

By the Committee on Health Regulation; and Senator Bogdanoff

588-03531-12

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1 A bill to be entitled
2 An act relating to health care facilities; amending s.
3 400.021, 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. 408.036, F.S.; adding to the
21 exemptions from agency review and from the requirement
22 of a certificate of need a pilot project to construct
23 a nursing home that is affiliated with an accredited
24 nursing school in a private accredited university and
25 that meets certain criteria; providing an exception to
26 a moratorium on new construction of nursing home beds;
27 providing for expiration of the provision; amending s.
28 429.195, F.S.; revising provisions prohibiting certain
29 rebates relating to assisted living facilities;

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30 amending s. 429.905, F.S.; defining the term "day" for
31 purposes of day care services provided to adults who
32 are not residents; amending ss. 458.3265 and 459.0137,
33 F.S.; revising the definition of the term "chronic
34 nonmalignant pain"; requiring that a pain-management
35 clinic register with the Department of Health unless
36 the clinic is wholly owned by certain board-eligible
37 or board-certified physicians or medical specialists,
38 organized as a physician-owned group practice, or
39 wholly owned by physicians who are not board eligible
40 or board certified but who have completed specified
41 residency programs and have a specified number of
42 years of full-time practice in pain medicine; amending
43 s. 651.118, F.S.; providing a funding limitation on
44 sheltered nursing home beds used to provide assisted
45 living, rather than extended congregate care services;
46 authorizing certain sharing of areas, services, and
47 staff between such sheltered beds and nursing home
48 beds in those facilities; amending s. 817.505, F.S.;
49 conforming provisions to changes made by the act;
50 providing an effective date.

51
52 Be It Enacted by the Legislature of the State of Florida:

53
54 Section 1. Subsections (8) and (16) of section 400.021,
55 Florida Statutes, are amended, and subsection (19) is added to
56 that section, to read:

57 400.021 Definitions.—When used in this part, unless the
58 context otherwise requires, the term:

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59 (8) "Geriatric outpatient clinic" means a site for
60 providing outpatient health care to persons 60 years of age or
61 older, which is staffed by a registered nurse, ~~or~~ a physician
62 assistant, or a licensed practical nurse under the direct
63 supervision of a registered nurse, advanced registered nurse
64 practitioner, physician assistant, or physician.

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

83 (19) "Therapeutic spa services" means bathing, nail, and
84 hair care services and other similar services related to
85 personal hygiene.

86 Section 2. Paragraph (g) of subsection (1) of section
87 400.141, Florida Statutes, is amended to read:

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88 400.141 Administration and management of nursing home
89 facilities.-

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

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

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117 require additional staff if a facility is cited for deficiencies
118 in care which are caused by an insufficient number of certified
119 nursing assistants or licensed nurses. The agency may adopt
120 rules for the documentation necessary to determine compliance
121 with this provision.

122 Section 3. Section 400.172, Florida Statutes, is created to
123 read:

124 400.172 Respite care provided in nursing home facilities.-

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

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

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

140 (c) Ensure that each resident is released to his or her
141 caregiver or an individual designated in writing by the
142 caregiver.

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

144 (a) Be exempt from department rules relating to the
145 discharge planning process.

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146 (b) Be covered by the residents' rights specified in s.
147 400.022(1)(a)-(o) and (r)-(t). Funds or property of the resident
148 are not be considered trust funds subject to the requirements of
149 s. 400.022(1)(h) until the resident has been in the facility for
150 more than 14 consecutive days.

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

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

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

167 (3) A prospective respite care resident must provide
168 medical information from a physician, physician assistant, or
169 nurse practitioner and any other information provided by the
170 primary caregiver required by the facility before or when the
171 person is admitted to receive respite care. The medical
172 information must include a physician's order for respite care
173 and proof of a physical examination by a licensed physician,
174 physician assistant, or nurse practitioner. The physician's

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175 order and physical examination may be used to provide
176 intermittent respite care for up to 12 months after the date the
177 order is written.

178 (4) The facility shall assume the duties of the primary
179 caregiver. To ensure continuity of care and services, the
180 resident may retain his or her personal physician and shall have
181 access to medically necessary services such as physical therapy,
182 occupational therapy, or speech therapy, as needed. The facility
183 shall arrange for transportation of the resident to these
184 services, if necessary.

185 Section 4. Paragraph (f) of subsection (1) of section
186 400.141, Florida Statutes, is amended to read:

187 400.141 Administration and management of nursing home
188 facilities.-

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

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

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

223 Section 5. Paragraph (t) is added to subsection (3) of
224 section 408.036, Florida Statutes, to read:

225 408.036 Projects subject to review; exemptions.—

226 (3) EXEMPTIONS.—Upon request, the following projects are
227 subject to exemption from the provisions of subsection (1):

228 (t)1. There shall be a pilot project in the agency-planning
229 subdistrict 4-1, 4-2, or 4-3 for the construction of a nursing
230 home that has 150 or fewer beds. In order to qualify for the
231 pilot project, the nursing home must:

232 a. Be affiliated with an accredited nursing school offering

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233 a bachelor of science, master of science, and doctorate of
234 science degree program within a private accredited university;
235 b. Be constructed on or abutting property of the private
236 accredited university;
237 c. Once licensed, have at all times an affiliation with the
238 private accredited university; and
239 d. Employ or otherwise make positions available for the
240 education and training of nursing students in the field of long-
241 term care or geriatric nursing.

242 2. Notwithstanding any moratorium, existing or planned, on
243 new construction of nursing home beds, a pilot project meeting
244 the provisions of this paragraph may proceed with construction,
245 licensure, and operation. Construction must begin within 11
246 months after this exemption becomes law. This exemption expires
247 June 30, 2014.

248 Section 6. Section 429.195, Florida Statutes, is amended to
249 read:

250 429.195 Rebates prohibited; penalties.—

251 (1) It is unlawful for an ~~any~~ assisted living facility
252 licensed under this part to contract or promise to pay or
253 receive any commission, bonus, kickback, or rebate or engage in
254 any split-fee arrangement in any form whatsoever with any
255 person, health care provider, or health care facility as
256 provided under s. 817.505 ~~physician, surgeon, organization,~~
257 ~~agency, or person, either directly or indirectly, for residents~~
258 ~~referred to an assisted living facility licensed under this~~
259 ~~part. A facility may employ or contract with persons to market~~
260 ~~the facility, provided the employee or contract provider clearly~~
261 ~~indicates that he or she represents the facility. A person or~~

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262 ~~agency independent of the facility may provide placement or~~
263 ~~referral services for a fee to individuals seeking assistance in~~
264 ~~finding a suitable facility; however, any fee paid for placement~~
265 ~~or referral services must be paid by the individual looking for~~
266 ~~a facility, not by the facility.~~

267 (2) This section does not apply to:

268 (a) An individual employed by the assisted living facility,
269 or with whom the facility contracts to provide marketing
270 services for the facility, if the individual clearly indicates
271 that he or she works with or for the facility.

272 (b) Payments by an assisted living facility to a referral
273 service that provides information, consultation, or referrals to
274 consumers to assist them in finding appropriate care or housing
275 options for seniors or disabled adults if the referred consumers
276 are not Medicaid recipients.

277 (c) A resident of an assisted living facility who refers a
278 friend, family members, or other individuals with whom the
279 resident has a personal relationship to the assisted living
280 facility, in which case the assisted living facility may provide
281 a monetary reward to the resident for making such referral.

282 (3)~~(2)~~ A violation of this section is ~~shall be considered~~
283 patient brokering and is punishable as provided in s. 817.505.

284 Section 7. Subsection (2) of section 429.905, Florida
285 Statutes, is amended to read:

286 429.905 Exemptions; monitoring of adult day care center
287 programs colocated with assisted living facilities or licensed
288 nursing home facilities.—

289 (2) A licensed assisted living facility, a licensed
290 hospital, or a licensed nursing home facility may provide

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291 services during the day which include, but are not limited to,
292 social, health, therapeutic, recreational, nutritional, and
293 respite services, to adults who are not residents. Such a
294 facility need not be licensed as an adult day care center;
295 however, the agency must monitor the facility during the regular
296 inspection and at least biennially to ensure adequate space and
297 sufficient staff. If an assisted living facility, a hospital, or
298 a nursing home holds itself out to the public as an adult day
299 care center, it must be licensed as such and meet all standards
300 prescribed by statute and rule. For the purpose of this
301 subsection, the term "day" means any portion of a 24-hour day.

302 Section 8. Paragraph (a) of subsection (1) of section
303 458.3265, Florida Statutes, is amended to read:

304 458.3265 Pain-management clinics.-

305 (1) REGISTRATION.-

306 (a)1. As used in this section, the term:

307 a. "Chronic nonmalignant pain" means pain unrelated to
308 cancer, ~~or~~ rheumatoid arthritis, or sickle cell anemia which
309 persists beyond the usual course of disease or beyond the injury
310 that is the cause of the pain or which persists more than 90
311 days after surgery.

312 b. "Pain-management clinic" or "clinic" means any publicly
313 or privately owned facility:

314 (I) That advertises in any medium for any type of pain-
315 management services; or

316 (II) Where in any month a majority of patients are
317 prescribed opioids, benzodiazepines, barbiturates, or
318 carisoprodol for the treatment of chronic nonmalignant pain.

319 2. Each pain-management clinic must register with the

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320 department unless:

321 a. The ~~That~~ clinic is licensed as a facility pursuant to
322 chapter 395;

323 b. The majority of the physicians who provide services in
324 the clinic ~~primarily~~ provide primarily surgical services;

325 c. The clinic is owned by a publicly held corporation whose
326 shares are traded on a national exchange or on the over-the-
327 counter market and whose total assets at the end of the
328 corporation's most recent fiscal quarter exceeded \$50 million;

329 d. The clinic is affiliated with an accredited medical
330 school at which training is provided for medical students,
331 residents, or fellows;

332 e. The clinic does not prescribe controlled substances for
333 the treatment of pain;

334 f. The clinic is owned by a corporate entity exempt from
335 federal taxation under 26 U.S.C. s. 501(c)(3);

336 g. The clinic is wholly owned ~~and operated~~ by one or more
337 board-eligible or board-certified anesthesiologists,
338 physiatrists, psychiatrists, rheumatologists, or neurologists;
339 ~~or~~

340 h. The clinic is wholly owned ~~and operated~~ by one or more
341 board-eligible or board-certified medical specialists who have
342 also completed fellowships in pain medicine approved by the
343 Accreditation Council for Graduate Medical Education, or who are
344 also board-eligible or board-certified in pain medicine by a
345 board approved by the American Board of Pain Medicine or the
346 American Board of Medical Specialties and perform interventional
347 pain procedures of the type routinely billed using surgical
348 codes; ~~-~~

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349 i. The clinic is organized as a physician-owned group
350 practice as defined in 42 C.F.R. 411,352; or

351 j. Before June 1, 2011, the clinic was wholly owned by
352 physicians who are not board eligible or board certified but who
353 successfully completed a residency program in anesthesiology,
354 physiatry, psychiatry, rheumatology, or neurology and who have 7
355 years of documented, full-time practice in pain medicine in this
356 state. For purposes of this paragraph, the term "full-time" is
357 defined as practicing an average of 20 hours per week each year
358 in pain medicine.

359 Section 9. Paragraph (a) of subsection (1) of section
360 459.0137, Florida Statutes, is amended to read:

361 459.0137 Pain-management clinics.—

362 (1) REGISTRATION.—

363 (a)1. As used in this section, the term:

364 a. "Chronic nonmalignant pain" means pain unrelated to
365 cancer, ~~or~~ rheumatoid arthritis, or sickle cell anemia which
366 persists beyond the usual course of disease or beyond the injury
367 that is the cause of the pain or which persists more than 90
368 days after surgery.

369 b. "Pain-management clinic" or "clinic" means any publicly
370 or privately owned facility:

371 (I) That advertises in any medium for any type of pain-
372 management services; or

373 (II) Where in any month a majority of patients are
374 prescribed opioids, benzodiazepines, barbiturates, or
375 carisoprodol for the treatment of chronic nonmalignant pain.

376 2. Each pain-management clinic must register with the
377 department unless:

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- 378 a. The ~~That~~ clinic is licensed as a facility pursuant to
379 chapter 395;
- 380 b. The majority of the physicians who provide services in
381 the clinic ~~primarily~~ provide primarily surgical services;
- 382 c. The clinic is owned by a publicly held corporation whose
383 shares are traded on a national exchange or on the over-the-
384 counter market and whose total assets at the end of the
385 corporation's most recent fiscal quarter exceeded \$50 million;
- 386 d. The clinic is affiliated with an accredited medical
387 school at which training is provided for medical students,
388 residents, or fellows;
- 389 e. The clinic does not prescribe controlled substances for
390 the treatment of pain;
- 391 f. The clinic is owned by a corporate entity exempt from
392 federal taxation under 26 U.S.C. s. 501(c)(3);
- 393 g. The clinic is wholly owned ~~and operated~~ by one or more
394 board-eligible or board-certified anesthesiologists,
395 physiatrists, psychiatrists, rheumatologists, or neurologists;
396 or
- 397 h. The clinic is wholly owned ~~and operated~~ by one or more
398 board-eligible or board-certified medical specialists who have
399 also completed fellowships in pain medicine approved by the
400 Accreditation Council for Graduate Medical Education or the
401 American Osteopathic Association, or who are also board-eligible
402 or board-certified in pain medicine by a board approved by the
403 American Board of Medical Specialties, the American Association
404 of Physician Specialties, or the American Board of Pain
405 Medicine, or the American Osteopathic Association and perform
406 interventional pain procedures of the type routinely billed

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407 using surgical codes.

408 Section 10. Subsection (8) of section 651.118, Florida
409 Statutes, is amended to read:

410 651.118 Agency for Health Care Administration; certificates
411 of need; sheltered beds; community beds.—

412 (8) A provider may petition the Agency for Health Care
413 Administration to use a designated number of sheltered nursing
414 home beds to provide assisted living ~~extended congregate care as~~
415 ~~defined in s. 429.02~~ if the beds are in a distinct area of the
416 nursing home which can be adapted to meet the requirements for
417 an assisted living facility as defined in s. 429.02 ~~extended~~
418 ~~congregate care~~. The provider may subsequently use such beds as
419 sheltered beds after notifying the agency of the intended
420 change. Any sheltered beds used to provide assisted living
421 ~~extended congregate care~~ pursuant to this subsection may not
422 qualify for funding under the Medicaid waiver. Any sheltered
423 beds used to provide assisted living ~~extended congregate care~~
424 pursuant to this subsection may share common areas, services,
425 and staff with beds designated for nursing home care, provided
426 that all of the beds are under common ownership. For the
427 purposes of this subsection, fire and life safety codes
428 applicable to nursing home facilities shall apply.

429 Section 11. Paragraph (j) is added to subsection (3) of
430 section 817.505, Florida Statutes, to read:

431 817.505 Patient brokering prohibited; exceptions;
432 penalties.—

433 (3) This section shall not apply to:

434 (j) Any exemptions relating to assisted living facilities
435 provided under s. 429.195(2).

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Section 12. This act shall take effect July 1, 2012.