

CHAPTER 97-82

Committee Substitute for Senate Bill No. 1836

An act relating to assisted living; suspending provisions of s. 400.4075, F.S., and ch. 58A-5.029, F.A.C., relating to limited mental health licenses; amending s. 400.402, F.S.; revising definitions; providing additional definitions; amending s. 400.407, F.S.; correcting cross references; revising requirements for monitoring visits conducted by a representative of the Agency for Health Care Administration; revising requirements for admitting an individual to a facility that provides extended congregate care services; deleting an additional license fee assessed against facilities that provide limited mental health services; amending s. 400.4075, F.S.; revising requirements for a facility in obtaining a limited mental health license; requiring a facility that holds a limited mental health license to maintain a copy of the community living support plan and a cooperative agreement for each mental health resident and verify that such resident meets certain requirements; amending s. 400.426, F.S.; revising provisions to reflect the transfer of certain duties to the Department of Children and Family Services; providing that an assessment completed through the Comprehensive Assessment and Review for Long-Term Care Services (CARES) Program fulfills certain requirements for a medical examination; requiring certain documentation for a mental health resident who resides in an assisted living facility that holds a limited mental health license; providing for an evaluation of a mental health resident in certain instances; amending s. 400.628, F.S.; prohibiting the use of restraints in adult family-care homes; requiring a study relating to certified medication technicians; requiring a report; amending s. 394.455, F.S.; revising definitions to reflect the transfer of duties to the Department of Children and Family Services; creating s. 394.4574, F.S.; providing requirements under the Baker Act for the Department of Children and Family Services with respect to a mental health resident who resides in an assisted living facility that holds a limited mental health license; providing certain department responsibilities related to a mental health resident; amending ss. 409.212, 651.011, and 651.118, F.S.; correcting cross references; amending s. 409.912, F.S.; requiring an entity that provides Medicaid prepaid health services to coordinate health care services with an assisted living facility in certain instances; requiring establishment of a workgroup on procurement of services for assisted living facilities with a limited mental health license; requiring a report; creating s. 400.4178, F.S.; providing standards for facilities that provide special care for persons with Alzheimer's disease and other related disorders; providing employee training requirements; providing continuing education requirements; providing for approval of education courses and providers; providing for fees; providing for rules; amending s. 400.452, F.S.; including education on Alzheimer's disease and related disorders in the core educational requirement for facility administrators and

staff; amending s. 430.502, F.S.; revising provisions relating to establishing memory disorder clinics; creating an additional clinic; providing an effective date.

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

Section 1. The provisions of section 400.4075, Florida Statutes, 1996 Supplement, and Rule 58A-5.029, Florida Administrative Code, are hereby suspended and shall not be enforced by the Department of Elderly Affairs or the Agency for Health Care Administration until July 1, 1997.

Section 2. Present subsections (9), (10), (11), (12), (13), (14), (16), (17), (18), (19), (21), (22), (23), (24), (25), and (26) of section 400.402, Florida Statutes, are renumbered as subsections (11), (12), (13), (14), (15), (16), (18), (19), (20), (21), (23), (24), (25), (26), (27), and (28), respectively, present subsection (15) is renumbered as subsection (17) and amended, present subsection (20) is renumbered as subsection (22) and amended, and new subsections (9) and (10) are added to that section, to read:

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

(9) “Community living support plan” means a written document prepared by a mental health resident and the mental health case manager of that resident in consultation with the administrator of the facility or the administrator’s designee. A copy must be provided to the administrator. The plan must include information about the supports, services, and special needs of the resident which enable the resident to live in the assisted living facility.

(10) “Cooperative agreement” means a written statement of understanding between a mental health care services provider and the administrator of the assisted living facility with a limited mental health license in which a mental health resident is living. The agreement specifies directions for accessing emergency and after-hours care for the mental health resident and a method by which the staff of the facility can recognize and respond to the signs and symptoms particular to that mental health resident that indicate the need for professional services. The cooperative agreement may be a component of the community living support plan.

(17)(15) “Mental health resident” means an individual who receives social security disability income due to a mental disorder as determined by the Social Security Administration or receives supplemental security income due to a mental disorder as determined by the Social Security Administration and receives optional state supplementation.:

~~(a) Is a member of a specified population group having priority for district alcohol, drug abuse, and mental health services as provided in s. 394.75(4); and~~

~~(b) Has been determined to be in need of primary care services as provided in s. 394.675(1)(a).~~

~~(22)~~(20) “Service plan” means a written plan, developed and agreed upon by the resident and, if applicable, the resident’s representative or designee or the resident’s surrogate, guardian, or attorney in fact, if any, and the administrator or designee representing the facility, which addresses the unique physical and psychosocial needs, abilities, and personal preferences of each resident receiving extended congregate care services ~~or mental health services~~. The plan shall include a brief written description, in easily understood language, of what services shall be provided, who shall provide the services, when the services shall be rendered, and the purposes and benefits of the services.

Section 3. Paragraph (b) of subsection (1) and subsections (3) and (4) of section 400.407, Florida Statutes, are amended to read:

400.407 License required; fee, display.—

(1)

(b)1. Any person found guilty of violating paragraph (a) who, upon notification by the agency, fails, within 10 working days after receiving such notification, to apply for a license commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Any person found to be in violation of paragraph (a) due to a change in s. 400.402(3), (18), (24), or (25) ~~(16), (22), or (23)~~ or a modification in department policy pertaining to personal services as provided for in s. 400.402~~(16)~~ and who, upon notification by the agency, fails, within 10 working days after receiving such notification, to apply for a license commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Except as provided for in subparagraph 2., any person who violates paragraph (a) who previously operated a licensed facility or concurrently operates a licensed facility and an unlicensed facility commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. Any person who fails to obtain a license after agency notification may be fined for each day of noncompliance pursuant to s. 400.419(1)(b).

5. When an owner has an interest in more than one facility, and fails to license any one of these facilities, the agency may revoke the license or impose a moratorium on any or all of the licensed facilities until such time as the delinquent facility is licensed.

6. If the agency determines that an owner is operating or maintaining a facility without obtaining a license authorizing such operation and determines that a condition exists in the facility that poses a threat to the health, safety, or welfare of a resident of the facility, the owner commits neglect as defined in s. 415.102 and is subject to the same actions and penalties specified in ss. 400.414 and 400.419 for a negligent act seriously affecting the health, safety, or welfare of a resident of the facility.

(3) Any license granted by the agency ~~must~~ shall state the maximum resident capacity of the facility, the type of care for which the license is

granted, the date the license is issued, the expiration date of the license, and any other information deemed necessary by the agency. Licenses shall be issued for one or more of the following categories of care: standard, extended congregate care, limited nursing services, or limited mental health services.

(a) A standard license shall be issued to facilities providing one or more of the services identified in s. 400.402(16). Such facilities may also employ or contract with a person licensed under chapter 464 to administer medications and perform other tasks as specified in s. 400.4255.

(b) An extended congregate care license shall be issued to facilities providing, directly or through contract, services beyond those authorized in paragraph (a), including acts performed pursuant to chapter 464 by persons licensed thereunder, and supportive services ~~which may be~~ defined by rule to persons who otherwise would be disqualified from continued residence in a facility licensed under this part.

1. In order for extended congregate care services to be provided in a facility licensed under this part, the agency must first determine that all requirements established in law and rule are met and must specifically designate, on the facility's license, that such services may be provided and whether the designation applies to all or part of a facility. Such designation may be made at the time of initial licensure or biennial relicensure, or upon request in writing by a licensee under this part. Notification of approval or denial of such request shall be made within 90 days after receipt of such request and all necessary documentation. Existing facilities qualifying to provide extended congregate care services must ~~shall~~ have maintained a standard license and may ~~shall~~ not have been subject to administrative sanctions during the previous 2 years, or since initial licensure if the facility has been licensed for less than 2 years, for any of the following reasons:

- a. A class I or class II violation;
- b. Three or more repeat or recurring class III violations of identical or similar resident care standards as specified in rule from which a pattern of noncompliance is found by the agency;
- c. Three or more class III violations ~~that~~ ~~which~~ were not corrected in accordance with the corrective action plan approved by the agency;
- d. Violation of resident care standards resulting in a requirement to employ the services of a consultant pharmacist or consultant dietitian;
- e. Denial, suspension, or revocation of a license for another facility under this part in which the applicant for an extended congregate care license has at least 25 percent ownership interest; or
- f. Imposition of a moratorium on admissions or initiation of injunctive proceedings.

2. Facilities ~~that~~ ~~which~~ are licensed to provide extended congregate care services shall maintain a written progress report on each person who receives such services, which report describes the type, amount, duration,

scope, and outcome of services that are rendered and the general status of the resident's health. A registered nurse, or appropriate designee, representing the agency shall visit such facilities at least ~~two~~ three times a year to monitor residents who are receiving extended congregate care services and to determine if the facility is in compliance with applicable provisions of this part and with related rules that relate to extended congregate care. One of these visits may be in conjunction with the regular biennial survey. The monitoring visits may be provided through contractual arrangements with appropriate community agencies. A registered nurse shall serve as part of the team that biennially inspects such facility. The agency may waive one of the required yearly monitoring visits for a facility that has been licensed for at least 24 months to provide extended congregate care services, if, during the biennial inspection, the registered nurse determines that extended congregate care services are being provided appropriately, and if the facility has no class I or class II violations and no uncorrected class III violations. Before such decision is made, the agency shall consult with the long-term care ombudsman council for the area in which the facility is located to determine if any complaints have been made and substantiated about the quality of services or care. The agency may ~~shall~~ not waive one of the required yearly monitoring visits if complaints have been made and substantiated.

3. Facilities that ~~which~~ are licensed to provide extended congregate care services shall:

a. Demonstrate the capability to meet unanticipated resident service needs.

b. Offer a physical environment that ~~which~~ promotes a homelike setting, provides for resident privacy, promotes resident independence, and allows sufficient congregate space as defined by rule.

c. Have sufficient staff available, taking into account the physical plant and firesafety features of the building, to assist with the evacuation of residents in an emergency, as necessary.

d. Adopt and follow policies and procedures that ~~which~~ maximize resident independence, dignity, choice, and decisionmaking to permit residents to age in place to the extent possible, so that moves due to changes in functional status are minimized or avoided.

e. Allow residents or, if applicable, a resident's representative, designee, surrogate, guardian, or attorney in fact to make a variety of personal choices, participate in developing service plans, and share responsibility in decisionmaking.

f. Implement the concept of managed risk.

g. Provide, either directly or through contract, the services of a person licensed pursuant to chapter 464.

h. In addition to the training mandated in s. 400.452, provide specialized training as defined by rule for facility staff.

4. Facilities licensed to provide extended congregate care services ~~are~~ shall be exempt from the criteria for continued residency as set forth in rules adopted under rule pursuant to s. 400.441(1)(h). Facilities so licensed shall adopt their own requirements within guidelines for continued residency set forth by the department in rule. However, such facilities ~~may~~ shall not serve residents who require 24-hour nursing supervision. Facilities licensed to provide extended congregate care services shall provide each resident with a written copy of facility policies governing admission and retention.

5. The primary purpose of extended congregate care services is to allow residents, as they become more impaired, the option of remaining in a familiar setting from which they would otherwise be disqualified for continued residency. A facility licensed to provide extended congregate care services may also admit an individual who exceeds the admission criteria for a facility with a standard license, if the individual is determined appropriate for admission to the extended congregate care facility, ~~and either:~~

- ~~a. Transfers from a facility with a standard license; or~~
- ~~b. Transfers from another facility licensed to provide extended congregate care services.~~

6. Before admission of an individual to a facility licensed to provide extended congregate care services, the individual must undergo a medical examination as provided in s. 400.426(4) and the facility must develop a preliminary service plan for the individual.

7. When a facility can no longer provide or arrange for services in accordance with the resident's service plan and needs and the facility's policy, the facility shall make arrangements for relocating the person in accordance with s. 400.428(1)(k).

8. Failure to provide extended congregate care services may result in denial of extended congregate care license renewal.

9. No later than January 1 of each year, the department, in consultation with the agency, shall prepare and submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairmen of appropriate legislative committees, a report on the status of, and recommendations related to, extended congregate care services. The status report must include, but need not be limited to, the following information:

- a. A description of the facilities licensed to provide such services, including total number of beds licensed under this part.
- b. The number and characteristics of residents receiving such services.
- c. The types of services rendered that could not be provided through a standard license.
- d. An analysis of deficiencies cited during biennial inspections.
- e. The number of residents who required extended congregate care services at admission and the source of admission.

f. Recommendations for statutory or regulatory changes.

g. The availability of extended congregate care to state clients residing in facilities licensed under this part and in need of additional services, and recommendations for appropriations to subsidize extended congregate care services for such persons.

h. Such other information as the department considers appropriate.

(c) A limited nursing services license shall be issued to a facility that ~~which~~ provides services beyond those authorized in paragraph (a) and as specified in this paragraph.

1. In order for limited nursing services to be provided in a facility licensed under this part, the agency must first determine that all requirements established in law and rule are met and must specifically designate, on the facility's license, that such services may be provided. Such designation may be made at the time of initial licensure or biennial relicensure, or upon request in writing by a licensee under this part. Notification of approval or denial of such request shall be made within 90 days after receipt of such request and all necessary documentation. Existing facilities qualifying to provide limited nursing services shall have maintained a standard license and may shall not have been subject to administrative sanctions that ~~which~~ affect the health, safety, and welfare of residents for the previous 2 years or since initial licensure if the facility has been licensed for less than 2 years.

2. Facilities that ~~which~~ are licensed to provide limited nursing services shall maintain a written progress report on each person who receives such nursing services, which report describes the type, amount, duration, scope, and outcome of services that are rendered and the general status of the resident's health. A registered nurse representing the agency shall visit such facilities at least once a year to monitor residents who are receiving limited nursing services and to determine if the facility is in compliance with applicable provisions of this part and with related rules. The monitoring visits may be provided through contractual arrangements with appropriate community agencies. A registered nurse shall also serve as part of the team that biennially inspects such facility.

3. A person who receives limited nursing services under this part must meet the admission criteria established by the agency for assisted living facilities. When a resident no longer meets the admission criteria for a facility licensed under this part, arrangements for relocating the person shall be made in accordance with s. 400.428(1)(k), unless the facility is licensed to provide extended congregate care services.

(4)(a) The biennial license fee required of a facility is \$240 per license, with an additional fee of \$30 per resident based on the total licensed resident capacity of the facility, except that no additional fee will be assessed for beds designated for recipients of optional state supplementation payments provided for in s. 409.212. The total fee may shall not exceed \$10,000, no part of which shall be returned to the facility. ~~Effective July 1, 1995,~~ The agency shall adjust the per bed license fee and the total licensure fee annually by

not more than the change in the consumer price index based on the 12 months immediately preceding the increase.

(b) In addition to the total fee assessed under paragraph (a), the agency shall require facilities that are licensed to provide extended congregate care services under this part to pay an additional fee per licensed facility. The amount of the biennial fee shall be \$400 per license, no part of which shall be returned to the facility. ~~Beginning July 1, 1990,~~ The agency may adjust the annual license fee once each year by not more than the average rate of inflation for the 12 months immediately preceding the increase.

(c) In addition to the total fee assessed under paragraph (a), the agency shall require facilities that are licensed to provide limited nursing services under this part to pay an additional fee per licensed facility. The amount of the biennial fee shall be \$200 per license, with an additional fee of \$10 per resident based on the total licensed resident capacity of the facility. The total biennial fee ~~may shall~~ not exceed \$2,000, no part of which shall be returned to the facility. ~~Beginning July 1, 1990,~~ The agency may adjust the \$200 biennial license fee and the maximum total license fee once each year by not more than the average rate of inflation for the 12 months immediately preceding the increase.

~~(d) In addition to the total fee assessed under paragraph (a), the agency shall require that facilities designated to provide limited mental health services under this part pay an additional fee per licensed facility. The biennial fee shall be \$200 per facility with an additional fee of \$10 per resident based on the capacity of the facility for limited mental health services. The total fee shall not exceed \$1,000, no part of which shall be returned to the facility. Beginning July 1, 1990, the agency may adjust the \$200 biennial license fee and the maximum total license fee once each year by not more than the average rate of inflation for the 12 months immediately preceding the increase.~~

Section 4. Section 400.4075, Florida Statutes, 1996 Supplement, is amended to read:

400.4075 Limited mental health license.—An assisted living facility that serves three or more mental health residents must obtain a limited mental health license.

(1) To obtain a limited mental health license, a facility must hold a standard license as an assisted living facility and must ensure that, within 6 months after receiving a limited mental health license, the facility administrator and the staff of the facility who are in direct contact with mental health residents must complete training of no less than 6 hours related to their duties. This training will be provided by or approved by the Department of Children and Family Services. A limited mental health license shall be issued to facilities that provide services to mental health residents who meet the criteria of s. 400.402(15).

~~(1) In order for services to be provided to mental health residents in a facility licensed under this part, the agency shall first determine that all requirements established in law and rule are met and shall specifically~~

~~designate, on the facility's license, that services may be provided to mental health residents, and shall designate the number of such residents who may receive services. Such designation may be made at the time of initial licensure or biennial relicensure, or if requested in writing by a licensee under this part. Notification of approval or denial of such request shall be made within 90 days after receipt of such request and all necessary documentation. Existing facilities qualifying to provide services to such residents shall meet the licensing standards in this section and shall not have been subject to administrative sanctions which affect the health, safety, or welfare of residents for the previous 2 years or since initial licensure if the facility has been licensed for less than 2 years.~~

(2) ~~Facilities licensed to provide services to mental health residents shall provide appropriate supervision and staffing, as defined by rule, to provide for the health, safety, and welfare of such residents.~~

(3) A facility that has a limited mental health license must:

(a) Have a copy of each mental health resident's community living support plan and the cooperative agreement with the mental health care services provider. The support plan and the agreement may be combined.

(b) Have documentation that is provided by the Department of Children and Family Services that each mental health resident has been assessed and determined to be able to live in the community in an assisted living facility with a limited mental health license.

(c) Make the community living support plan available for inspection by the resident, the resident's legal guardian, the resident's health care surrogate, and other individuals who have a lawful basis for reviewing this document.

(d) Assist the mental health resident in carrying out the activities identified in the individual's community living support plan.

(4) A facility with a limited mental health license may enter into a cooperative agreement with a private mental health provider. For purposes of the limited mental health license, the private mental health provider may act as the case manager.

~~(3) In addition to the training as provided in s. 400.452, staff in facilities that are authorized to provide services to mental health residents shall receive training, as defined by rule, on the special needs of such residents.~~

~~(4) Facilities designated to provide services to mental health residents may not have more than the maximum resident capacity for the facility.~~

~~(5) A mental health resident who receives services under this part shall meet the admission criteria established by the department for assisted living facilities. When a resident no longer meets the admission criteria for a facility licensed under this part, arrangements for relocating the person shall be made in accordance with s. 400.428(1)(k).~~

~~(6) An assisted living facility serving mental health residents under this part shall have on file for each mental health resident a written mental health plan. The plan shall be open and available for inspection by the resident, the resident's legal guardian, if any, the resident's health care surrogate, if any, and all other entities or individuals having lawful access to such records. The department shall establish standards regarding the format and content of such plans.~~

~~(7) Facilities licensed to provide services to mental health residents under this part shall be required to have a written agreement with the nearest publicly funded community facility as defined in s. 394.455 or a licensed mental health professional designated by the district alcohol, drug abuse, and mental health program office. The agreement shall specify the manner in which the clinical mental health services that are included in residents' mental health plans shall be accessed and delivered.~~

Section 5. Subsections (1), (4), (6), (7), and (8) of section 400.426, Florida Statutes, 1996 Supplement, are amended to read:

400.426 Appropriateness of placements; examinations of residents.—

(1) The owner or administrator of a facility is responsible for determining the appropriateness of admission of an individual to the facility and for determining the continued appropriateness of residence of an individual in the facility. A determination shall be based upon an assessment of the strengths, needs, and preferences of the resident, the care and services offered or arranged for by the facility in accordance with facility policy, and any limitations in law or rule related to admission criteria or continued residency for the type of license held by the facility under this part. A resident may not be moved from one facility to another without consultation with and agreement from the resident or, if applicable, the resident's representative or designee or the resident's family, guardian, surrogate, or attorney in fact. In the case of a resident who has been placed by the department or the Department of Children and Family Health and Rehabilitative Services, the administrator must notify the appropriate contact person in the applicable department.

(4) ~~If~~ Where possible, each resident shall have been examined by a licensed physician or a licensed nurse practitioner within 60 days before admission to the facility. The signed and completed medical examination report shall be submitted to the owner or administrator of the facility who shall use ~~utilize~~ the information contained therein to assist in the determination of the appropriateness of the resident's admission and continued stay in the facility. The medical examination report shall become a permanent part of the record of the resident at the facility and shall be made available to the agency during inspection or upon request. An assessment that has been completed through the Comprehensive Assessment and Review for Long-Term Care Services (CARES) Program fulfills the requirements for a medical examination under this subsection and s. 400.407(3)(b)6.

(6) Any resident accepted in a facility and placed by the department or the Department of Children and Family Health and Rehabilitative Services

shall have been examined by medical personnel within 30 days before placement in the facility. The examination shall include an assessment of the appropriateness of placement in a facility. The findings of this pursuant to such examination shall be recorded on the examination form provided by the agency. The completed form shall accompany the resident and shall be submitted to the facility owner or administrator. Additionally, in the case of a mental health resident, the Department of Children and Family Services must provide documentation that the individual has been assessed by a psychiatrist, clinical psychologist, clinical social worker, or psychiatric nurse, or an individual who is supervised by one of these professionals, and determined to be appropriate to reside in an assisted living facility. The documentation must be in the facility within 30 days after the mental health resident has been admitted to the facility. An evaluation completed upon discharge from a state mental hospital meets the requirements of this subsection related to appropriateness for placement as a mental health resident providing it was completed within 90 days prior to admission to the facility. ~~In addition, any resident placed by the department or the Department of Health and Rehabilitative Services who is a mental health resident shall also be evaluated by a mental health professional, as defined in s. 394.455(2), (4), (20), (22), or (23), to assess the resident's appropriateness for placement in a facility.~~ The applicable department shall provide to the facility administrator any information about the resident that would help the administrator meet his or her responsibilities under subsection (1). Further, department personnel shall explain to the facility operator any special needs of the resident and advise the operator whom to call should problems arise. The applicable department shall advise and assist the facility administrator where the special needs of residents who are recipients of optional state supplementation require such assistance.

(7) The Department of Children and Family Health and Rehabilitative Services may require an examination for supplemental security income and optional state supplementation recipients residing in facilities at any time and shall provide the such examination whenever a resident's condition requires it. Any facility administrator; personnel of the agency, the department, or the Department of Children and Family Health and Rehabilitative Services; or long-term care ombudsman council member who believes a resident needs to be evaluated shall notify the resident's case manager, who shall take appropriate action. A report of the examination findings shall be provided to the resident's case manager and the facility administrator to help the administrator meet his or her responsibilities under subsection (1).

(8) If, at any time after admission to a facility, a resident appears to need care beyond that which the facility is licensed to provide, the agency shall require the resident to be physically examined by a licensed physician or licensed nurse practitioner. This or ~~evaluated by an appropriate mental health professional, as defined in s. 394.455(2), (4), (20), (22), or (23);~~ such examination shall, to the extent possible, be performed by the resident's preferred physician or nurse practitioner ~~or mental health professional~~ and shall be paid for by the resident with personal funds, except as provided in s. 400.418(1)(b). Following this ~~Pursuant to such~~ examination, the examining physician or licensed nurse practitioner shall complete and sign a medical form provided by the agency. The completed medical form shall be sub-

mitted to the agency within 30 days after ~~from~~ the date the facility owner or administrator is notified by the agency that the physical examination is required. After consultation with the physician or licensed nurse practitioner who performed the examination, a medical review team designated by the agency shall then determine whether the resident is appropriately residing in the facility. The medical review team shall base its decision on a comprehensive review of the resident's physical and functional status, including the resident's preferences, and not on an isolated health-related problem. In the case of a mental health resident, if the resident appears to have needs in addition to those identified in the community living support plan, the agency may require an evaluation by a mental health professional, as determined by the Department of Children and Family Services. A facility ~~may~~ must not be required to retain a resident who requires more services or care than the facility is able to provide in accordance with its policies and criteria for admission and continued residency. Members of the medical review team making the final determination may ~~shall~~ not include the agency personnel who initially questioned the appropriateness of a resident's placement. Such determination is ~~shall be~~ final and binding upon the facility and the resident. Any resident who is determined by the medical review team to be inappropriately residing in a facility shall be given 30 days' written notice to relocate by the owner or administrator, unless the resident's continued residence in the facility presents an imminent danger to the health, safety, or welfare of the resident or a substantial probability exists that death or serious physical harm would result to the resident if allowed to remain in the facility.

Section 6. Paragraph (k) of subsection (1) of section 400.628, Florida Statutes, is amended to read:

400.628 Residents' bill of rights.—

(1) A resident of an adult family-care home may not be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the State Constitution, or the Constitution of the United States solely by reason of status as a resident of the home. Each resident has the right to:

(k) Be free from chemical and physical restraints ~~except as ordered by a physician.~~

Section 7. The Department of Elderly Affairs, in conjunction with the Department of Health, the Agency for Health Care Administration, the Board of Nursing, the Board of Pharmacy, and the Department of Education and in cooperation with the Florida Health Care Association, the Florida Association of Homes for the Aged and the Florida Assisted Living Association, shall study and report to the Legislature, no later than January 1, 1998, concerning:

(1) The need for certified medication technicians and the expected impact of the use of these technicians in assisted living facilities;

(2) A determination as to whether statutory revision is necessary to implement a program for medication technicians, and if so, recommended statutory language;

(3) A training course for certified medication technicians, and a plan for making this certification course available throughout the state; and

(4) A process for the certification of medication technicians, including the entity responsible for this certification.

Section 8. Subsections (8) and (28) of section 394.455, Florida Statutes, 1996 Supplement, are amended to read:

394.455 Definitions.—As used in this part, unless the context clearly requires otherwise, the term:

(8) “Department” means the Department of Children and Family Health and Rehabilitative Services.

(28) “Secretary” means the Secretary of Children and Family Health and Rehabilitative Services.

Section 9. Section 394.4574, Florida Statutes, is created to read:

394.4574 Department responsibilities for a mental health resident who resides in an assisted living facility that holds a limited mental health license.—

(1) The term “mental health resident,” for purposes of this section, means an individual who receives social security disability income due to a mental disorder as determined by the Social Security Administration or receives supplemental security income due to a mental disorder as determined by the Social Security Administration and receives optional state supplementation.

(2) The department must ensure that:

(a) A mental health resident has been assessed by a psychiatrist, clinical psychologist, clinical social worker, or psychiatric nurse, or an individual who is supervised by one of these professionals, and determined to be appropriate to reside in an assisted living facility. The documentation must be provided to the administrator of the facility within 30 days after the mental health resident has been admitted to the facility. An evaluation completed upon discharge from a state mental hospital meets the requirements of this subsection related to appropriateness for placement as a mental health resident if it was completed within 90 days prior to admission to the facility.

(b) A cooperative agreement, as required in s. 400.4075, is developed between the mental health care services provider that serves a mental health resident, and the administrator of the assisted living facility with a limited mental health license in which the mental health resident is living. Any entity that provides Medicaid prepaid health plan services shall ensure the appropriate coordination of health care services with an assisted living facility in cases where a Medicaid recipient is both a member of the entity's prepaid health plan and a resident of the assisted living facility. If the entity is at risk for Medicaid targeted case management and behavioral health services, the entity shall inform the assisted living facility of the procedures to follow should an emergent condition arise.

(c) The community living support plan, as defined in s. 400.402, has been prepared by a mental health resident and a mental health case manager of that resident in consultation with the administrator of the facility or the administrator's designee. The plan must be provided to the administrator of the assisted living facility with a limited mental health license in which the mental health resident lives. The support plan and the agreement may be in one document.

(d) The assisted living facility with a limited mental health license is provided with documentation that the individual meets the definition of a mental health resident.

(e) The mental health services provider assigns a case manager to each mental health resident who lives in an assisted living facility with a limited mental health license. The case manager is responsible for coordinating the development of and implementation of the community living support plan defined in s. 400.402. The plan must be updated at least annually.

Section 10. Subsection (2) of section 409.212, Florida Statutes, is amended to read:

409.212 Optional supplementation.—

(2) The base rate of payment for optional state supplementation shall be established by the department within funds appropriated. Additional amounts may be provided for mental health residents in facilities designed to provide limited mental health services as provided for in s. 400.4075 s. 400.407(5). The base rate of payment does not include the personal needs allowance.

Section 11. Subsection (34) is added to section 409.912, Florida Statutes, 1996 Supplement, to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services.

(34) Any entity that provides Medicaid prepaid health plan services shall ensure the appropriate coordination of health care services with an assisted living facility in cases where a Medicaid recipient is both a member of the entity's prepaid health plan and a resident of the assisted living facility. If the entity is at risk for Medicaid targeted case management and behavioral health services, the entity shall inform the assisted living facility of the procedures to follow should an emergent condition arise.

Section 12. Subsection (2) of section 651.011, Florida Statutes, 1996 Supplement, is amended to read:

651.011 Definitions.—For the purposes of this chapter, the term:

(2) “Continuing care” or “care” means furnishing pursuant to an agreement shelter, food, and either nursing care or personal services as defined in s. 400.402(16), whether such nursing care or personal services are provided in the facility or in another setting designated by the agreement for continuing care, to an individual not related by consanguinity or affinity to the provider furnishing such care, upon payment of an entrance fee. Other personal services provided shall be designated in the continuing care agreement. Agreements to provide continuing care include agreements to provide care for any duration, including agreements that are terminable by either party.

Section 13. Subsection (8) of section 651.118, Florida Statutes, 1996 Supplement, is amended to read:

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

(8) A provider may petition the Agency for Health Care Administration to use a designated number of sheltered nursing home beds to provide extended congregate care as defined in s. 400.402(44) if the beds are in a distinct area of the nursing home which can be adapted to meet the requirements for extended congregate care. The provider may subsequently use such beds as sheltered beds after notifying the agency of the intended change.

Section 14. The Department of Children and Family Services, in cooperation with the Agency for Health Care Administration, shall establish a workgroup of interested parties, to include relevant state agencies, representatives of providers of mental health services, and owners and administrators of assisted living facilities, to develop criteria and recommend changes to the state contracting procurement process for the provision of state-funded substance abuse and mental health services to residents of assisted living facilities with a limited mental health license. Staff support will be provided by the Department of Children and Family Services. Participation in this workgroup will be at the expense of each individual except for representatives of state agencies, whose expenses must be covered by the agency for whom they work. The workgroup must report its findings and recommended changes to the Governor and the Legislature no later than January 1, 1998.

Section 15. Section 400.4178, Florida Statutes, is created to read:

400.4178 Special care for persons with Alzheimer’s disease or other related disorders.—

(1) A facility which advertises that it provides special care for persons with Alzheimer’s disease or other related disorders must meet the following standards of operation:

(a)1. If the facility has 17 or more residents, have an awake staff member on duty at all hours of the day and night; or

2. If the facility has fewer than 17 residents, have an awake staff member on duty at all hours of the day and night or have mechanisms in place to monitor and ensure the safety of the facility's residents.

(b) Offer activities specifically designed for persons who are cognitively impaired.

(c) Have a physical environment that provides for the safety and welfare of the facility's residents.

(d) Employ staff who have completed the training and continuing education required in subsection (2).

(2)(a) An individual who is employed by a facility that provides special care for residents with Alzheimer's disease or other related disorders, and who has regular contact with such residents, must complete up to 4 hours of initial dementia-specific training developed or approved by the department. The training shall be completed within 3 months after beginning employment and shall satisfy the core training requirements of s. 400.452(2)(g).

(b) A direct caregiver who is employed by a facility that provides special care for residents with Alzheimer's disease or other related disorders, and who provides direct care to such residents, must complete the required initial training and 4 additional hours of training developed or approved by the department. The training shall be completed within 9 months after beginning employment and shall satisfy the core training requirements of s. 400.452(2)(g).

(c) An individual who is employed by a facility that provides special care for residents with Alzheimer's disease or other related disorders, but who only has incidental contact with such residents, must be given, at a minimum, general information on interacting with individuals with Alzheimer's disease or other related disorders, within 3 months after beginning employment.

(3) In addition to the training required under subsection (2), a direct caregiver must participate in a minimum of 4 contact hours of continuing education each calendar year. The continuing education must include one or more topics included in the dementia-specific training developed or approved by the department, in which the caregiver has not received previous training.

(4) Upon completing any training listed in subsection (2), the employee or direct caregiver shall be issued a certificate that includes the name of the training provider, the topic covered, and the date and signature of the training provider. The certificate is evidence of completion of training in the identified topic, and the employee or direct caregiver is not required to repeat training in that topic if the employee or direct caregiver changes employment to a different facility. The employee or direct caregiver must comply with other applicable continuing education requirements.

(5) The department, or its designee, shall approve the initial and continuing education courses and providers.

(6) The department shall keep a current list of providers who are approved to provide initial and continuing education for staff of facilities that provide special care for persons with Alzheimer's disease or other related disorders.

(7) Any facility more than 90 percent of whose residents receive monthly optional supplementation payments is not required to pay for the training and education programs required under this section. A facility that has one or more such residents shall pay a reduced fee that is proportional to the percentage of such residents in the facility. A facility that does not have any residents who receive monthly optional supplementation payments must pay a reasonable fee, as established by the department, for such training and education programs.

(8) The department shall adopt rules to establish standards for trainers and training and to implement this section.

Section 16. Paragraph (g) is added to subsection (2) of section 400.452, Florida Statutes, to read:

400.452 Staff training and educational programs; core educational requirement.—

(2) The department shall also establish a core educational requirement to be used in these programs. Successful completion of the core educational requirement must include successful completion of a competency test. Programs must be provided by the department or by a provider approved by the department at least quarterly. The core educational requirement must cover at least the following topics:

(g) Alzheimer's disease and other related disorders.

Section 17. Subsection (1) of section 430.502, Florida Statutes, is amended to read:

430.502 Alzheimer's disease; memory disorder clinics and day care and respite care programs.—

(1) There is established ~~The Legislature shall fund:~~

(a) A memory disorder clinic at each of the three medical schools in this state;

(b) A memory disorder clinic at a major private nonprofit research-oriented teaching hospital, and may fund a memory disorder clinic at any of the other affiliated teaching hospitals;

(c) A memory disorder clinic at the Mayo Clinic in Jacksonville;

(d) A memory disorder clinic at the West Florida Regional Medical Center;

(e) The East Central Florida Memory Disorder Clinic at the Joint Center for Advanced Therapeutics and Biomedical Research of the Florida Institute of Technology and Holmes Regional Medical Center, Inc.; ~~and~~

(f) A memory disorder clinic at the Orlando Regional Healthcare System, Inc.; and

~~(g)~~(f) A memory disorder center located in a public hospital that is operated by an independent special hospital taxing district that governs multiple hospitals and is located in a county with a population greater than 800,000 persons,

for the purpose of conducting research and training in a diagnostic and therapeutic setting for persons suffering from Alzheimer's disease and related memory disorders. However, memory disorder clinics funded as of June 30, 1995, shall not receive decreased funding due solely to subsequent additions of memory disorder clinics in this subsection.

Section 18. This act shall take effect upon becoming a law.

Approved by the Governor May 23, 1997.

Filed in Office Secretary of State May 23, 1997.