

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 1292

INTRODUCER: Senator Bogdanoff

SUBJECT: Nursing Home Facilities

DATE: February 13, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HR	Pre-meeting
2.	_____	_____	CF	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill revises certain definitions relating to nursing homes and deletes certain requirements relating to sharing programming and staff between nursing homes, continuing care facilities, and retirement communities offering home health, assisted living, or adult day care services. The bill provides various criteria for respite care in nursing home facilities. The bill allows any licensed nursing home to provide services, including respite care, therapeutic spa, and adult day care services to nonresidents, with certain requirements relating to adult day care services provided, and eliminates the requirement that the Agency for Health Care Administration (the agency) adopt rules related to short-term or temporary nursing home services.

The bill amends the conditions under which the moratorium on issuing certificates of need for construction of additional community nursing home beds ends and provides clarification for the meaning of “day” as it relates to monitoring of adult day care center programs co-located with licensed nursing homes. The bill allows a continuing care facility to petition the agency to designate a certain number of its sheltered nursing home beds to provide assisted living, rather than extended congregate care, if the beds are in a distinct area of the facility which can be adapted to meet the requirements for an assisted living facility. Such beds do not qualify for funding under the Medicaid waiver and may share common areas, services, and staff with beds designated for nursing home care, provided that all beds are under common ownership.

This bill amends ss. 400.021, 400.141, 408.0435, 429.905, and 651.118, F.S. The bill creates s. 400.172, F.S.

II. Present Situation:

Licensed Practical Nurses

Licensed practical nurses are practitioners who perform selected acts—including the administration of treatments and medications in the care of the ill, injured, or infirm and the promotion of wellness, maintenance of health, and prevention of illness in others—under the direction of a registered nurse, licensed physician, licensed podiatrist, or licensed dentist. A practical nurse is responsible and accountable for making decisions that are based upon his or her educational preparation and experience in nursing.¹

Resident Care Plans

Each resident in a nursing home² must have a resident care plan which includes a comprehensive assessment of his or her needs; the type and frequency of services required to attain or maintain his or her highest practicable physical, mental, and psychosocial well-being; a list of services required within or outside the facility to meet those needs; and an explanation of service goals. The resident care plan must be developed by a registered nurse with participation from other facility staff, the resident, or the resident's designee and signed by the director of nursing or another registered nurse³ and the resident or his or her designee.

The care plan must be reviewed by a registered nurse at least quarterly and updated as appropriate. Agency or temporary registered nurses may not serve as registered nurses for purposes of formulating, signing, or maintaining resident care plans.⁴

Services Provided by Nursing Homes⁵

A nursing home that has had no class I or class II deficiencies⁶ during the past 2 years or has been awarded a Gold Seal⁷ is permitted to provide services, including, but not limited to, respite

¹ Section 464.003(16) and (19), F.S.

² As defined in s. 400.021(7) and (12), F.S., a nursing home facility is any institution, building, residence, private home, or other place, whether operated for profit or not, which undertakes through its ownership or management to provide for a period exceeding 24-hour nursing care, personal care, or custodial care for three or more persons not related to the owner or manager by blood or marriage, who by reasons of illness, physical infirmity, or advanced age require such services, but does not include any place providing care and treatment primarily for the acutely ill. A facility offering services for fewer than three persons is within the meaning of this definition if it holds itself out to the public to be an establishment which regularly provides such services. A nursing home is licensed to offer services as defined in part I of ch. 464, F.S., the Nurse Practice Act.

³ Such a nurse must be employed by the facility and have been delegated institutional responsibilities by the facility. The nature of any delegated responsibilities must be documented as part of the resident care plan.

⁴ Section 400.021(16), F.S.

⁵ Sections 400.141(1), F.S.

⁶ There are four classes of deficiencies for which nursing homes may be cited under ch. 400.23(8), F.S. A class I deficiency presents a situation in which immediate corrective action is necessary because the facility's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility. A class II deficiency compromises a resident's ability to maintain or reach his or her highest practicable physical, mental, and psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. A class III deficiency results in no more than minimal physical, mental, or psychosocial discomfort to the resident or has the potential to compromise a resident's ability to maintain or reach his or her highest practical physical, mental, or psychosocial well-being,

and adult day care services, which enable individuals to move in and out of the facility and may provide such services without meeting any requirements beyond those for standard licensing. Respite care means admission to a nursing home for the purpose of providing a short period of rest, relief, or emergency alternative care for the primary caregiver of an individual receiving care at home who, without home-based care, would otherwise require institutional care.⁸ Adult day care means providing basic services—including providing a protective setting that is as non-institutional as possible, therapeutic programs of social and health activities and services, leisure activities, self-care training, rest, nutritional services, and respite care—for a part of a day to three or more adults who require such services and who are not related to the owner or operator of an adult day care center by blood or marriage.⁹

The agency must by rule adopt modified requirements for resident assessment, resident care plans, resident contracts, physician orders, and other provisions, as appropriate, for short-term or temporary nursing home services.¹⁰ Staff and programming may be shared between normal nursing home residents and short-term or temporary residents unless the facility is cited for deficiencies in patient care. A person receiving either respite care for 24 hours or longer or adult day care services must be included when calculating minimum staffing for the facility.

Any licensed assisted living facility, hospital, or nursing home may provide services during the day which include, but are not limited to, social, health, therapeutic, recreational, nutritional, and respite services to adults who are not residents. Such a facility need not be licensed as an adult day care center unless it publicly advertises to be such a center.¹¹

If the facility has a standard license or is a Gold Seal facility, exceeds the minimum required hours of licensed nursing and certified nursing assistant direct care per resident per day, and is part of a licensed continuing care¹² facility or a retirement community that offers home health,¹³ assisted living,¹⁴ or adult day care services on a single campus, such facilities are allowed to share programming and staff. At the time of inspection and in semiannual reports required to be

as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. A class IV deficiency has the potential for causing no more than a minor negative impact on the resident.

⁷ To be given the Gold Seal award, a facility must demonstrate excellence in long-term care over a sustained period. Criteria for the award include no class I or class II deficiencies within the past 30 months; evidence of financial stability; demonstration of consumer satisfaction with the facility as collected from residents and family members; evidence of workforce stability, such as low rate of turnover among registered nurses and certified nursing assistants during the previous 30 months; and an outstanding record regarding the number and types of substantiated complaints made to the State Long-Term Care Ombudsman Council within the previous 30 months. Gold Seal facilities are subject to less frequent surveys and relicensure visits by the agency. *See* s. 400.235, F.S.

⁸ Section 400.021(15), F.S.

⁹ Section 429.901, F.S.

¹⁰ No such rules currently exist in the Florida Administrative Code.

¹¹ Section 429.905(2), F.S.

¹² According to s. 651.011(2), F.S., continuing care means, pursuant to a contract, furnishing shelter and nursing or personal services to a resident of a facility, whether such nursing care or personal services are provided in the facility or in another setting designated in the contract for continuing care, by an individual not related by consanguinity or affinity to the resident, upon payment of an entrance fee.

¹³ According to s. 400.462(14), F.S., home health services are health and medical services and medical supplies furnished by an organization to an individual in the individual's home or place of residence.

¹⁴ According to s. 429.02(5), F.S., an assisted living facility is a residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.

submitted to the agency related to licensure renewal, any continuing care facility or retirement community that uses this option must demonstrate through staffing records that minimum staffing requirements were met.

All licensed nursing homes must submit reports to the agency, at least semiannually, but more often if requested by the agency, containing information regarding facility staff-to-resident ratios, staff turnover, and staff stability. A nursing home that has failed to comply with the state minimum-staffing requirements for 2 consecutive days is prohibited from accepting new admissions until the facility has achieved the minimum-staffing requirements for a period of 6 consecutive days, and failure to impose such an admissions moratorium constitutes a class II deficiency. A nursing home may be cited for violation of minimum staffing requirements in s. 400.23(3)(a)1.b. and c., F.S.,¹⁵ if it has failed to meet those standards on two consecutive days or has failed to meet at least 97 percent of those standards on any one day. Additionally, the agency may take action against any nursing home which meets the minimum staffing requirements but does not have enough staff to meet its residents' needs.

Residents' Rights

All residents of nursing homes have certain rights listed in statute.¹⁶ Such rights include:

- The right to civil and religious liberties, including knowledge of available choices and the right to make independent personal decisions;
- The right to private and uncensored communication;
- The right to reasonable access to legal, social, health, or other services;
- The right to present grievances to nursing home staff, government officials, or any other entity. Such grievances must be promptly addressed by nursing home staff;
- The right to participate in social, religious, and community activities that do not interfere with the rights of other residents;
- The right to examine the results of the most recent inspection of the nursing home;
- The right to manage personal financial affairs or to delegate such responsibility to the nursing home, but only to the extent of the funds held in trust by the nursing home or the resident. The facility may not require a resident to deposit personal funds with the facility;
- The right to be fully informed of services available in the facility and of any related charges for such services;
- The right to be adequately informed of the resident's own medical conditions and proposed treatments and to participate in treatment planning, unless the resident is determined to be unable to provide informed consent under Florida law;
- The right to have privacy in treatment and in caring for personal needs;
- The right to security in storing and using personal possessions;
- The right to be treated courteously, fairly, and with the fullest measure of dignity and to be free from mental and physical abuse;

¹⁵ These provisions give minimum staffing requirements for certified nursing assistants and licensed nurses in nursing homes. For certified nursing assistants, there must be a minimum of 2.5 hours of direct care per resident, per day and at least one certified nursing assistant per 20 residents. For licensed nurses, a minimum of one hour of direct care per resident, per day is required, and there must be at least one licensed nurse per 40 residents.

¹⁶ Section 400.022, F.S.

- The right to be transferred or discharged from a nursing home only for medical reasons or for the welfare of other residents and the right to be given at least 30 days' notice before any involuntary transfer or discharge, except in case of emergency. Nursing homes which provide services under Medicaid may not transfer or discharge a resident solely because the source of payment for care changes;
- The right to freedom of choice in selecting a personal physician and pharmacy and to participate in community-based activities programs;
- The right to receive notice before the resident's room in the nursing home is changed; and
- The right to be informed of the nursing home's bed reservation policy relating to resident hospitalization. Nursing home beds must be reserved during resident hospitalizations of up to 30 days for privately insured residents or 15 days for residents under Medicaid, provided that the nursing home receives reimbursement during this time.

The nursing home must provide a copy of such rights to each resident, his or her designee, and all facility staff. This statement of rights must also inform residents of their right to file a complaint with the agency or the local ombudsman council and must include contact information for the nearest ombudsman council and the central abuse hotline. Any violation of resident rights is grounds for disciplinary action by the agency.

Certificate of Need

Before construction may begin on any health care-related project, including the addition of beds to a nursing home, a facility must apply for and be awarded a certificate of need from the agency.¹⁷ A certificate of need is a written statement which provides evidence that the community needs a new, converted, expanded, or otherwise significantly modified health care facility.¹⁸ An application for a certificate of need must contain a detailed description of the proposed project and statement of its purpose, a statement of the financial resources needed by and available to the applicant to accomplish the proposed project, and an audited financial statement of the applicant.¹⁹ In addition, the application *may* contain a statement of intent that a certain percentage of the annual patient days at the facility will be used by patients eligible for care under Medicaid; nursing homes may be issued certificates of need on the condition that they fulfill this requirement.²⁰ Preference for granting certificates of need will be given to nursing homes who have been awarded a Gold Seal.²¹

The agency may also issue a certificate of need for the construction of nursing home beds in a continuing care facility for the exclusive use of the facility; such beds are known as sheltered nursing home beds.²² The agency may approve one sheltered nursing home bed for every four proposed residential units in the facility, unless the facility owner demonstrates the need for additional beds based on actual utilization and demand by current residents. A facility owner

¹⁷ Section 408.036(1), F.S.

¹⁸ Section 408.032, F.S.

¹⁹ Section 408.037(1), F.S.

²⁰ Section 408.040, F.S.

²¹ Section 400.171(3), F.S.

²² Sheltered nursing home beds in continuing care facilities may be used for persons who are not residents of the continuing care facility and who are not parties to a continuing care contract for up to 5 years after the date of issuance of the initial nursing home license. This 5-year period may be extended by the agency under certain conditions. *See* s. 651.118(7), F.S.

may petition the agency to use a designated number of sheltered nursing home beds to provide extended congregate care²³ if the beds are in a distinct area of the nursing home which can be adapted to meet the requirements of extended congregate care. Such converted beds may not qualify for funding under the Medicaid waiver and may share common areas, services, and staff with beds designated for nursing home care. Construction may not begin until the facility has been issued a certificate of need from the agency and a certificate of authority²⁴ from the Office of Insurance Regulation. However, a continuing care facility may also apply for a certificate of need to construct regular nursing home beds which may be used by residents or non-residents of the continuing care facility.²⁵

Certificates of need expire 18 months after they are granted unless construction for the project has begun, and a certificate may be revoked if construction has begun but is not proceeding along the timetable specified in the application.²⁶

As of July 1, 2011,²⁷ certificates of need for additional nursing home beds may not be approved until Medicaid managed care is implemented statewide or until after October 1, 2016, whichever occurs earlier. This is because the Legislature has found that the continued growth in the Medicaid budget for nursing home care has constrained the ability of the state to meet the needs of its elderly residents through the use of less restrictive and less institutional methods of long-term care; fewer state funds will be appropriated to nursing home care during this time so that more home- and community-based methods of long-term care may be explored. This moratorium on certificates does not apply to:

- Sheltered nursing home beds in a continuing care retirement community;
- Counties with no community nursing home beds because all nursing homes in the county licensed on July 1, 2001, have since closed; or
- Nursing homes wishing to add ten total beds or ten percent of the number of total beds in the facility, whichever is greater. Such beds may be added provided that the facility meets certain occupancy rates and has no class I or II deficiencies.²⁸

III. Effect of Proposed Changes:

Section 1 amends s. 400.021, F.S. The definition of “geriatric outpatient clinic” is revised to allow such clinics to be staffed by licensed practical nurses working under the direct supervision of registered nurses, advanced registered nurse practitioners, physicians, or physician assistants. The definition of “resident care plan” is amended to remove the requirement that the plan be signed by the director of nursing or another registered nurse employed by the facility and the

²³ According to s. 429.02(11), F.S., extended congregate care means acts beyond personal services that may be performed under part I of ch. 464, F.S., the Nurse Practice Act, by persons licensed thereunder while carrying out their professional duties, and other supportive services which may be specified by rule. The purpose of such services is to enable residents to age in place in a residential environment despite mental or physical limitations that might otherwise disqualify them from residency in an assisted living facility.

²⁴ A certificate of authority is required before any business may provide continuing care or construct any facility related to continuing care. Requirements for certificates of authority are listed in s. 651.023, F.S.

²⁵ Section 651.118, F.S.

²⁶ Section 408.040, F.S.

²⁷ Chapter 2011-135, L.O.F.

²⁸ Section 408.0435, F.S.

resident or his or her designee. The definition of “therapeutic spa services” is created to mean bathing, nail, and hair care services and other similar services related to personal hygiene.

Section 2 amends s. 400.141, F.S., to delete a reference to Gold Seal facilities from s. 400.141(1)(g), F.S. This paragraph currently allows a facility that has a standard license or is a Gold Star facility and meets certain other requirements to share programming and staff with a continuing care facility or a retirement community offering assisted living or adult day care services of which the nursing home is a part or with which it shares a campus. The reference to Gold Seal facilities is unnecessary as any facility with a standard license who meets the other requirements may share such programming.

The bill also deletes the requirements for facilities sharing programming and staff under this section to demonstrate in semiannual reports to the agency that minimum staffing requirements were met. Such compliance to minimum staffing requirements must still be demonstrated during agency inspections, however.

Section 3 creates s. 400.172, F.S., concerning criteria for providing respite care in nursing home facilities. For each person admitted for respite care, a nursing home facility must:

- Have a written abbreviated plan of care that, at a minimum, includes nutritional requirements, medication orders, physician orders, nursing assessments, and dietary preferences. The nursing or physician assessments may take the place of all other assessments required for full-time residents;
- Have a contract that, at a minimum, specifies the services to be provided to a resident receiving respite care and charges for such services. If multiple admissions for respite care are anticipated, this contract is valid for 1 year after it is executed; and
- Ensure that each resident is released to his or her caregiver or to an individual designated in writing by the caregiver.

Residents admitted under the respite care program will be exempt from Department of Children and Families rules relating to the discharge planning process. They will be entitled to resident rights under s. 400.022(1)(a)-(o) and (r)-(t), F.S.,²⁹ except that nursing homes are not permitted to manage the funds of any respite care resident until he or she has been in the facility for at least 14 consecutive days. They will reside in licensed nursing home beds and will be allowed to use personal medications during the stay, as long as a physician’s order is obtained. Medications will be released with the resident upon discharge in accordance with the physician’s orders.

A respite care resident may reside in a nursing home for a total of 60 days per year, with each separate stay lasting less than 14 days. If a person stays in respite care for longer than 14 days, the facility must comply with all assessment and care planning requirements applicable to nursing home residents.

²⁹ Respite care residents do not have the right to be transferred or discharged only for medical reasons or for the welfare of other residents, the right to be given at least 30 days’ notice before any involuntary transfer or discharge, the right to freedom of choice in selecting a personal physician or pharmacy, the right to participate in community-based activities programs unless medically contraindicated, the right to be informed of the bed reservation policy of the nursing home as it relates to resident hospitalization, or the right to challenge a resident discharge or transfer decision made by the facility. *See:* s. 400.022(1)(p), (q), (u), and (v), F.S.

Medical information from a physician, physician assistant, or nurse practitioner and any other information required by the facility must be submitted to the nursing home before any respite care resident may be admitted to a nursing home. Such medical information must include a physician's order for respite care and proof of a physical examination by a licensed physician, physician assistant, or nurse practitioner; such order and examination are valid for 1 year. Once a resident is admitted, the nursing home will assume primary caregiver duties for him or her, including arranging for the continuation of medically necessary services as needed.

Section 4 amends s. 400.141, F.S., to allow any licensed nursing home to provide services, including respite, therapeutic spa, and adult day care services to nonresidents. Currently, only licensed nursing homes with no class I or class II deficiencies during the last 2 years or with Gold Seal status are permitted to provide such services. Adult day care services must be administered according to s. 429.905(2), F.S., which states that all nursing homes providing adult day services must be monitored by the agency at least biennially to ensure adequate space and sufficient staff, unless the nursing home holds itself out to be an adult day care center, in which case it must meet all standards set in rule and law for such centers.

The bill also eliminates the requirement that the agency adopt rules related to short-term or temporary nursing home services.

Section 5 amends s. 408.0435, F.S., to amend provisions concerning the moratorium on nursing home certificates of need. No further certificates of need may be issued for construction of additional community nursing home beds until Medicaid managed care is implemented statewide or until October 1, 2016, whichever is later. Current statute states that the moratorium ends once the *earlier* of these criteria occurs. Medicaid managed care is to be implemented statewide by October 1, 2014.³⁰

Section 6 amends s. 429.905(2), F.S., relating to monitoring of adult day care center programs co-located with licensed nursing homes. The bill clarifies that, for purposes of this subsection, the term "day" means any portion of a 24-hour day.

Section 7 amends s. 651.118, F.S., to allow a continuing care facility to petition the agency to designate a certain number of its sheltered nursing home beds to provide assisted living, rather than extended congregate care, if the beds are in a distinct area of the facility which can be adapted to meet the requirements for an assisted living facility as defined in s. 429.02, F.S. Any sheltered beds used to provide assisted living may not qualify for funding under the Medicaid waiver and may share common areas, services, and staff with beds designated for nursing home care, as long as all of the beds are under common ownership.

Section 8 provides an effective date of July 1, 2012.

³⁰ See ss. 12 and 19, ch. 2011-134, L.O.F.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this CS have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the CS have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Certain nursing homes would be able to provide additional services to residents and the public.

C. Government Sector Impact:

None.³¹

VI. Technical Deficiencies:

Lines 20-23 of the bill's title state that the bill revises the period of time allotted for approval of the nursing home moratorium on a certificate of need for additional community nursing home beds; however, the bill's text does not include such a provision. Rather, the bill revises the conditions which may end such a moratorium.

Sections 2 and 4 of the bill both amend s. 400.141, F.S. It might be more concise to merge these two sections into one.

VII. Related Issues:

Lines 58-60 allow a licensed practical nurse working under the direct supervision of a registered nurse, advanced registered nurse practitioner, physician assistant, or physician to staff a geriatric

³¹ Agency for Health Care Administration, *2012 Bill Analysis and Economic Impact Statement for SB 1292*. A copy is on file with the Senate Health Regulation Committee.

outpatient clinic. However, the definition of “licensed practical nurse” in ch. 464, F.S., the Nurse Practice Act, only allows such practitioners to work under the supervision of registered nurses, physicians, podiatrists, or dentists.

Lines 140-141 state that respite care residents are exempt from department rules related to the discharge planning process. The Department of Children and Families, the department which has authority under ch. 400, F.S., applies, does not have any such rules. However, the agency does have rules related to patient discharge from health care facilities.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.