subject to criminal prosecution or
380 civil liability, nor be considered to have engaged in negligent
381 or unprofessional conduct, for withholding or withdrawing
382 cardiopulmonary resuscitation pursuant to such an order and
383 rules adopted by the department. The absence of an order to
384 resuscitate executed pursuant to s. 401.45 does not preclude a
385 physician from withholding or withdrawing cardiopulmonary
386 resuscitation as otherwise permitted by law.

387 Section 5. Subsection (3) of section 429.28, Florida
388 Statutes, is repealed.

389 Section 6. Paragraphs (i) and (j) of subsection (1) of
390 section 429.41, Florida Statutes, are amended to read:

391 429.41 Rules establishing standards.—

392 (1) It is the intent of the Legislature that rules
393 published and enforced pursuant to this section shall include
394 criteria by which a reasonable and consistent quality of
395 resident care and quality of life may be ensured and the results
396 of such resident care may be demonstrated. Such rules shall also
397 ensure a safe and sanitary environment that is residential and
398 noninstitutional in design or nature. It is further intended
399 that reasonable efforts be made to accommodate the needs and
400 preferences of residents to enhance the quality of life in a
401 facility. The agency, in consultation with the department, may
402 adopt rules to administer the requirements of part II of chapter
403 408. In order to provide safe and sanitary facilities and the
404 highest quality of resident care accommodating the needs and
405 preferences of residents, the department, in consultation with
406 the agency, the Department of Children and Family Services, and

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407 the Department of Health, shall adopt rules, policies, and
408 procedures to administer this part, which must include
409 reasonable and fair minimum standards in relation to:

410 (i) Facilities holding an ~~a limited nursing~~, extended
411 congregate care, or limited mental health license.

412 (j) The establishment of specific criteria to define
413 appropriateness of resident admission and continued residency in
414 a facility holding a standard, ~~limited nursing~~, extended
415 congregate care, and limited mental health license.

416 Section 7. Section 429.54, Florida Statutes, is amended to
417 read:

418 429.54 Collection of information; local subsidy.-

419 (1) Facilities that are licensed under this part must
420 report electronically to the agency semiannually, or more
421 frequently as determined by rule, data related to the facility,
422 including, but not limited to: the total number of residents,
423 the number of residents who are receiving limited mental health
424 services, the number of residents who are receiving extended
425 congregate care services, the number of residents who are
426 receiving limited nursing services, funding sources of the
427 residents, and professional staffing employed by or under
428 contract with the licensee to provide resident services. The
429 department, in consultation with the agency, shall adopt rules
430 to administer this subsection.

431 (2)~~(1)~~ To enable the department to collect the information
432 requested by the Legislature regarding the actual cost of
433 providing room, board, and personal care in facilities, the
434 department is authorized to conduct field visits and audits of
435 facilities as may be necessary. The owners of randomly sampled

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436 facilities shall submit such reports, audits, and accountings of
437 cost as the department may require by rule; provided that such
438 reports, audits, and accountings shall be the minimum necessary
439 to implement the provisions of this section. Any facility
440 selected to participate in the study shall cooperate with the
441 department by providing cost of operation information to
442 interviewers.

443 (3)~~(2)~~ Local governments or organizations may contribute to
444 the cost of care of local facility residents by further
445 subsidizing the rate of state-authorized payment to such
446 facilities. Implementation of local subsidy shall require
447 departmental approval and shall not result in reductions in the
448 state supplement.

449 Section 8. This act shall take effect July 1, 2010.