

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>      </u>	(Y/N)
ADOPTED AS AMENDED	<u>      </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>      </u>	(Y/N)
FAILED TO ADOPT	<u>      </u>	(Y/N)
WITHDRAWN	<u>      </u>	(Y/N)
OTHER	<u>      </u>	

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1 Committee/Subcommittee hearing bill: Finance & Facilities  
2 Subcommittee

3 Representative Melo offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (18) of section 400.021, Florida  
8 Statutes, is amended to read:

9 400.021 Definitions.— When used in this part, unless the  
10 context otherwise requires, the term:

11 (18) "Resident careplan" means a written comprehensive  
12 person-centered care plan developed in accordance with 42  
13 C.F.R. s. 483.21(b) that is, ~~maintained, and~~ reviewed not less  
14 than quarterly by a registered nurse, with participation from  
15 other facility staff and the resident or his or her designee or  
16 legal representative. ~~The resident care plan must include,~~

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17 ~~which includes~~ a comprehensive assessment of the needs of an  
18 individual resident; the type and frequency of services  
19 required to provide the necessary care for the resident to  
20 attain or maintain the highest practicable physical, mental,  
21 and psychosocial well-being; a listing of services provided  
22 within or outside the facility to meet those needs; and an  
23 explanation of service goals.

24 Section 2. Subsection (3) of section 400.23, Florida  
25 Statutes, is amended to read:

26 (3)(a)1. As used in this subsection, the term:

27 a. "Direct care staff" means individuals who, through  
28 interpersonal contact with residents or resident care  
29 management, provide care and services to allow residents to  
30 attain or maintain the highest practicable physical, mental,  
31 and psychosocial well-being, including, but not limited to,  
32 disciplines and professions that must be reported in accordance  
33 with 42 C.F.R. s. 483.70(q) in the following categories of  
34 direct care services: physician; pharmacy; dietary; therapeutic;  
35 dental; podiatry; and mental health. The term does not include  
36 individuals whose primary duty is maintaining the physical  
37 environment of the facility, including, but not limited to,  
38 food preparation, laundry, and housekeeping.

39 b. "Facility assessment" means a process to determine the  
40 staff competencies necessary to provide the level and types of  
41 care needed for the facility's resident population considering

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42 the types of diseases, conditions, physical and cognitive  
43 disabilities, overall acuity, and other facts pertinent to that  
44 resident population, and performed in accordance with 42 C.F.R.  
45 s. 483.70(e).

46 2. For purposes of this subsection, direct care staffing  
47 hours do not include time spent on nursing administration,  
48 staff development, staffing coordination, and the  
49 administrative portion of the minimum data set and care plan  
50 coordination for Medicaid.

51 (b)1. The agency shall adopt rules providing minimum  
52 staffing requirements for nursing home facilities. Each  
53 facility must determine its direct care staffing needs based on  
54 the facility assessment and the individual needs of the  
55 resident based on the resident's care plan. At a minimum,  
56 staffing ~~These requirements must include, for each facility,~~  
57 the following requirements:

58 a. A minimum weekly average of ~~certified nursing assistant~~  
59 ~~and licensed nursing staffing combined of~~ 3.6 hours of ~~direct~~  
60 care by direct care staff per resident per day. As used in this  
61 subparagraph ~~sub-subparagraph~~, a week is defined as Sunday  
62 through Saturday.

63 b. A minimum ~~certified nursing assistant staffing of~~ 2.0  
64 ~~2.5~~ hours of direct care by a certified nursing assistant per  
65 resident per day. A facility may not staff below one certified  
66 nursing assistant per 20 residents.

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67 c. A minimum ~~licensed nursing staffing~~ of 1.0 hour of  
68 direct care by a licensed nurse per resident per day. A  
69 facility may not staff below one licensed nurse per 40  
70 residents.

71 2. Nursing assistants employed under s. 400.211(2) may be  
72 included in computing the hours of direct care provided by  
73 certified nursing assistants and may be included in computing  
74 the staffing ratio for certified nursing assistants if their  
75 job responsibilities include only nursing-assistant-related  
76 duties.

77 3. Each nursing home facility must document compliance with  
78 staffing standards as required under this paragraph and post  
79 daily the names of licensed nurses and certified nursing  
80 assistants ~~staff~~ on duty for the benefit of facility residents  
81 and the public. Facilities must maintain the records  
82 documenting compliance with minimum staffing standards for a  
83 period of 5 years and must report staffing in accordance with  
84 42 C.F.R. s. 483.70(q).

85 4. The agency must ~~shall~~ recognize the use of licensed  
86 nurses for compliance with minimum staffing requirements for  
87 certified nursing assistants if the nursing home facility  
88 otherwise meets the minimum staffing requirements for licensed  
89 nurses and the licensed nurses are performing the duties of a  
90 certified nursing assistant. Unless otherwise approved by the  
91 agency, licensed nurses counted toward the minimum staffing

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92 requirements for certified nursing assistants must exclusively  
93 perform the duties of a certified nursing assistant for the  
94 entire shift and not also be counted toward the minimum  
95 staffing requirements for licensed nurses. If the agency  
96 approved a facility's request to use a licensed nurse to  
97 perform both licensed nursing and certified nursing assistant  
98 duties, the facility must allocate the amount of staff time  
99 specifically spent on certified nursing assistant duties for  
100 the purpose of documenting compliance with minimum staffing  
101 requirements for certified and licensed nursing staff. The  
102 hours of a licensed nurse with dual job responsibilities may  
103 not be counted twice.

104 5. Evidence that a facility complied with the minimum  
105 direct care staffing requirements under subparagraph (b)1. is  
106 not admissible as evidence of compliance with the nursing  
107 services requirements under 42 C.F.R. s. 483.35 or 42 C.F.R. s.  
108 483.70.

109 (c)(b) Paid feeding assistants and direct care staff who  
110 provide ~~providing~~ eating assistance to residents shall ~~not~~  
111 count toward compliance with overall direct care minimum  
112 staffing hours, but not the hours of direct care required for  
113 certified nursing assistants or licensed nurses. Direct care  
114 staff who are not CNAs or licensed nurses must successfully  
115 complete the feeding assistant training program under s.  
116 400.141(1) for purposes of this parargraph standards.

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117        ~~(d)-(e)~~ Licensed practical nurses licensed under chapter 464  
118 who provide ~~are providing~~ nursing services in nursing home  
119 facilities under this part may supervise the activities of  
120 other licensed practical nurses, certified nursing assistants,  
121 and other unlicensed personnel providing services in such  
122 facilities in accordance with rules adopted by the Board of  
123 Nursing.

124        (e) The agency may adopt rules to implement this  
125 subsection.

126        Section 3. Subsection (4) of section 400.024, Florida  
127 Statutes, is amended to read:

128        400.024 Failure to satisfy a judgment or settlement  
129 agreement.—

130        (1) Upon the entry by a Florida court of an adverse final  
131 judgment against a licensee as defined in s. 400.023(2) which  
132 arises from an award pursuant to s. 400.023, including an  
133 arbitration award, for a claim of negligence or a violation of  
134 residents' rights, in contract or tort, or from noncompliance  
135 with the terms of a settlement agreement as determined by a  
136 court or arbitration panel, which arises from a claim pursuant  
137 to s. 400.023, the licensee shall pay the judgment creditor the  
138 entire amount of the judgment, award, or settlement and all  
139 accrued interest within 60 days after the date such judgment,  
140 award, or settlement becomes final and subject to execution  
141 unless otherwise mutually agreed to in writing by the parties.

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142 Failure to make such payment shall result in additional grounds  
143 that may be used by the agency for revoking a license or for  
144 denying a renewal application or a related party change of  
145 ownership application as provided in this section.

146 (2) The agency is deemed notified of an unsatisfied  
147 judgment or settlement under subsection (1) when a certified  
148 copy of the judgment and a certified copy of a valid judgment  
149 lien certificate, filed in accordance with ss. 55.202 and  
150 55.203, are served to the agency by process server or received  
151 by certified mail, return receipt requested. Within 60 days  
152 after receiving such documents, the agency shall notify the  
153 licensee by certified mail, return receipt requested, that it  
154 is subject to disciplinary action unless, within 30 days after  
155 the date of mailing the notice, the licensee:

156 (a) Shows proof that the unsatisfied judgment or settlement  
157 has been paid in the amount specified;

158 (b) Shows proof of the existence of a payment plan mutually  
159 agreed upon by the parties in writing;

160 (c) Furnishes the agency with a copy of a timely filed  
161 notice of appeal;

162 (d) Furnishes the agency with a copy of a court order  
163 staying execution of the final judgment; or

164 (e) Shows proof by submitting an order from a court or  
165 arbitration panel that is overseeing any action seeking

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166 indemnification from an insurance carrier or other party that  
167 the licensee believes is required to pay the award.

168 (3) If the agency is placed on notice pursuant to  
169 subsection (2) and proof pursuant to subsection (2) is not  
170 provided by the licensee, the agency shall issue an emergency  
171 order pursuant to s. 120.60 declaring that the facility lacks  
172 financial ability to operate and a notice of intent to revoke  
173 or deny a license.

174 (4) ~~If,~~ After the agency is placed on notice pursuant to  
175 subsection (2), the following applies and:

176 (a) If the license is subject to renewal, the agency may  
177 deny the license renewal unless compliance with this section is  
178 achieved; and

179 (b) If a change of ownership application for the facility  
180 at issue is submitted by the licensee, by a person or entity  
181 identified as having a controlling interest in the licensee, or  
182 by a related party, the unsatisfied or undischarged adverse  
183 final judgment under subsection (1) becomes the responsibility  
184 and liability of the transferee and the agency shall deny the  
185 change of ownership application unless compliance with this  
186 section is achieved; and

187 (c) If a change of ownership application for the facility  
188 at issue is filed by the licensee, by a person or entity  
189 identified as having a controlling interest in the licensee, or  
190 by a related party, then:

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191 1. The licensee or transferor must provide written notice  
192 of the filing of the application to each pending claimant or  
193 the claimant's attorney of record if applicable. The written  
194 notice must be provided within 14 days after the date the  
195 application is filed with the agency.

196 2. Notice must be provided by certified mail, return  
197 receipt requested, or other method that provides verification  
198 of receipt.

199 3. A claimant has 30 days after the date of receipt of the  
200 written notice to object to the application if the claimant has  
201 reason to believe that the approval of the application would  
202 facilitate a fraudulent transfer or allow the transferor to  
203 avoid financial responsibility for the claimant's pending  
204 claim.

205 4. The agency must consider any objection brought pursuant  
206 to this subsection in its decision to approve or deny an  
207 application for change of ownership under this part and part II  
208 of chapter 408.

209 5. If a claim is pending in arbitration at the time that  
210 the application for change of ownership is filed, the claimant  
211 may file a petition to enjoin the transfer in circuit court.

212 6. As used in this paragraph, "claimant" means a resident,  
213 the resident's family, or personal representative, who has  
214 notified the licensee or facility of a potential claim by

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215 notice of intent letter or who has initiated an action, claim,  
216 or arbitration proceeding against the licensee or facility.

217 Section 4. Paragraphs (g), (n), and (r) of subsection (1)  
218 of section 400.141, Florida Statutes, are amended to read:

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

221 (g) If the facility has a standard license, exceeds the  
222 minimum required hours of direct care provided by licensed  
223 nurses nursing and certified nursing assistants assistant  
224 ~~direct care~~ per resident per day, and is part of a continuing  
225 care facility licensed under chapter 651 or is a retirement  
226 community that offers other services pursuant to part III of  
227 this chapter or part I or part III of chapter 429 on a single  
228 campus, be allowed to share programming and staff. At the time  
229 of inspection, a continuing care facility or retirement  
230 community that uses this option must demonstrate through  
231 staffing records that minimum staffing requirements for the  
232 facility were met. Licensed nurses and certified nursing  
233 assistants who work in the facility may be used to provide  
234 services elsewhere on campus if the facility exceeds the  
235 minimum number of direct care hours required per resident per  
236 day and the total number of residents receiving direct care  
237 services from a licensed nurse or a certified nursing assistant  
238 does not cause the facility to violate the staffing ratios  
239 required under s. 400.23(3)(b) ~~s. 400.23(3)(a)~~. Compliance with

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240 the minimum staffing ratios must be based on the total number  
241 of residents receiving direct care services, regardless of  
242 where they reside on campus. If the facility receives a  
243 conditional license, it may not share staff until the  
244 conditional license status ends. This paragraph does not  
245 restrict the agency's authority under federal or state law to  
246 require additional staff if a facility is cited for  
247 deficiencies in care which are caused by an insufficient number  
248 of certified nursing assistants or licensed nurses. The agency  
249 may adopt rules for the documentation necessary to determine  
250 compliance with this provision.

251 (n) Comply with state minimum-staffing requirements:

252 1. A facility that has failed to comply with state minimum-  
253 staffing requirements for 48 ~~2~~ consecutive hours ~~days~~ is  
254 prohibited from accepting new admissions until the facility has  
255 achieved the minimum-staffing requirements for 6 consecutive  
256 days. For the purposes of this subparagraph, any person who was  
257 a resident of the facility and was absent from the facility for  
258 the purpose of receiving medical care at a separate location or  
259 was on a leave of absence is not considered a new admission.  
260 Failure by the facility to impose such an admissions moratorium  
261 is subject to a \$1,000 fine.

262 2. A facility that does not have a conditional license may  
263 be cited for failure to comply with the standards in s.  
264 400.23(3) (b) 1.b. and c. ~~s. 400.23(3) (a) 1.b. and c.~~ only if it

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265 has failed to meet those standards on 2 consecutive days or if  
266 it has failed to meet at least 97 percent of those standards on  
267 any one day.

268 3. A facility that has a conditional license must be in  
269 compliance with the standards in s. 400.23(3)(b) ~~s.~~  
270 ~~400.23(3)(a)~~ at all times.

271 (r) Maintain in the medical record for each resident a  
272 daily chart of direct care ~~certified nursing assistant~~ services  
273 provided to the resident. The direct care staff ~~certified~~  
274 ~~nursing assistant who is~~ caring for the resident must complete  
275 this record by the end of his or her shift. This record must  
276 indicate assistance with activities of daily living, assistance  
277 with eating, ~~and~~ assistance with drinking, and must record each  
278 offering of nutrition and hydration for those residents whose  
279 plan of care or assessment indicates a risk for malnutrition or  
280 dehydration.

281 Section 5. Subsection (6) of section 651.118, Florida  
282 Statutes, is amended to read:

283 651.118 Agency for Health Care Administration; certificates  
284 of need; sheltered beds; community beds.-

285 (6) Unless the provider already has a component that is to  
286 be a part of the continuing care facility and that is licensed  
287 under chapter 395, part II of chapter 400, or part I of chapter  
288 429 at the time of construction of the continuing care  
289 facility, the provider must construct the non-nursing

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290 ~~nonnursing~~ home portion of the facility and the nursing home  
291 portion of the facility at the same time. If a provider  
292 constructs less than the number of residential units approved  
293 in the certificate of authority, the number of licensed  
294 sheltered nursing home beds shall be reduced by a proportionate  
295 share.

296 Section 6. This act shall take effect upon becoming a law.

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**T I T L E A M E N D M E N T**

300

Remove everything before the enacting clause and insert:  
301 amending s. 400.021, F.S.; revising a definition; amending s.  
302 400.23, F.S.; providing definitions; specifying functions that  
303 do not constitute direct care staffing hours for purposes of  
304 required nursing home staffing ratios; requiring nursing home  
305 facilities to determine their direct care staffing needs based  
306 on the facility assessment and the individual needs of the  
307 resident based on the resident's care plan; revising nursing  
308 home staffing requirements; requiring nursing home facilities to  
309 maintain and report staffing information consistent with federal  
310 law; specifying that evidence of compliance with the minimum  
311 direct care staffing requirements is not admissible as evidence  
312 of compliance with certain federal nursing services  
313 requirements; authorizing paid feeding assistants and direct  
314 care staff who provide eating assistance to residents to count

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315 toward compliance with the overall direct care minimum staffing  
316 requirement; requiring direct care staff who are not certified  
317 nursing assistants or licensed nurses to successfully complete  
318 the feeding assistant training program; specifying that forms  
319 filed by nursing home facilities to report their actual  
320 financial experience for a fiscal year are not confidential or  
321 exempt from s. 119.071(1) or s. 24(a), Art. I of the State  
322 Constitution and may be discoverable and admissible in a civil  
323 action or an administrative action; providing that the  
324 transferee in a change of ownership is responsible and liable  
325 for any unsatisfied or undischarged adverse final judgments;  
326 requiring the licensee or transferor who files an application  
327 for a change of ownership to provide written notice to each  
328 pending claimant or their attorney; removing authority for the  
329 Agency for Health Care Administration to cite a nursing home  
330 facility for failure to meet at least 97 percent of the minimum  
331 staffing requirements for direct care provided by certified  
332 nursing assistants and licensed nurses; providing an effective  
333 date.