

By Senator Meek

36-933A-99

1 A bill to be entitled
2 An act relating to health care; amending s.
3 400.063, F.S.; providing for use of moneys in
4 the Resident Protection Trust Fund to operate a
5 facility under receivership; amending s.
6 400.126, F.S.; requiring the Agency for Health
7 Care Administration to petition a court to
8 appoint a receiver for a nursing home facility
9 prior to delicensure or decertification;
10 providing conditions under which the
11 receivership may be terminated; providing for
12 use of funds in the Resident Protection Trust
13 Fund; amending s. 400.23, F.S.; requiring the
14 Agency for Health Care Administration to adopt
15 rules providing minimum staffing requirements
16 for certified nursing assistants in nursing
17 home facilities; prohibiting health care
18 entities from taking retaliatory action against
19 any person who discloses unlawful acts of the
20 entity or its employees; providing definitions;
21 providing a cause of action for aggrieved
22 persons; authorizing specified court actions;
23 requiring health care entities to provide
24 notice on their premises that such retaliatory
25 action is not permitted; providing an effective
26 date.

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

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30 Section 1. Subsection (1) of section 400.063, Florida
31 Statutes, is amended to read:

1 400.063 Resident Protection Trust Fund.--
2 (1) A Resident Protection Trust Fund shall be
3 established for the purpose of collecting and disbursing funds
4 generated from the license fees and administrative fines as
5 provided for in ss. 393.0673(2), 400.062(3)(b), 400.111(1),
6 400.121(2), and 400.23(9). Such funds shall be solely for the
7 ~~sole~~ purpose of paying for the appropriate alternate
8 placement, care, and treatment of residents who are removed
9 from a facility licensed under this part or a facility
10 specified in s. 393.0678(1) in which the agency determines
11 that existing conditions or practices constitute an immediate
12 danger to the health, safety, or security of the residents or
13 for the operation of a facility under receivership as provided
14 in s. 400.126. If the agency determines that it is in the
15 best interest of the health, safety, or security of the
16 residents to provide for an orderly removal of the residents
17 from the facility, the agency may utilize such funds to
18 maintain and care for the residents in the facility pending
19 removal and alternative placement. The maintenance and care
20 of the residents shall be under the direction and control of a
21 receiver appointed pursuant to s. 393.0678(1) or s.
22 400.126(1). However, funds may be expended in an emergency
23 upon a filing of a petition for a receiver, upon the
24 declaration of a state of local emergency pursuant to s.
25 252.38(3)(a)5., or upon a duly authorized local order of
26 evacuation of a facility by emergency personnel to protect the
27 health and safety of the residents.

28 Section 2. Present subsections (2) through (11) of
29 section 400.126, Florida Statutes, are redesignated as
30 subsections (3) through (12), respectively, and a new
31 subsection (2) is added to that section to read:

1 400.126 Receivership proceedings.--

2 (2)(a) Prior to initiating the delicensure or
3 decertification of a nursing home facility, the agency shall
4 petition a court of competent jurisdiction for the appointment
5 of a receiver, who shall operate the facility in accordance
6 with this section until:

7 1. The facility has been sold to new ownership; or

8 2. The facility has been brought into compliance with
9 all applicable care standards and the owner or operator has
10 satisfied the agency that it has the means and intent to
11 operate the facility in full compliance with all state and
12 federal standards.

13 (b) The agency may adopt rules necessary to administer
14 this subsection. Funds necessary for administering this
15 subsection shall be provided from the Resident Protection
16 Trust Fund, in accordance with s. 400.063.

17 Section 3. Present subsections (3) through (13) of
18 section 400.23, Florida Statutes, 1998 Supplement, are
19 redesignated as subsections (4) through (14), respectively,
20 and a new subsection (3) is added to that section to read:

21 400.23 Rules; criteria; Nursing Home Advisory
22 Committee; evaluation and rating system; fee for review of
23 plans.--

24 (3) The agency shall adopt rules prescribing the
25 minimum staffing requirements for certified nursing assistants
26 in nursing home facilities. These rules must:

27 (a) Require that each nursing home facility:

28 1. Maintains a minimum ratio of certified nursing
29 assistants to residents of not less than:

30 a. Day shift: 1 certified nursing assistant for every
31 8 residents.

1 b. Afternoon shift: 1 certified nursing assistant for
2 every 10 residents.

3 c. Night shift: 1 certified nursing assistant for
4 every 15 residents.

5 2. Maintains a minimum ratio of registered nurses or
6 licensed practical nurses to residents of not less than:

7 a. Day shift: 1 nurse for every 15 residents.

8 b. Afternoon shift: 1 nurse for every 25 residents.

9 c. Night shift: 1 nurse for every 35 residents.

10 (b) Prohibit any employee who is designated as a
11 member of the nursing staff from providing services such as
12 food preparation, housekeeping, laundry, or maintenance
13 services, and prohibit any person who is employed to provide
14 such services from providing nursing care to residents or
15 being counted in determining the ratios.

16 (c) Provide that these requirements apply to all
17 nursing home facility residents, including respite care
18 residents, and adjust the requirements upward to meet any
19 special care needs of residents; require that staffing
20 assignments be based on accurate acuity levels and the
21 intensity and time needed to provide safe, preventive, and
22 restorative care; and ensure that the requirements are
23 enforced for all residents, regardless of payment source,
24 without any waivers.

25 (d) Require each nursing home facility to post the
26 current ratios of residents to staff for each wing or floor of
27 the facility and for each shift. The posted ratios must show
28 separately the number of residents to licensed nursing staff
29 and the number of residents to unlicensed nursing staff
30 directly responsible for resident care. In addition, such
31 information must be posted for the most recently concluded

1 cost-reporting period in the form of average daily staffing
2 ratios for that period. This information must be posted in a
3 manner that is visible and accessible to all residents, their
4 families, caregivers, and potential consumers in each
5 facility.

6 Section 4. (1) A health care entity must not take any
7 retaliatory action against any person because the person:

8 (a) Discloses or threatens to disclose an activity,
9 policy, procedure, action, or failure to act on the part of
10 the employer or another employer with whom there is a business
11 relationship which the employee reasonably believes is in
12 violation of a federal, state, or local law, rule, ordinance,
13 declaratory ruling, standard, professional or ethical code,
14 contract provision, or subscriber or membership agreement, or
15 is incompatible with a clear mandate of public policy.

16 (b) Provides information to or testifies before any
17 public body conducting an investigation, hearing, or inquiry
18 into any alleged violation of a federal, state, or local law,
19 rule, regulation, ordinance, declaratory ruling, standard,
20 professional or ethical code, contract provision, or
21 subscriber or membership agreement, or into any alleged
22 incompatibility with a clear mandate of public policy.

23 (c) Objects to or refuses to participate in any
24 activity, policy, or practice that the employee reasonably
25 believes:

26 1. Is in violation of a federal, state, or local law,
27 rule, regulation, ordinance, declaratory ruling, standard,
28 professional or ethical code, contract provision, or
29 subscriber or membership agreement, or is incompatible with a
30 clear mandate of public policy; or

31 2. Is fraudulent or criminal.

1 (2) Upon a violation of any of the provisions of this
2 section, an aggrieved person may, within 3 years, institute a
3 civil action in a court of competent jurisdiction. Upon the
4 application of any party, a jury trial shall be directed to
5 try the validity of any claim under this section as specified
6 in the suit. All remedies available in common law tort actions
7 are available to prevailing plaintiffs. These remedies are in
8 addition to any legal or equitable relief provided by law.
9 Interest on any damages awarded must be awarded at the
10 prevailing rate. The court may also order:

11 (a) A temporary, preliminary, or permanent injunction
12 to restrain continued violation of this section;

13 (b) The reinstatement of the employee to the same
14 position held before the retaliatory action or to an
15 equivalent position;

16 (c) The reinstatement of full fringe benefits and
17 seniority rights;

18 (d) Compensatory damages, including compensation for
19 lost wages, benefits, and other remuneration;

20 (e) The payment by the employer of reasonable costs,
21 including expert witness fees and attorney's fees;

22 (f) Punitive damages; or

23 (g) An assessment of a civil fine of not more than
24 \$1,000 for the first violation of this section and not more
25 than \$5,000 for each subsequent violation, which must be paid
26 to the State Treasurer for deposit into the General Revenue
27 Fund.

28 (3) Health care entities shall post and keep posted,
29 in conspicuous places on their premises where notices to
30 employees and applicants for employment are customarily
31 posted, a notice to be prepared or approved by the Secretary

1 of the Department of Labor and Employment Security, setting
2 forth excerpts from or summaries of the pertinent provisions
3 of this section and information pertaining to the filing of a
4 charge under this section.

5 (4) As used in this section, the term:

6 (a) "Health care entity" means any governmental,
7 nonprofit, or for-profit employer in the health care industry,
8 including health care facilities, carriers, and any other
9 public or private entity whose main source of revenue is
10 derived from the provision of health care supplies or services
11 to patients, health care facilities, or health care carriers.
12 The term also includes those federal, state, or local agencies
13 whose responsibilities include oversight of health care or
14 health care entities. This term includes any individual,
15 partnership, association, corporation, or any person or group
16 of persons, all branches of federal or state government,
17 counties and municipalities, or any other political
18 subdivision of the state, or any authority, commission, or
19 board, or any other agency or instrumentality thereof.

20 (b) "Person" includes any employee, former employee,
21 consumer, provider, independent contractor, job applicant or
22 bidder, individual, partnership, association, corporation,
23 public body, or group of persons.

24 (c) "Public body" means:

25 1. The United States Congress, the State Legislature,
26 or any elected local governmental body, or any member or
27 employee thereof;

28 2. Any federal, state, or local judiciary, or any
29 member or employee thereof, or any grand or petit jury;
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1 3. Any federal, state, or local regulatory,
2 administrative, or public agency or authority, or
3 instrumentality thereof;

4 4. Any federal, state, or local law enforcement
5 agency, prosecutorial office, or police or peace officer;

6 5. Any federal, state, or local department of an
7 executive branch of government; or

8 6. Any division, board, bureau, office, committee, or
9 commission of any of the public bodies described in this
10 paragraph.

11 (d) "Retaliatory action" means the discharge,
12 suspension, or demotion or other adverse change in the
13 person's wages, benefits, or terms or conditions of
14 employment. The term includes actions, failures to act,
15 threats, intimidations, and the cancellation of or refusal to
16 renew a contract.

17 Section 5. This act shall take effect July 1, 1999.

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20 SENATE SUMMARY

21 Requires the Agency for Health Care Administration to
22 petition a court to appoint a receiver for a nursing home
23 facility prior to delicensure or decertification of the
24 facility. Provides conditions under which the
25 receivership may be terminated. Provides that moneys in
26 the Resident Protection Trust Fund be used by the
27 receiver. Requires the Agency for Health Care
28 Administration to adopt rules providing minimum staffing
29 requirements for certified nursing assistants in nursing
30 home facilities. Prohibits health care entities from
31 taking retaliatory action against any person who
 discloses unlawful acts of the entity or its employees.
 Provides definitions. Provides a cause of action for
 aggrieved persons, and authorizes specified court
 actions. Requires health care entities to provide notice
 on their premises that such retaliatory action is not
 permitted.