

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. 408.036,  
20          F.S.; providing an exemption from certain certificate-  
21          of-need requirements to provide for the creation of a  
22          pilot project in any of specified Agency for Health  
23          Care Administration subdistricts; requiring the  
24          nursing home to be affiliated with an accredited  
25          nursing school that offers certain degree programs;  
26          providing requirements for affiliation with a private  
27          accredited university and for location and staffing of  
28          the nursing home; providing for the pilot project to

CS/CS/HB 787

2012

29 | proceed notwithstanding any moratorium under certain  
30 | conditions; providing for expiration of the exemption;  
31 | amending s. 429.905, F.S.; defining the term "day" for  
32 | purposes of day care services provided to adults who  
33 | are not residents; amending s. 651.118, F.S.;

34 | providing a funding limitation on sheltered nursing  
35 | home beds used to provide assisted living, rather than  
36 | extended congregate care services; authorizing certain  
37 | sharing of areas, services, and staff between such  
38 | sheltered beds and nursing home beds in those  
39 | facilities; providing an effective date.

40 |  
41 | WHEREAS, the Legislature recognizes that the use of nursing  
42 | homes has decreased over the past decade because of alternatives  
43 | that are now available to consumers, and

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

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

54 |  
55 | Be It Enacted by the Legislature of the State of Florida:  
56 |

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

60 400.021 Definitions.—When used in this part, unless the  
 61 context otherwise requires, the term:

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

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

85 ~~that have been delegated to the registered nurse.~~

86 (19) "Therapeutic spa services" means bathing, nail, and  
 87 hair care services and other similar services related to  
 88 personal hygiene.

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

91 400.141 Administration and management of nursing home  
 92 facilities.-

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

95 (f) Be allowed and encouraged by the agency to provide  
 96 other needed services under certain conditions. If the facility  
 97 has a standard licensure status, ~~and has had no class I or class~~  
 98 ~~II deficiencies during the past 2 years or has been awarded a~~  
 99 ~~Gold Seal under the program established in s. 400.235,~~ it may be  
 100 ~~encouraged by the agency to provide services, including, but not~~  
 101 ~~limited to, respite, therapeutic spa, and adult day services to~~  
 102 ~~nonresidents, which enable individuals to move in and out of the~~  
 103 facility. A facility is not subject to any additional licensure  
 104 requirements for providing these services. Respite care may be  
 105 offered to persons in need of short-term or temporary nursing  
 106 home services. Respite care must be provided in accordance with  
 107 this part ~~and rules adopted by the agency. However, the agency~~  
 108 ~~shall, by rule, adopt modified requirements for resident~~  
 109 ~~assessment, resident care plans, resident contracts, physician~~  
 110 ~~orders, and other provisions, as appropriate, for short-term or~~  
 111 ~~temporary nursing home services. Providers of adult day services~~  
 112 must comply with the requirements of s. 429.905(2). The agency

113 shall allow for shared programming and staff in a facility which  
114 meets minimum standards and offers services pursuant to this  
115 paragraph, but, if the facility is cited for deficiencies in  
116 patient care, may require additional staff and programs  
117 appropriate to the needs of service recipients. A person who  
118 receives respite care may not be counted as a resident of the  
119 facility for purposes of the facility's licensed capacity unless  
120 that person receives 24-hour respite care. A person receiving  
121 either respite care for 24 hours or longer or adult day services  
122 must be included when calculating minimum staffing for the  
123 facility. Any costs and revenues generated by a nursing home  
124 facility from nonresidential programs or services shall be  
125 excluded from the calculations of Medicaid per diems for nursing  
126 home institutional care reimbursement.

127 (g) If the facility has a standard license ~~or is a Gold~~  
128 ~~Seal facility~~, exceeds the minimum required hours of licensed  
129 nursing and certified nursing assistant direct care per resident  
130 per day, and is part of a continuing care facility licensed  
131 under chapter 651 or a retirement community that offers other  
132 services pursuant to part III of this chapter or part I or part  
133 III of chapter 429 on a single campus, be allowed to share  
134 programming and staff. At the time of inspection ~~and in the~~  
135 ~~semiannual report required pursuant to paragraph (e)~~, a  
136 continuing care facility or retirement community that uses this  
137 option must demonstrate through staffing records that minimum  
138 staffing requirements for the facility were met. Licensed nurses  
139 and certified nursing assistants who work in the ~~nursing home~~  
140 facility may be used to provide services elsewhere on campus if

141 the facility exceeds the minimum number of direct care hours  
 142 required per resident per day and the total number of residents  
 143 receiving direct care services from a licensed nurse or a  
 144 certified nursing assistant does not cause the facility to  
 145 violate the staffing ratios required under s. 400.23(3)(a).  
 146 Compliance with the minimum staffing ratios must ~~shall~~ be based  
 147 on the total number of residents receiving direct care services,  
 148 regardless of where they reside on campus. If the facility  
 149 receives a conditional license, it may not share staff until the  
 150 conditional license status ends. This paragraph does not  
 151 restrict the agency's authority under federal or state law to  
 152 require additional staff if a facility is cited for deficiencies  
 153 in care which are caused by an insufficient number of certified  
 154 nursing assistants or licensed nurses. The agency may adopt  
 155 rules for the documentation necessary to determine compliance  
 156 with this provision.

157 Section 3. Section 400.172, Florida Statutes, is created  
 158 to read:

159 400.172 Respite care provided in nursing home facilities.-

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

163 (a) Have a written abbreviated plan of care that, at a  
 164 minimum, includes nutritional requirements, medication orders,  
 165 physician orders, nursing assessments, and dietary preferences.  
 166 The nursing or physician assessments may take the place of all  
 167 other assessments required for full-time residents.

168 (b) Have a contract that, at a minimum, specifies the

169 services to be provided to a resident receiving respite care,  
170 including charges for services, activities, equipment, emergency  
171 medical services, and the administration of medications. If  
172 multiple admissions for a single person for respite care are  
173 anticipated, the original contract is valid for 1 year after the  
174 date the contract is executed.

175 (c) Ensure that each resident is released to his or her  
176 caregiver or an individual designated in writing by the  
177 caregiver.

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

180 (a) Be exempt from department rules relating to the  
181 discharge planning process.

182 (b) Be covered by the residents' rights specified in s.  
183 400.022(1)(a)-(o) and (r)-(t). Funds or property of the resident  
184 are not be considered trust funds subject to the requirements of  
185 s. 400.022(1)(h) until the resident has been in the facility for  
186 more than 14 consecutive days.

187 (c) Be allowed to use his or her personal medications  
188 during the respite stay if permitted by facility policy. The  
189 facility must obtain a physician's order for the medications.  
190 The caregiver may provide information regarding the medications  
191 as part of the nursing assessment and that information must  
192 agree with the physician's order. Medications shall be released  
193 with the resident upon discharge in accordance with current  
194 physician's orders.

195 (d) Be entitled to reside in the facility for a total of  
196 60 days within a contract year or for a total of 60 days within

197 a calendar year if the contract is for less than 12 months.  
 198 However, each single stay may not exceed 14 days. If a stay  
 199 exceeds 14 consecutive days, the facility must comply with all  
 200 assessment and care planning requirements applicable to nursing  
 201 home residents.

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

203 (3) A prospective respite care resident must provide  
 204 medical information from a physician, physician assistant, or  
 205 nurse practitioner and any other information provided by the  
 206 primary caregiver required by the facility before or when the  
 207 person is admitted to receive respite care. The medical  
 208 information must include a physician's order for respite care  
 209 and proof of a physical examination by a licensed physician,  
 210 physician assistant, or nurse practitioner. The physician's  
 211 order and physical examination may be used to provide  
 212 intermittent respite care for up to 12 months after the date the  
 213 order is written.

214 (4) The facility shall assume the duties of the primary  
 215 caregiver. To ensure continuity of care and services, the  
 216 resident may retain his or her personal physician and shall have  
 217 access to medically necessary services such as physical therapy,  
 218 occupational therapy, or speech therapy, as needed. The facility  
 219 shall arrange for transportation of the resident to these  
 220 services, if necessary.

221 Section 4. Paragraph (t) is added to subsection (3) of  
 222 section 408.036, Florida Statutes, to read:

223 408.036 Projects subject to review; exemptions.—

224 (3) EXEMPTIONS.—Upon request, the following projects are



CS/CS/HB 787

2012

225 subject to exemption from the provisions of subsection (1):

226 (t) For the creation of a pilot project in planning  
227 subdistrict 4-1, subdistrict 4-2, or subdistrict 4-3 for the  
228 construction of a nursing home with up to and including 150  
229 beds, where the nursing home is affiliated with an accredited  
230 nursing school offering Bachelor of Science, Master of Science,  
231 and Doctor of Science degree programs within a private  
232 accredited university, where the nursing home will be  
233 constructed on or abutting the private accredited university.  
234 The nursing home, once licensed, must at all times have an  
235 affiliation with the private accredited university and must  
236 employ or otherwise make positions available for the education  
237 and training of nursing students in the field of long-term care  
238 or geriatric nursing. Notwithstanding any moratorium, existing  
239 or planned, on new construction of nursing home beds, the pilot  
240 project may proceed with construction, licensure, and operation.  
241 Construction must begin within 11 months after this paragraph  
242 becomes law. This paragraph expires June 30, 2014.

243 Section 5. Subsection (2) of section 429.905, Florida  
244 Statutes, is amended to read:

245 429.905 Exemptions; monitoring of adult day care center  
246 programs colocated with assisted living facilities or licensed  
247 nursing home facilities.—

248 (2) A licensed assisted living facility, a licensed  
249 hospital, or a licensed nursing home facility may provide  
250 services during the day which include, but are not limited to,  
251 social, health, therapeutic, recreational, nutritional, and  
252 respite services, to adults who are not residents. Such a

253 facility need not be licensed as an adult day care center;  
 254 however, the agency must monitor the facility during the regular  
 255 inspection and at least biennially to ensure adequate space and  
 256 sufficient staff. If an assisted living facility, a hospital, or  
 257 a nursing home holds itself out to the public as an adult day  
 258 care center, it must be licensed as such and meet all standards  
 259 prescribed by statute and rule. For the purpose of this  
 260 subsection, the term "day" means any portion of a 24-hour day.

261 Section 6. Subsection (8) of section 651.118, Florida  
 262 Statutes, is amended to read:

263 651.118 Agency for Health Care Administration;  
 264 certificates of need; sheltered beds; community beds.—

265 (8) A provider may petition the Agency for Health Care  
 266 Administration to use a designated number of sheltered nursing  
 267 home beds to provide assisted living ~~extended congregate care as~~  
 268 ~~defined in s. 429.02~~ if the beds are in a distinct area of the  
 269 nursing home which can be adapted to meet the requirements for  
 270 an assisted living facility as defined in s. 429.02 ~~extended~~  
 271 ~~congregate care~~. The provider may subsequently use such beds as  
 272 sheltered beds after notifying the agency of the intended  
 273 change. Any sheltered beds used to provide assisted living  
 274 ~~extended congregate care~~ pursuant to this subsection may not  
 275 qualify for funding under the Medicaid waiver. Any sheltered  
 276 beds used to provide assisted living ~~extended congregate care~~  
 277 pursuant to this subsection may share common areas, services,  
 278 and staff with beds designated for nursing home care, provided  
 279 that all of the beds are under common ownership. For the  
 280 purposes of this subsection, fire and life safety codes

CS/CS/HB 787

2012

281 applicable to nursing home facilities shall apply.

282       Section 7. This act shall take effect July 1, 2012.