

FOR CONSIDERATION By the Committee on Health Regulation

588-01025-10

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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 Agency for Health Care
11 Administration to conduct monitoring visits at least
12 twice a year to facilities providing limited nursing
13 services; establishing a monitoring fee for each
14 quarter in which a facility provides limited nursing
15 services; amending s. 429.17, F.S.; deleting
16 provisions related to the limited nursing services
17 license; amending s. 429.41, F.S.; conforming
18 provisions to changes made by the act; requiring the
19 Department of Elderly Affairs to adopt rules that
20 establish the frequency of monitoring visits to
21 licensed facilities providing limited nursing services
22 or extended congregate care services, that provide for
23 collecting monitoring fees, and that require the
24 quarterly submission of data concerning the facility's
25 resident population; amending s. 429.54, F.S.;
26 requiring licensed assisted living facilities to
27 submit reports electronically each quarter to the
28 Agency for Health Care Administration; requiring the
29 first data submission to cover data for the first

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30 calendar quarter of 2011; providing effective dates.

31
32 Be It Enacted by the Legislature of the State of Florida:

33
34 Section 1. Effective April 1, 2011, subsections (3) and (4)
35 of section 429.07, Florida Statutes, are amended to read:

36 429.07 License required; fee.—

37 (3) In addition to the requirements of s. 408.806, each
38 license granted by the agency must state the type of care for
39 which the license is granted. Licenses shall be issued for one
40 or more of the following categories of care: standard, extended
41 congregate care, ~~limited nursing services~~, or limited mental
42 health.

43 (a) A standard license shall be issued to facilities
44 providing one or more of the personal services identified in s.
45 429.02. Such facilities may provide limited nursing services as
46 provided in this paragraph and may also employ or contract with
47 a person licensed under part I of chapter 464 to administer
48 medications and perform other tasks as specified in s. 429.255.

49 1. A facility that provides limited nursing services shall
50 maintain a written progress report for each person who receives
51 such nursing services, and the report must describe the type,
52 amount, duration, scope, and outcome of services that are
53 rendered and the general status of the resident's health. A
54 registered nurse representing the agency shall visit such
55 facility to monitor residents who are receiving limited nursing
56 services and to determine if the facility is in compliance with
57 applicable provisions of this part, part II of chapter 408, and
58 related rules. The frequency of monitoring visits shall be

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59 determined by rule. The monitoring visits may be provided
60 through contractual arrangements with appropriate community
61 agencies. A registered nurse shall also serve as part of the
62 team that inspects such facility.

63 2. A person who receives limited nursing services under
64 this paragraph must meet the admission and continued residency
65 criteria established by the agency for assisted living
66 facilities. When a resident no longer meets the admission and
67 continued residency criteria for a facility licensed under this
68 paragraph, arrangements for relocating the person shall be made
69 in accordance with s. 429.28(1)(k), unless the facility is
70 licensed to provide extended congregate care services.

71 (b) An extended congregate care license shall be issued to
72 facilities providing, directly or through contract, services
73 beyond those authorized in paragraph (a), including acts
74 performed pursuant to part I of chapter 464 by persons licensed
75 thereunder, and supportive services defined by rule to persons
76 who otherwise would be disqualified from continued residence in
77 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 facility ~~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 facility ~~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 facility ~~facilities at least quarterly~~ to monitor residents
119 who are receiving extended congregate care services and to
120 determine if the facility is in compliance with this part, part
121 II of chapter 408, and rules that relate to extended congregate
122 care. The frequency of monitoring visits shall be determined by
123 rule. One of these visits may be in conjunction with the regular
124 survey. The monitoring visits may be provided through
125 contractual arrangements with appropriate community agencies. A
126 registered nurse shall serve as part of the team that inspects
127 such facility. ~~The agency may waive one of the required yearly~~
128 ~~monitoring visits for a facility that has been licensed for at~~
129 ~~least 24 months to provide extended congregate care services,~~
130 ~~if, during the inspection, the registered nurse determines that~~
131 ~~extended congregate care services are being provided~~
132 ~~appropriately, and if the facility has no class I or class II~~
133 ~~violations and no uncorrected class III violations. Before such~~
134 ~~decision is made, the agency shall consult with the long-term~~
135 ~~care ombudsman council for the area in which the facility is~~
136 ~~located to determine if any complaints have been made and~~
137 ~~substantiated about the quality of services or care. The agency~~
138 ~~may not waive one of the required yearly monitoring visits if~~
139 ~~complaints have been made and substantiated.~~

140 3. Facilities that are licensed to provide extended
141 congregate care services shall:

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

144 b. Offer a physical environment that promotes a homelike
145 setting, provides for resident privacy, promotes resident

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146 independence, and allows sufficient congregate space as defined
147 by rule.

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

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

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

162 f. Implement the concept of managed risk.

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

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

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

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175 care services shall provide each resident with a written copy of
176 facility 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 facility
181 licensed to provide extended congregate care services may also
182 admit an individual who exceeds the admission criteria for a
183 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 facility can no longer provide or arrange for
192 services in accordance with the resident's service plan and
193 needs and the facility's policy, the facility shall make
194 arrangements for relocating the person in accordance with s.
195 429.28(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 \$300
268 per license, with an additional fee of \$50 per resident based on
269 the total licensed resident capacity of the facility, except
270 that no additional fee will be assessed for beds designated for
271 recipients of optional state supplementation payments provided
272 for in s. 409.212. The total fee under this paragraph may not
273 exceed \$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 \$400 per license, with an additional fee
279 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 monitoring fee quarterly for each quarter in which
285 the facility provides limited nursing services. The quarterly
286 monitoring fee shall be \$75 plus \$10 for each resident who
287 received limited nursing services during the quarter. This
288 monitoring fee shall be adjusted by not more than the change in
289 the Consumer Price Index based on the 12 months immediately
290 preceding the increase. ~~fee per licensed facility. The amount of~~

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291 ~~the biennial fee shall be \$250 per license, with an additional~~
292 ~~fee of \$10 per resident based on the total licensed resident~~
293 ~~capacity of the facility.~~

294 Section 2. Effective April 1, 2011, subsections (1) and (5)
295 of section 429.17, Florida Statutes, are amended to read:

296 429.17 Expiration of license; renewal; conditional
297 license.-

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

301 (5) When an extended care ~~or limited nursing~~ license is
302 requested during a facility's biennial license period, the fee
303 shall be prorated in order to permit the additional license to
304 expire at the end of the biennial license period. The fee shall
305 be calculated as of the date the additional license application
306 is received by the agency.

307 Section 3. Paragraphs (i) and (j) of subsection (1) of
308 section 429.41, Florida Statutes, are amended, and paragraphs
309 (m), (n), and (o) are added to that subsection, to read:

310 429.41 Rules establishing standards.-

311 (1) It is the intent of the Legislature that rules
312 published and enforced pursuant to this section shall include
313 criteria by which a reasonable and consistent quality of
314 resident care and quality of life may be ensured and the results
315 of such resident care may be demonstrated. Such rules shall also
316 ensure a safe and sanitary environment that is residential and
317 noninstitutional in design or nature. It is further intended
318 that reasonable efforts be made to accommodate the needs and
319 preferences of residents to enhance the quality of life in a

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320 facility. The agency, in consultation with the department, may
321 adopt rules to administer the requirements of part II of chapter
322 408. In order to provide safe and sanitary facilities and the
323 highest quality of resident care accommodating the needs and
324 preferences of residents, the department, in consultation with
325 the agency, the Department of Children and Family Services, and
326 the Department of Health, shall adopt rules, policies, and
327 procedures to administer this part, which must include
328 reasonable and fair minimum standards in relation to:

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

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

335 (m) The frequency of the monitoring visits to licensed
336 facilities that provide limited nursing services or extended
337 congregate care services. The frequency of monitoring visits
338 shall be based on factors such as, but not limited to: the
339 number of residents receiving limited nursing services or
340 extended congregate care services; the type, amount, duration,
341 and scope of limited nursing services or extended congregate
342 care services provided by the facility; the health status of the
343 residents receiving the limited nursing services or extended
344 congregate services; whether the registered nurse has determined
345 during inspections that have occurred within the last 24 months
346 that the facility has provided limited nursing services or
347 extended congregate care services appropriately; whether the
348 facility has no class I or class II violations and no

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349 uncorrected class III violations; and the existence of any
350 complaints made to and substantiated by the long-term care
351 ombudsman council for the area in which the facility is located
352 concerning the limited nursing services or extended congregate
353 care services provided by that facility.

354 (n) The process for collecting the monitoring fee from
355 licensed facilities providing limited nursing services.

356 (o) The submission of aggregate data concerning the
357 resident population as required by s. 429.54.

358 Section 4. Section 429.54, Florida Statutes, is amended to
359 read:

360 429.54 Collection of information; local subsidy.-

361 (1) Facilities that are licensed under this part must
362 report electronically to the agency quarterly data related to
363 the characteristics, attributes, and health status of the
364 resident population and the type, amount, duration, and scope of
365 services provided to residents. The department, in consultation
366 with the agency, shall adopt rules for the submission of
367 aggregate data. The first data submission to the agency shall
368 cover data for the calendar quarter January 1 through March 31,
369 2011.

370 (2)~~(1)~~ To enable the department to collect the information
371 requested by the Legislature regarding the actual cost of
372 providing room, board, and personal care in facilities, the
373 department is authorized to conduct field visits and audits of
374 facilities as may be necessary. The owners of randomly sampled
375 facilities shall submit such reports, audits, and accountings of
376 cost as the department may require by rule; provided that such
377 reports, audits, and accountings shall be the minimum necessary

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378 to implement the provisions of this section. Any facility
379 selected to participate in the study shall cooperate with the
380 department by providing cost of operation information to
381 interviewers.

382 (3)~~(2)~~ Local governments or organizations may contribute to
383 the cost of care of local facility residents by further
384 subsidizing the rate of state-authorized payment to such
385 facilities. Implementation of local subsidy shall require
386 departmental approval and shall not result in reductions in the
387 state supplement.

388 Section 5. Except as otherwise expressly provided in this
389 act, this act shall take effect July 1, 2010.