

By Representative Kosmas

1 A bill to be entitled
2 An act relating to nursing homes; amending s.
3 400.021, F.S.; defining "isolated deficiency";
4 amending s. 400.102, F.S.; providing additional
5 grounds for action by the agency against a
6 licensee; amending s. 400.23, F.S.; specifying
7 minimum staffing requirements for nursing
8 homes; requiring documentation and daily
9 posting of staff on duty; revising provisions
10 relating to classification of deficient
11 practices; revising penalties; providing
12 penalties for isolated deficiencies; amending
13 s. 397.405, F.S.; correcting a cross reference;
14 providing an effective date.

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

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18 Section 1. Subsections (10) through (18) of section
19 400.021, Florida Statutes, are renumbered as subsections (11)
20 through (19), respectively, and a new subsection (10) is added
21 to said section to read:

22 400.021 Definitions.--When used in this part, unless
23 the context otherwise requires, the term:

24 (10) "Isolated deficiency" means a deficiency
25 affecting one or a very limited number of residents, involving
26 one or a very limited number of staff, or related to a
27 situation that occurred only occasionally or in a very limited
28 number of locations.

29 Section 2. Section 400.102, Florida Statutes, is
30 amended to read:

31 400.102 Action by agency against licensee; grounds.--

- 1 (1) Any of the following conditions shall be grounds
2 for action by the agency against a licensee:
3 (a) An intentional or negligent act materially
4 affecting the health or safety of residents of the facility;
5 (b) Misappropriation or conversion of the property of
6 a resident of the facility;
7 (c) Failure to follow the criteria and procedures
8 provided under part I of chapter 394 relating to the
9 transportation, voluntary admission, and involuntary
10 examination of a nursing home resident;
11 (d) Violation of provisions of this part or rules
12 adopted under this part; ~~or~~
13 (e) Any act constituting a ground upon which
14 application for a license may be denied;
15 (f) A demonstrated pattern of deficient practices;
16 (g) Failure to pay any outstanding fines assessed by
17 final agency order or fines assessed by the Health Care
18 Financing Administration pursuant to requirements for federal
19 Medicare certification; or
20 (h) Exclusion from the Medicare or Medicaid programs.
21 (2) If the agency has reasonable belief that any of
22 such conditions exist, it shall take the following action:
23 (a) In the case of an applicant for original
24 licensure, denial action as provided in s. 400.121.
25 (b) In the case of an applicant for relicensure or a
26 current licensee, administrative action as provided in s.
27 400.121 or injunctive action as authorized by s. 400.125.
28 (c) In the case of a facility operating without a
29 license, injunctive action as authorized in s. 400.125.
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1 Section 3. Paragraph (a) of subsection (3) and
2 subsection (8) of section 400.23, Florida Statutes, are
3 amended to read:

4 400.23 Rules; evaluation and deficiencies; licensure
5 status.--

6 (3)(a) ~~The agency shall adopt rules providing for the~~
7 ~~minimum staffing requirements for nursing homes. These~~
8 ~~requirements shall include, for each nursing home facility, a~~
9 ~~minimum certified nursing assistant staffing of 3.0 hours per~~
10 ~~resident per day, with no single shift having less than one~~
11 ~~certified nursing assistant per 20 residents, and a minimum~~
12 ~~licensed nursing staffing of 1 hour per resident per day, with~~
13 ~~no single shift having less than one licensed nurse per 40~~
14 ~~residents. Each nursing home shall document including evening~~
15 ~~and night shifts and weekends. Agency rules shall specify~~
16 ~~requirements for documentation of compliance with staffing~~
17 ~~standards and post daily, sanctions for violation of such~~
18 ~~standards, and requirements for daily posting of the names of~~
19 ~~staff on duty for the benefit of facility residents and the~~
20 ~~public. The agency shall recognize the use of licensed nurses~~
21 ~~for compliance with minimum staffing requirements for~~
22 ~~certified nursing assistants, provided that the facility~~
23 ~~otherwise meets the minimum staffing requirements for licensed~~
24 ~~nurses and that the licensed nurses so recognized are~~
25 ~~performing the duties of a certified nursing assistant. Unless~~
26 ~~otherwise approved by the agency, licensed nurses counted~~
27 ~~towards the minimum staffing requirements for certified~~
28 ~~nursing assistants must exclusively perform the duties of a~~
29 ~~certified nursing assistant for the entire shift and shall not~~
30 ~~also be counted towards the minimum staffing requirements for~~
31 ~~licensed nurses. If the agency approved a facility's request~~

1 to use a licensed nurse to perform both licensed nursing and
2 certified nursing assistant duties, the facility must allocate
3 the amount of staff time specifically spent on certified
4 nursing assistant duties for the purpose of documenting
5 compliance with minimum staffing requirements for certified
6 and licensed nursing staff. In no event may the hours of a
7 licensed nurse with dual job responsibilities be counted
8 twice.

9 (8) The agency shall adopt rules to provide that, when
10 the criteria established under subsection (2) are not met,
11 such deficiencies, including past deficient practices
12 identified after the facility has taken corrective action,
13 shall be classified according to the nature of the deficiency.
14 The agency shall indicate the classification on the face of
15 the notice of deficiencies as follows:

16 (a) Class I deficiencies are those which the agency
17 determines present immediate jeopardy to resident health or
18 safety ~~an imminent danger to the residents or guests of the~~
19 ~~nursing home facility or a substantial probability that death~~
20 ~~or serious physical harm would result therefrom.~~ The
21 condition or practice constituting a class I violation shall
22 be abated or eliminated immediately, unless a fixed period of
23 time, as determined by the agency, is required for correction.
24 ~~Notwithstanding s. 400.121(2),~~ A class I deficiency is subject
25 to a civil penalty of \$20,000 ~~in an amount not less than~~
26 ~~\$5,000 and not exceeding \$25,000~~ for each and every
27 deficiency. However, if the class I deficiency is an isolated
28 deficiency, the penalty shall be \$10,000. A fine shall ~~may~~ be
29 levied notwithstanding the correction of the deficiency.

30 (b) Class II deficiencies are those which the agency
31 determines to involve actual harm, with potential for more

1 than minimal harm that is not immediate jeopardy.
2 Notwithstanding s. 400.121(2),~~have a direct or immediate~~
3 ~~relationship to the health, safety, or security of the nursing~~
4 ~~home facility residents, other than class I deficiencies.~~a
5 class II deficiency is subject to a civil penalty of \$5,000 ~~in~~
6 ~~an amount not less than \$1,000 and not exceeding \$10,000 for~~
7 ~~each and every deficiency. However, if the class II deficiency~~
8 ~~is an isolated deficiency, the penalty shall be \$2,500.~~A
9 citation for a class II deficiency shall specify the time
10 within which the deficiency is required to be corrected. If a
11 ~~class II deficiency is corrected within the time specified, no~~
12 ~~civil penalty shall be imposed, unless it is a repeated~~
13 ~~offense.~~

14 (c) Class III deficiencies are those which the agency
15 determines to involve no actual harm, with potential for more
16 than minimal harm that is not immediate jeopardy ~~have an~~
17 ~~indirect or potential relationship to the health, safety, or~~
18 ~~security of the nursing home facility residents, other than~~
19 ~~class I or class II deficiencies. A class III deficiency~~
20 ~~shall be subject to a civil penalty of \$2,000 not less than~~
21 ~~\$500 and not exceeding \$2,500 for each and every deficiency.~~
22 However, if the class III deficiency is an isolated
23 deficiency, the penalty shall be \$1,000.A citation for a
24 class III deficiency shall specify the time within which the
25 deficiency is required to be corrected. If a class III
26 deficiency is corrected within the time specified, no civil
27 penalty shall be imposed, unless it is a repeated offense.

28 (d) Class IV deficiencies are those which the agency
29 determines to involve no actual harm, with potential for only
30 minimal harm. If the class IV deficiency is isolated, no plan
31 of correction is required.

1 Section 4. Subsection (2) of section 397.405, Florida
2 Statutes, is amended to read:

3 397.405 Exemptions from licensure.--The following are
4 exempt from the licensing provisions of this chapter:

5 (2) A nursing home facility as defined in s.
6 400.021(13)~~(12)~~.

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8 The exemptions from licensure in this section do not apply to
9 any facility or entity which receives an appropriation, grant,
10 or contract from the state to operate as a service provider as
11 defined in this chapter or to any substance abuse program
12 regulated pursuant to s. 397.406. No provision of this
13 chapter shall be construed to limit the practice of a
14 physician licensed under chapter 458 or chapter 459, a
15 psychologist licensed under chapter 490, or a psychotherapist
16 licensed under chapter 491, providing outpatient or inpatient
17 substance abuse treatment to a voluntary patient, so long as
18 the physician, psychologist, or psychotherapist does not
19 represent to the public that he or she is a licensed service
20 provider under this act. Failure to comply with any
21 requirement necessary to maintain an exempt status under this
22 section is a misdemeanor of the first degree, punishable as
23 provided in s. 775.082 or s. 775.083.

24 Section 5. This act shall take effect July 1, 2001.
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HOUSE SUMMARY

Defines "isolated deficiency" for purposes of classification of deficient practices in nursing homes. Authorizes the Agency for Health Care Administration to take action against a nursing home for a pattern of deficient practices, failure to pay certain outstanding fines, or exclusion from the Medicare or Medicaid programs. Specifies per hour and per resident minimum certified nursing assistant and licensed nursing staffing requirements. Requires each nursing home to document and daily post the names of staff on duty. Revises descriptions of classes of deficient practices and penalties therefor. Provides reduced penalties for isolated deficiencies.