

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 other needed services provided by licensed
8 nursing home facilities, including respite care, adult
9 day, and therapeutic spa services; revising provisions
10 relating to facilities eligible to share programming
11 and staff; deleting requirements for the submission of
12 certain reports to the Agency for Health Care
13 Administration; creating s. 400.172, F.S.; providing
14 requirements for a nursing home facility operated by a
15 licensee that provides respite care services;
16 providing for rights of persons receiving respite care
17 in nursing home facilities; requiring a prospective
18 respite care recipient to provide certain information
19 to the nursing home facility; amending s. 429.905,
20 F.S.; defining the term "day" for purposes of day care
21 services provided to adults who are not residents;
22 amending s. 651.118, F.S.; providing a funding
23 limitation on sheltered nursing home beds used to
24 provide assisted living, rather than extended
25 congregate care services; authorizing certain sharing
26 of areas, services, and staff between such sheltered
27 beds and nursing home beds in those facilities;
28 providing an effective date.

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

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

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

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

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

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

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

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

75 (19) "Therapeutic spa services" means bathing, nail, and
 76 hair care services and other similar services related to
 77 personal hygiene.

78 Section 2. Paragraphs (f) and (g) of subsection (1) of
 79 section 400.141, Florida Statutes, are amended to read:

80 400.141 Administration and management of nursing home
 81 facilities.—

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

84 (f) Be allowed and encouraged by the agency to provide

CS/HB 787

2012

85 other needed services under certain conditions. If the facility
86 has a standard licensure status, ~~and has had no class I or class~~
87 ~~II deficiencies during the past 2 years or has been awarded a~~
88 ~~Gold Seal under the program established in s. 400.235,~~ it may be
89 encouraged by the agency to provide services, including, but not
90 limited to, respite, therapeutic spa, and adult day services to
91 nonresidents, ~~which enable individuals to move in and out of the~~
92 facility. A facility is not subject to any additional licensure
93 requirements for providing these services. Respite care may be
94 offered to persons in need of short-term or temporary nursing
95 home services. Respite care must be provided in accordance with
96 this part ~~and rules adopted by the agency. However, the agency~~
97 ~~shall, by rule, adopt modified requirements for resident~~
98 ~~assessment, resident care plans, resident contracts, physician~~
99 ~~orders, and other provisions, as appropriate, for short-term or~~
100 ~~temporary nursing home services.~~ Providers of adult day services
101 must comply with the requirements of s. 429.905(2). The agency
102 shall allow for shared programming and staff in a facility which
103 meets minimum standards and offers services pursuant to this
104 paragraph, but, if the facility is cited for deficiencies in
105 patient care, may require additional staff and programs
106 appropriate to the needs of service recipients. A person who
107 receives respite care may not be counted as a resident of the
108 facility for purposes of the facility's licensed capacity unless
109 that person receives 24-hour respite care. A person receiving
110 either respite care for 24 hours or longer or adult day services
111 must be included when calculating minimum staffing for the
112 facility. Any costs and revenues generated by a nursing home

CS/HB 787

2012

113 facility from nonresidential programs or services shall be
114 excluded from the calculations of Medicaid per diems for nursing
115 home institutional care reimbursement.

116 (g) If the facility has a standard license ~~or is a Gold~~
117 ~~Seal facility~~, exceeds the minimum required hours of licensed
118 nursing and certified nursing assistant direct care per resident
119 per day, and is part of a continuing care facility licensed
120 under chapter 651 or a retirement community that offers other
121 services pursuant to part III of this chapter or part I or part
122 III of chapter 429 on a single campus, be allowed to share
123 programming and staff. At the time of inspection ~~and in the~~
124 ~~semiannual report required pursuant to paragraph (c)~~, a
125 continuing care facility or retirement community that uses this
126 option must demonstrate through staffing records that minimum
127 staffing requirements for the facility were met. Licensed nurses
128 and certified nursing assistants who work in the ~~nursing home~~
129 facility may be used to provide services elsewhere on campus if
130 the facility exceeds the minimum number of direct care hours
131 required per resident per day and the total number of residents
132 receiving direct care services from a licensed nurse or a
133 certified nursing assistant does not cause the facility to
134 violate the staffing ratios required under s. 400.23(3)(a).
135 Compliance with the minimum staffing ratios must ~~shall~~ be based
136 on the total number of residents receiving direct care services,
137 regardless of where they reside on campus. If the facility
138 receives a conditional license, it may not share staff until the
139 conditional license status ends. This paragraph does not
140 restrict the agency's authority under federal or state law to

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

146 Section 3. Section 400.172, Florida Statutes, is created
 147 to read:

148 400.172 Respite care provided in nursing home facilities.-

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

152 (a) Have a written abbreviated plan of care that, at a
 153 minimum, includes nutritional requirements, medication orders,
 154 physician orders, nursing assessments, and dietary preferences.
 155 The nursing or physician assessments may take the place of all
 156 other assessments required for full-time residents.

157 (b) Have a contract that, at a minimum, specifies the
 158 services to be provided to a resident receiving respite care,
 159 including charges for services, activities, equipment, emergency
 160 medical services, and the administration of medications. If
 161 multiple admissions for a single person for respite care are
 162 anticipated, the original contract is valid for 1 year after the
 163 date the contract is executed.

164 (c) Ensure that each resident is released to his or her
 165 caregiver or an individual designated in writing by the
 166 caregiver.

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

169 (a) Be exempt from department rules relating to the
170 discharge planning process.

171 (b) Be covered by the residents' rights specified in s.
172 400.022(1)(a)-(o) and (r)-(t). Funds or property of the resident
173 are not be considered trust funds subject to the requirements of
174 s. 400.022(1)(h) until the resident has been in the facility for
175 more than 14 consecutive days.

176 (c) Be allowed to use his or her personal medications
177 during the respite stay if permitted by facility policy. The
178 facility must obtain a physician's order for the medications.
179 The caregiver may provide information regarding the medications
180 as part of the nursing assessment and that information must
181 agree with the physician's order. Medications shall be released
182 with the resident upon discharge in accordance with current
183 physician's orders.

184 (d) Be entitled to reside in the facility for a total of
185 60 days within a contract year or for a total of 60 days within
186 a calendar year if the contract is for less than 12 months.
187 However, each single stay may not exceed 14 days. If a stay
188 exceeds 14 consecutive days, the facility must comply with all
189 assessment and care planning requirements applicable to nursing
190 home residents.

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

192 (3) A prospective respite care resident must provide
193 medical information from a physician, physician assistant, or
194 nurse practitioner and any other information provided by the
195 primary caregiver required by the facility before or when the
196 person is admitted to receive respite care. The medical

197 information must include a physician's order for respite care
 198 and proof of a physical examination by a licensed physician,
 199 physician assistant, or nurse practitioner. The physician's
 200 order and physical examination may be used to provide
 201 intermittent respite care for up to 12 months after the date the
 202 order is written.

203 (4) The facility shall assume the duties of the primary
 204 caregiver. To ensure continuity of care and services, the
 205 resident may retain his or her personal physician and shall have
 206 access to medically necessary services such as physical therapy,
 207 occupational therapy, or speech therapy, as needed. The facility
 208 shall arrange for transportation of the resident to these
 209 services, if necessary.

210 Section 4. Subsection (2) of section 429.905, Florida
 211 Statutes, is amended to read:

212 429.905 Exemptions; monitoring of adult day care center
 213 programs colocated with assisted living facilities or licensed
 214 nursing home facilities.—

215 (2) A licensed assisted living facility, a licensed
 216 hospital, or a licensed nursing home facility may provide
 217 services during the day which include, but are not limited to,
 218 social, health, therapeutic, recreational, nutritional, and
 219 respite services, to adults who are not residents. Such a
 220 facility need not be licensed as an adult day care center;
 221 however, the agency must monitor the facility during the regular
 222 inspection and at least biennially to ensure adequate space and
 223 sufficient staff. If an assisted living facility, a hospital, or
 224 a nursing home holds itself out to the public as an adult day

225 care center, it must be licensed as such and meet all standards
 226 prescribed by statute and rule. For the purpose of this
 227 subsection, the term "day" means any portion of a 24-hour day.

228 Section 5. Subsection (8) of section 651.118, Florida
 229 Statutes, is amended to read:

230 651.118 Agency for Health Care Administration;
 231 certificates of need; sheltered beds; community beds.—

232 (8) A provider may petition the Agency for Health Care
 233 Administration to use a designated number of sheltered nursing
 234 home beds to provide assisted living ~~extended congregate care as~~
 235 ~~defined in s. 429.02~~ if the beds are in a distinct area of the
 236 nursing home which can be adapted to meet the requirements for
 237 an assisted living facility as defined in s. 429.02 ~~extended~~
 238 ~~congregate care~~. The provider may subsequently use such beds as
 239 sheltered beds after notifying the agency of the intended
 240 change. Any sheltered beds used to provide assisted living
 241 ~~extended congregate care~~ pursuant to this subsection may not
 242 qualify for funding under the Medicaid waiver. Any sheltered
 243 beds used to provide assisted living ~~extended congregate care~~
 244 pursuant to this subsection may share common areas, services,
 245 and staff with beds designated for nursing home care, provided
 246 that all of the beds are under common ownership. For the
 247 purposes of this subsection, fire and life safety codes
 248 applicable to nursing home facilities shall apply.

249 Section 6. This act shall take effect July 1, 2012.