

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 1088

INTRODUCER: Senator Albritton

SUBJECT: Nursing Home Facility Staffing

DATE: March 8, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 1088 amends nursing home staffing requirements established in s. 400.23, F.S., to define the term “direct care staff” and to replace requirements for staffing a nursing home with certified nursing assistants (CNA) with requirements for staffing with direct care staff. The bill requires a minimum weekly average of 3.9 hours of direct care staffing (increased from 3.6 hours of staffing by CNAs or licensed nurses) per resident per day and a minimum of 2.5 hours of non-nursing direct care staffing per resident per day.

The bill’s provisions take effect on July 1, 2019.

II. Present Situation:

Direct Care Staff

Federal law defines “direct care staff” as those individuals who, through interpersonal contact with nursing home residents or resident care management, provide care and services to allow residents to attain or maintain the highest practicable physical, mental, and psychosocial well-being. Direct care staff does not include individuals whose primary duty is maintaining the physical environment of the long-term care facility (for example, housekeeping).¹

Direct care staff are the primary providers of paid, hands-on care for more than 13 million elderly and disabled Americans. They assist individuals with a broad range of support, including preparing meals, helping with medications, bathing, dressing, getting about (mobility), and getting to planned activities on a daily basis.²

¹ 42 CFR s. 483.70(q)(1)

² Understanding Direct Care Workers: a Snapshot of Two of America’s Most Important Jobs, *Certified Nursing Assistants and Home Health Aides*, Khatutsky, et al., (March 2011), available at <https://aspe.hhs.gov/basic-report/understanding-direct->

Direct care staff fall into three main categories tracked by the U.S. Bureau of Labor Statistics: Nursing Assistants (usually known as Certified Nursing Assistants or CNAs), Home Health Aides, and Personal Care Aides:

- Nursing Assistants or Nursing Aides generally work in nursing homes, although some work in assisted living facilities, other community-based settings, or hospitals. They assist residents with activities of daily living (ADLs) such as eating, dressing, bathing, and toileting. They also perform clinical tasks such as range-of motion exercises and blood pressure readings.
- Home Health Aides provide essentially the same care and services as nursing assistants, but they assist people in their homes or in community settings under the supervision of a nurse or therapist. They may also perform light housekeeping tasks such as preparing food or changing linens.
- Personal Care Aides work in either private or group homes. They have many titles, including personal care attendant, home care worker, homemaker, and direct support professional. (The latter work with people with intellectual and developmental disabilities). In addition to providing assistance with ADLs, these aides often help with housekeeping chores, meal preparation, and medication management. They also help individuals go to work and remain engaged in their communities. A growing number of these workers are employed and supervised directly by consumers.³

The federal government requires training only for nursing assistants and home health aides who work in Medicare-certified and Medicaid-certified nursing homes and home health agencies. Such training includes training on residents' rights; abuse, neglect, and exploitation; quality assurance; infection control; and compliance and ethics; and specifies that direct care staff must be trained in effective communications.⁴

Nursing Home Staffing Standards

Section 400.23(3), F.S., requires the Agency for Health Care Administration to adopt rules providing minimum staffing requirements for nursing home facilities. The requirements must include:

- A minimum weekly average of 3.6 hours of direct care per resident per day provided by a combination of certified nursing assistants and licensed nursing staff. A week is defined as Sunday through Saturday.
- A minimum of 2.5 hours of direct care per resident per day provided by certified nursing assistant staff. A facility may not staff at a ratio of less than one certified nursing assistant per 20 residents.
- A minimum of 1.0 hour of direct care per resident per day provided by licensed nursing staff. A facility may not staff at a ratio of less than one licensed nurse per 40 residents.

[care-workers-snapshot-two-americas-most-important-jobs-certified-nursing-assistants-and-home-health-aides#intro](#) (last visited on Mar. 7, 2019).

³ See *Who are Direct Care Workers?* available at <https://phinational.org/wp-content/uploads/legacy/clearinghouse/NCDCW%20Fact%20Sheet-1.pdf> (last visited on Mar. 7, 2019)

⁴ 42 CFR s. 483.95

- Nursing assistants employed under s. 400.211(2), F.S., may be included in computing the staffing ratio for certified nursing assistants if their job responsibilities include only nursing-assistant-related duties.
- Each nursing home facility must document compliance with staffing standards and post daily the names of staff on duty for the benefit of facility residents and the public.
- Licensed nurses may be used to meet staffing requirements for CNAs if the licensed nurses are performing the duties of a CNA and the facility otherwise meets minimum staffing requirements for licensed nurses.
- Non-nursing staff providing eating assistance to residents do not count toward compliance with minimum staffing standards.

III. Effect of Proposed Changes:

SB 1088 amends s. 400.23, F.S., to:

- Define the term “direct care staff” to mean individuals who, through interpersonal contact with residents or resident care management, provide care and services that allow residents to attain or maintain their highest practicable physical, mental, and psychosocial states of well-being.
 - The term does not include individuals whose primary duty is maintaining the physical environment of the facility.
 - Direct care staffing hours do not include time spent on: nursing administration, staff development, staffing coordination, and the administrative portion of the minimum data set and care plan coordination.
- Replace requirements for staffing with CNAs with requirements for staffing with direct care staff, except that a facility may not staff below one CNA per 20 residents at any time.
- Establish staffing requirements as follows:
 - A minimum weekly average of 3.9 hours of direct care staffing per resident per day (increased from 3.6 hours of staffing by CNAs or licensed nurses) as determined by facility assessment staffing needs in accordance with Federal Requirements of Participation; and
 - A minimum of 2.5 hours of non-nursing direct care staffing per resident per day.
- Specify that a facility may not staff below one licensed nurse per 40 residents at any time.
- Make conforming changes.

The bill provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Lines 22-34 of SB 1088 define the term “direct care staff” applicable to the sub-subparagraph in which the definition is located. However, the bill uses the term “direct care staff” throughout the paragraph in which the term is defined. The bill should be amended to apply the definition of “direct care staff” to the paragraph rather than the sub-subparagraph.

VII. Related Issues:

Lines 21-22 of SB 1088 refer to “staffing needs in accordance with Federal Requirements of Participation.” Rather than citing to the unspecified “Federal Requirements of Participation” it may be clearer to cite to the specific portion of the Code of Federal Regulations where the requirements of participation are located, specifically 42 CFR s. 483 subpart B.

VIII. Statutes Affected:

This bill substantially amends section 400.23 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
