

By Senator Bogdanoff

25-00968A-12

20121292

1 A bill to be entitled
2 An act relating to nursing home facilities; amending
3 s. 400.021, F.S.; revising definitions of the terms
4 "geriatric outpatient clinic" and "resident care plan"
5 and defining the term "therapeutic spa services";
6 amending s. 400.141, F.S.; revising provisions
7 relating to facilities eligible to share programming
8 and staff; deleting requirements for the submission of
9 certain reports to the Agency for Health Care
10 Administration; creating s. 400.172, F.S.; providing
11 requirements for a nursing home facility operated by a
12 licensee that provides respite care services;
13 providing for rights of persons receiving respite care
14 in nursing home facilities; requiring a prospective
15 respite care recipient to provide certain information
16 to the nursing home facility; amending s. 400.141,
17 F.S.; revising provisions relating to other needed
18 services provided by licensed nursing home facilities,
19 including respite care, adult day, and therapeutic spa
20 services; amending s. 408.0435, F.S.; revising the
21 period of time allotted for approval of the nursing
22 home moratorium on a certificate of need for
23 additional community nursing home beds; amending s.
24 429.905, F.S.; defining the term "day" for purposes of
25 day care services provided to adults who are not
26 residents; amending s. 651.118, F.S.; providing a
27 funding limitation on sheltered nursing home beds used
28 to provide assisted living, rather than extended
29 congregate care services; authorizing certain sharing

25-00968A-12

20121292

30 of areas, services, and staff between such sheltered
31 beds and nursing home beds in those facilities;
32 providing an effective date.

33
34 WHEREAS, the Legislature recognizes that the use of nursing
35 homes has decreased over the past decade because of alternatives
36 that are now available to consumers, and

37 WHEREAS, nursing homes continue to be a valuable resource
38 and should be used to the fullest extent possible to provide
39 traditional nursing care to the most impaired persons as well as
40 providing services to frail or disabled persons who choose to
41 remain in the community or who may need a less skilled level of
42 care, and

43 WHEREAS, regulatory requirements should be flexible enough
44 to allow nursing homes to diversify but continue to include
45 sufficient protections to ensure the best care possible to
46 consumers, NOW, THEREFORE,

47
48 Be It Enacted by the Legislature of the State of Florida:

49
50 Section 1. Subsections (8) and (16) of section 400.021,
51 Florida Statutes, are amended, and subsection (19) is added to
52 that section, to read:

53 400.021 Definitions.—When used in this part, unless the
54 context otherwise requires, the term:

55 (8) "Geriatric outpatient clinic" means a site for
56 providing outpatient health care to persons 60 years of age or
57 older, which is staffed by a registered nurse, ~~or~~ a physician
58 assistant, or a licensed practical nurse under the direct

25-00968A-12

20121292

59 supervision of a registered nurse, advanced registered nurse
60 practitioner, physician assistant, or physician.

61 (16) "Resident care plan" means a written plan developed,
62 maintained, and reviewed not less than quarterly by a registered
63 nurse, with participation from other facility staff and the
64 resident or his or her designee or legal representative, which
65 includes a comprehensive assessment of the needs of an
66 individual resident; the type and frequency of services required
67 to provide the necessary care for the resident to attain or
68 maintain the highest practicable physical, mental, and
69 psychosocial well-being; a listing of services provided within
70 or outside the facility to meet those needs; and an explanation
71 of service goals. ~~The resident care plan must be signed by the~~
72 ~~director of nursing or another registered nurse employed by the~~
73 ~~facility to whom institutional responsibilities have been~~
74 ~~delegated and by the resident, the resident's designee, or the~~
75 ~~resident's legal representative. The facility may not use an~~
76 ~~agency or temporary registered nurse to satisfy the foregoing~~
77 ~~requirement and must document the institutional responsibilities~~
78 ~~that have been delegated to the registered nurse.~~

79 (19) "Therapeutic spa services" means bathing, nail, and
80 hair care services and other similar services related to
81 personal hygiene.

82 Section 2. Paragraph (g) of subsection (1) of section
83 400.141, Florida Statutes, is amended to read:

84 400.141 Administration and management of nursing home
85 facilities.—

86 (1) Every licensed facility shall comply with all
87 applicable standards and rules of the agency and shall:

25-00968A-12

20121292

88 (g) If the facility has a standard license ~~or is a Gold~~
89 ~~Seal facility~~, exceeds the minimum required hours of licensed
90 nursing and certified nursing assistant direct care per resident
91 per day, and is part of a continuing care facility licensed
92 under chapter 651 or a retirement community that offers other
93 services pursuant to part III of this chapter or part I or part
94 III of chapter 429 on a single campus, be allowed to share
95 programming and staff. At the time of inspection ~~and in the~~
96 ~~semiannual report required pursuant to paragraph (e)~~, a
97 continuing care facility or retirement community that uses this
98 option must demonstrate through staffing records that minimum
99 staffing requirements for the facility were met. Licensed nurses
100 and certified nursing assistants who work in the ~~nursing home~~
101 facility may be used to provide services elsewhere on campus if
102 the facility exceeds the minimum number of direct care hours
103 required per resident per day and the total number of residents
104 receiving direct care services from a licensed nurse or a
105 certified nursing assistant does not cause the facility to
106 violate the staffing ratios required under s. 400.23(3)(a).
107 Compliance with the minimum staffing ratios must ~~shall~~ be based
108 on the total number of residents receiving direct care services,
109 regardless of where they reside on campus. If the facility
110 receives a conditional license, it may not share staff until the
111 conditional license status ends. This paragraph does not
112 restrict the agency's authority under federal or state law to
113 require additional staff if a facility is cited for deficiencies
114 in care which are caused by an insufficient number of certified
115 nursing assistants or licensed nurses. The agency may adopt
116 rules for the documentation necessary to determine compliance

25-00968A-12

20121292__

117 with this provision.

118 Section 3. Section 400.172, Florida Statutes, is created to
119 read:

120 400.172 Respite care provided in nursing home facilities.-

121 (1) For each person admitted for respite care as authorized
122 under s. 400.141(1)(f), a nursing home facility operated by a
123 licensee must:

124 (a) Have a written abbreviated plan of care that, at a
125 minimum, includes nutritional requirements, medication orders,
126 physician orders, nursing assessments, and dietary preferences.
127 The nursing or physician assessments may take the place of all
128 other assessments required for full-time residents.

129 (b) Have a contract that, at a minimum, specifies the
130 services to be provided to a resident receiving respite care,
131 including charges for services, activities, equipment, emergency
132 medical services, and the administration of medications. If
133 multiple admissions for a single person for respite care are
134 anticipated, the original contract is valid for 1 year after the
135 date the contract is executed.

136 (c) Ensure that each resident is released to his or her
137 caregiver or an individual designated in writing by the
138 caregiver.

139 (2) A person admitted under the respite care program shall:

140 (a) Be exempt from department rules relating to the
141 discharge planning process.

142 (b) Be covered by the residents' rights specified in s.
143 400.022(1)(a)-(o) and (r)-(t). Funds or property of the resident
144 are not be considered trust funds subject to the requirements of
145 s. 400.022(1)(h) until the resident has been in the facility for

25-00968A-12

20121292

146 more than 14 consecutive days.

147 (c) Be allowed to use his or her personal medications
148 during the respite stay if permitted by facility policy. The
149 facility must obtain a physician's order for the medications.
150 The caregiver may provide information regarding the medications
151 as part of the nursing assessment and that information must
152 agree with the physician's order. Medications shall be released
153 with the resident upon discharge in accordance with current
154 physician's orders.

155 (d) Be entitled to reside in the facility for a total of 60
156 days within a contract year or for a total of 60 days within a
157 calendar year if the contract is for less than 12 months.
158 However, each single stay may not exceed 14 days. If a stay
159 exceeds 14 consecutive days, the facility must comply with all
160 assessment and care planning requirements applicable to nursing
161 home residents.

162 (e) Reside in a licensed nursing home bed.

163 (3) A prospective respite care resident must provide
164 medical information from a physician, physician assistant, or
165 nurse practitioner and any other information provided by the
166 primary caregiver required by the facility before or when the
167 person is admitted to receive respite care. The medical
168 information must include a physician's order for respite care
169 and proof of a physical examination by a licensed physician,
170 physician assistant, or nurse practitioner. The physician's
171 order and physical examination may be used to provide
172 intermittent respite care for up to 12 months after the date the
173 order is written.

174 (4) The facility shall assume the duties of the primary

25-00968A-12

20121292

175 caregiver. To ensure continuity of care and services, the
176 resident may retain his or her personal physician and shall have
177 access to medically necessary services such as physical therapy,
178 occupational therapy, or speech therapy, as needed. The facility
179 shall arrange for transportation of the resident to these
180 services, if necessary.

181 Section 4. Paragraph (f) of subsection (1) of section
182 400.141, Florida Statutes, is amended to read:

183 400.141 Administration and management of nursing home
184 facilities.—

185 (1) Every licensed facility shall comply with all
186 applicable standards and rules of the agency and shall:

187 (f) Be allowed and encouraged by the agency to provide
188 other needed services under certain conditions. If the facility
189 has a standard licensure status, ~~and has had no class I or class~~
190 ~~II deficiencies during the past 2 years or has been awarded a~~
191 ~~Gold Seal under the program established in s. 400.235, it may be~~
192 ~~encouraged by the agency to provide services, including, but not~~
193 ~~limited to, respite, therapeutic spa, and adult day services to~~
194 ~~nonresidents, which enable individuals to move in and out of the~~
195 facility. A facility is not subject to any additional licensure
196 requirements for providing these services. Respite care may be
197 offered to persons in need of short-term or temporary nursing
198 home services. Respite care must be provided in accordance with
199 this part ~~and rules adopted by the agency. However, the agency~~
200 ~~shall, by rule, adopt modified requirements for resident~~
201 ~~assessment, resident care plans, resident contracts, physician~~
202 ~~orders, and other provisions, as appropriate, for short-term or~~
203 ~~temporary nursing home services. Providers of adult day services~~

25-00968A-12

20121292

204 must comply with the requirements of s. 429.905(2). The agency
205 shall allow for shared programming and staff in a facility which
206 meets minimum standards and offers services pursuant to this
207 paragraph, but, if the facility is cited for deficiencies in
208 patient care, may require additional staff and programs
209 appropriate to the needs of service recipients. A person who
210 receives respite care may not be counted as a resident of the
211 facility for purposes of the facility's licensed capacity unless
212 that person receives 24-hour respite care. A person receiving
213 either respite care for 24 hours or longer or adult day services
214 must be included when calculating minimum staffing for the
215 facility. Any costs and revenues generated by a nursing home
216 facility from nonresidential programs or services shall be
217 excluded from the calculations of Medicaid per diems for nursing
218 home institutional care reimbursement.

219 Section 5. Subsection (1) of section 408.0435, Florida
220 Statutes, is amended to read:

221 408.0435 Moratorium on nursing home certificates of need.—

222 (1) Notwithstanding the establishment of need as provided
223 for in this chapter, a certificate of need for additional
224 community nursing home beds may not be approved by the agency
225 until Medicaid managed care is implemented statewide pursuant to
226 ss. 409.961-409.985 or October 1, 2016, whichever is later
227 ~~earlier~~.

228 Section 6. Subsection (2) of section 429.905, Florida
229 Statutes, is amended to read:

230 429.905 Exemptions; monitoring of adult day care center
231 programs colocated with assisted living facilities or licensed
232 nursing home facilities.—

25-00968A-12

20121292

233 (2) A licensed assisted living facility, a licensed
234 hospital, or a licensed nursing home facility may provide
235 services during the day which include, but are not limited to,
236 social, health, therapeutic, recreational, nutritional, and
237 respite services, to adults who are not residents. Such a
238 facility need not be licensed as an adult day care center;
239 however, the agency must monitor the facility during the regular
240 inspection and at least biennially to ensure adequate space and
241 sufficient staff. If an assisted living facility, a hospital, or
242 a nursing home holds itself out to the public as an adult day
243 care center, it must be licensed as such and meet all standards
244 prescribed by statute and rule. For the purpose of this
245 subsection, the term "day" means any portion of a 24-hour day.

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

248 651.118 Agency for Health Care Administration; certificates
249 of need; sheltered beds; community beds.—

250 (8) A provider may petition the Agency for Health Care
251 Administration to use a designated number of sheltered nursing
252 home beds to provide assisted living ~~extended congregate care as~~
253 ~~defined in s. 429.02~~ if the beds are in a distinct area of the
254 nursing home which can be adapted to meet the requirements for
255 an assisted living facility as defined in s. 429.02 ~~extended~~
256 ~~congregate care~~. The provider may subsequently use such beds as
257 sheltered beds after notifying the agency of the intended
258 change. Any sheltered beds used to provide assisted living
259 ~~extended congregate care~~ pursuant to this subsection may not
260 qualify for funding under the Medicaid waiver. Any sheltered
261 beds used to provide assisted living ~~extended congregate care~~

25-00968A-12

20121292__

262 pursuant to this subsection may share common areas, services,
263 and staff with beds designated for nursing home care, provided
264 that all of the beds are under common ownership. For the
265 purposes of this subsection, fire and life safety codes
266 applicable to nursing home facilities shall apply.

267 Section 8. This act shall take effect July 1, 2012.