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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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03/04/2022 04:57 PM

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Senator Gibson moved the following:

Senate Amendment (with title amendment)

Delete lines 76 - 137

and insert:

Section 2. Paragraph (q) of subsection (1) of section 400.022, Florida Statutes, is amended, and paragraph (w) is added to that subsection, to read:

400.022 Residents' rights.—

(1) All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such



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12 residents in accordance with the provisions of that statement.
13 The statement shall assure each resident the following:

14 (q) The right to freedom of choice in selecting a personal
15 physician; to obtain pharmaceutical supplies and services from a
16 pharmacy of the resident's choice, at the resident's own expense
17 or through Title XIX of the Social Security Act; and to obtain
18 information about, and to participate in, community-based
19 activities programs, unless medically contraindicated as
20 documented by a physician in the resident's medical record. If a
21 resident selects a personal physician, the resident's attending
22 health care provider at the facility must consult with the
23 resident's personal physician in providing any acute care to the
24 resident and before ordering or prescribing medication for the
25 resident to ensure that the medication is not medically
26 contraindicated. The attending health care provider shall
27 document any consultation with the resident's personal physician
28 in the resident's records and provide copies of the resident's
29 records to the resident's personal physician in accordance with
30 s. 400.141(1)(x). If a resident chooses to use a community
31 pharmacy and the facility in which the resident resides uses a
32 unit-dose system, the pharmacy selected by the resident must
33 ~~shall~~ be one that provides a compatible unit-dose system,
34 provides service delivery, and stocks the drugs normally used by
35 long-term care residents. If a resident chooses to use a
36 community pharmacy and the facility in which the resident
37 resides does not use a unit-dose system, the pharmacy selected
38 by the resident must ~~shall~~ be one that provides service delivery
39 and stocks the drugs normally used by long-term care residents.

40 (w) The right to receive a response from the facility



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41 within 3 days after the resident or the resident's legal
42 representative makes an inquiry or otherwise requests
43 information related to the resident or the resident's care or
44 treatment at the facility.

45 Section 3. Section 400.0221, Florida Statutes, is created
46 to read:

47 400.0221 Resident admission procedures; resident care
48 plans.—

49 (1) Before admitting a resident, a nursing home facility
50 must do all of the following:

51 (a) Provide the resident or the resident's legal
52 representative with a printed copy of all of the following:

53 1. The residents' rights provided in s. 400.022. The
54 resident and the resident's legal representative must also be
55 orally informed of the resident's right under s. 400.022(1)(q)
56 to select a personal physician and of the requirement that the
57 personal physician be provided with the resident's records and
58 consulted in providing any acute care to the resident and before
59 ordering or prescribing any medication for the resident. The
60 facility must document in the resident's care plan whether he or
61 she selects a personal physician.

62 2. The most recent version of the Nursing Home Guide
63 published under s. 400.191.

64 3. The agency's most recent inspection report of the
65 facility.

66 4. The facility's resident grievance procedures developed
67 pursuant to s. 400.1183.

68 5. The names and contact information of the medical
69 director, managers, directors of nursing, care coordinators, and



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70 billing staff of the facility.

71 (b) Give the resident or the resident's legal
72 representative a meaningful opportunity to discuss the
73 information provided under paragraph (a).

74 (c) Discuss with the resident or the resident's legal
75 representative any dietary restrictions applicable to the
76 resident. The facility must confirm that it can comply with such
77 restrictions before accepting a resident. The facility shall
78 include the resident's dietary restrictions in his or her
79 resident care plan.

80 (d) Discuss with the resident or the resident's legal
81 representative any physical or cognitive impairments affecting
82 the resident which require accommodations in facilities or
83 services or require that care be provided by individuals
84 appropriately trained to serve residents with such impairments.
85 If the facility cannot make such accommodations or does not have
86 adequately trained staff to provide the care the resident needs,
87 the facility may not accept the resident until such
88 accommodations and care can be provided. If the resident is
89 admitted, the facility must document the required accommodations
90 and care for the resident in his or her resident care plan.

91 (e) Ensure that it has a complete medical history for the
92 resident, including, but not limited to, any prescribed
93 medications, contraindicated medications or treatments, and
94 allergies, which must be included in the resident care plan. The
95 facility must inform the resident's legal representative, if
96 any, and the resident's personal physician, if selected, before
97 prescribing a new medication to the resident.

98 (2) Immediately after a facility develops an initial



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99 resident care plan, the facility must provide the resident or
100 the resident's legal representative with a copy of the resident
101 care plan. A physician, a registered nurse, or the care
102 coordinator responsible for the resident shall discuss the
103 resident care plan with the resident or the resident's legal
104 representative to determine whether any information is missing
105 or incorrect and whether the plan of care delineated in the
106 resident care plan accounts for all of the concerns expressed by
107 the resident, the resident's legal representative, or the
108 resident's personal physician, if applicable, before admission,
109 including, but not limited to, any dietary restrictions or
110 accommodations needed or care specific to the resident.

111 (3) At least quarterly, a physician or registered nurse,
112 with participation from other facility staff and the resident or
113 the resident's legal representative, shall review the resident
114 care plan to assess the resident's needs; the type and frequency
115 of services required to provide the necessary care for the
116 resident to attain or maintain the highest practical physical,
117 mental, and psychosocial well-being; the services that are
118 provided to the resident, both within and outside of the
119 facility, and whether such services are sufficient to meet the
120 resident's needs; and the resident's service goals. If it is
121 determined that any of the resident's needs are not being met,
122 the resident care plan must be revised to promote the highest
123 practical physical, mental, and psychosocial well-being of the
124 resident.

125 Section 4. Paragraphs (x) and (y) are added to subsection
126 (1) of section 400.141, Florida Statutes, to read:

127 400.141 Administration and management of nursing home



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128 facilities.-

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

131 (x) Provide each resident with the opportunity to select a
132 personal physician as specified in s. 400.022(1)(q). The
133 resident's attending health care provider at the facility shall
134 consult with the resident's personal physician in providing any
135 acute care to the resident and before ordering or prescribing
136 medication for the resident to ensure the medication is not
137 medically contraindicated for the resident. The attending health
138 care provider shall document any consultation with the
139 resident's personal physician in the resident's records. The
140 facility shall provide the resident's personal physician with
141 the resident's medical records and any records relating to the
142 resident's care and treatment at the facility on a monthly
143 basis; however, in the event of a change in the resident's
144 condition, care, or treatment, the facility must inform and
145 provide related records to the resident's personal physician
146 within 3 days after such change. If the facility conducts any
147 test or examination on the resident, the facility must
148 immediately forward the results of such test or examination to
149 the resident's personal physician. The facility shall continue
150 to provide the resident's records to the resident's personal
151 physician until the resident or the resident's representative
152 notifies the facility that the transfer of such records is no
153 longer requested.

154 (y) Maintain on its website the names and contact
155 information for the medical director, managers, directors of
156 nursing, care coordinators, administrator, and billing staff of



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157 the facility. The facility shall also publicly display in the
158 facility the names of the manager and director of nursing on
159 duty each day or, if different, each shift.

160 Section 5. Subsections (1) and (8) of section 400.145,
161 Florida Statutes, are amended to read:

162 400.145 Copies of records of care and treatment of
163 resident.—

164 (1)(a) Upon receipt of a written request that complies with
165 the federal Health Insurance Portability and Accountability Act
166 of 1996 (HIPAA) and this section, a nursing home facility shall
167 furnish to a competent resident, or to a representative of that
168 resident who is authorized to make requests for the resident's
169 records under HIPAA or subsection (2), copies of the resident's
170 paper and electronic records that are in possession of the
171 facility. Such records must include any medical records and
172 records concerning the care and treatment of the resident
173 performed by the facility, except for progress notes and
174 consultation report sections of a psychiatric nature. The
175 facility shall provide the requested records within 3 calendar
176 ~~14 working~~ days after receipt of a request relating to a current
177 resident or within 14 calendar ~~30 working~~ days after receipt of
178 a request relating to a former resident.

179 (b) If a current resident of the facility or his or her
180 legal representative has selected a personal physician outside
181 of the facility for the resident or has requested that any of
182 the resident's health care providers outside of the facility be
183 kept informed of the resident's care and treatment in the
184 facility, the facility must provide such records on a monthly
185 basis; however, in the event of a change in the resident's



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186 condition, care, or treatment, the facility must inform and
187 provide related records to the resident's applicable health care
188 providers within 3 calendar days after such change. If the
189 facility conducts any test or examination on the resident, the
190 facility must immediately forward the results of such test or
191 examination to the resident's applicable health care providers.
192 The facility shall continue to provide the resident's records to
193 the resident's health care providers as applicable until the
194 resident or the resident's legal representative notifies the
195 facility that the transfer of such records is no longer
196 requested.

197 (8) A nursing home facility may not be cited by the agency
198 through the survey process for any alleged or actual
199 noncompliance with any of the requirements of this section,
200 except for those under paragraph (1)(b).

201 Section 6. Subsection (3) of section 400.23, Florida
202 Statutes, is amended to read:

203 400.23 Rules; evaluation and deficiencies; licensure
204 status.—

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

206 a. "Direct care staff" means persons who, through
207 interpersonal contact with residents or resident care
208 management, provide care and services to allow residents to
209 attain or maintain their highest practicable physical, mental,
210 and psychosocial well-being, including, but not limited to,
211 disciplines and professions that must be reported in accordance
212 with 42 C.F.R. s. 483.70(q) in the categories of direct care
213 services of nursing, dietary, therapeutic, and mental health.
214 The term does not include a person whose primary duty is



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215 maintaining the physical environment of the facility, including,
216 but not limited to, food preparation, laundry, and housekeeping.

217 b. "Facility assessment" means a process to determine the
218 staff competencies necessary to provide the level and types of
219 care needed for the facility's resident population considering
220 the types of diseases, conditions, physical and cognitive
221 disabilities, overall acuity, and other facts pertinent to that
222 resident population, and performed in accordance with 42 C.F.R.
223 s. 483.70(e).

224 2. For purposes of this subsection, direct care staffing
225 hours do not include time spent on nursing administration,
226 activities program administration, staff development, staffing
227 coordination, and the administrative portion of the minimum data
228 set and care plan coordination for Medicaid.

229 (b)1. Each facility must determine its direct care staffing
230 needs based on the facility assessment and the individual needs
231 of a resident based on the resident's care plan. At a minimum,
232 staffing ~~The agency shall adopt rules providing minimum staffing~~
233 ~~requirements for nursing home facilities. These requirements~~
234 must include, for each facility, the following requirements:

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

239 b. A minimum ~~certified nursing assistant staffing of 2.0~~
240 ~~2.5~~ hours of direct care by a certified nursing assistant per
241 resident per day. A facility may not staff below one certified
242 nursing assistant per 20 residents.

243 c. A minimum ~~licensed nursing staffing of 1.0 hour of~~



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244 direct care by a licensed nurse per resident per day. A facility
245 may not staff below one licensed nurse per 40 residents.

246 2. Nursing assistants employed under s. 400.211(2) may be
247 included in computing the hours of direct care provided by
248 certified nursing assistants and may be included in computing
249 the staffing ratio for certified nursing assistants if their job
250 responsibilities include only nursing-assistant-related duties.

251 3. Each nursing home facility must document compliance with
252 staffing standards as required under this paragraph and, for the
253 benefit of facility residents and the public, shall post on its
254 website daily the names of licensed nurses and certified nursing
255 assistants ~~staff~~ on duty and their affiliated staffing agency,
256 if any; the average daily resident-to-staff ratio at the
257 facility; the monthly staff turnover rate at the facility; and
258 any fines imposed by the agency for noncompliance with the
259 staffing standards specified in this paragraph. The facility
260 shall post such information in a conspicuous location on its
261 website in an easily accessible format. Facilities must maintain
262 the records documenting compliance with minimum staffing
263 standards for a period of 5 years and must report staffing in
264 accordance with 42 C.F.R. s. 483.70(q) ~~for the benefit of~~
265 ~~facility residents and the public.~~

266
267 ===== T I T L E A M E N D M E N T =====

268 And the title is amended as follows:

269 Delete lines 3 - 11

270 and insert:

271 F.S.; revising a definition; amending s. 400.022,
272 F.S.; requiring a resident's attending health care



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273 provider in a nursing home facility to consult with
274 the resident's personal physician, if selected, in the
275 provision of acute care to the resident and before
276 ordering or prescribing medication for the resident;
277 requiring the resident's attending health care
278 provider to document any such consultations in the
279 resident's records; requiring the nursing home
280 facility to provide the resident's records to the
281 resident's personal physician in accordance with
282 specified provisions; providing that residents or
283 their legal representatives have the right to receive
284 a response from a nursing home facility within a
285 specified timeframe after an inquiry or request for
286 information; creating s. 400.0221, F.S.; requiring
287 nursing home facilities to take certain measures
288 before admitting a resident; requiring nursing home
289 facilities to provide residents or their legal
290 representatives with a copy of the resident care plan
291 immediately after it is developed; requiring a
292 physician, registered nurse, or care coordinator to
293 discuss the plan with the resident or the resident's
294 legal representative for a specified purpose;
295 requiring such plan to be reviewed at least quarterly
296 by specified individuals; requiring the plan to be
297 revised under certain circumstances; amending s.
298 400.141, F.S.; requiring nursing home facilities to
299 provide each resident with the opportunity to select a
300 personal physician; requiring the attending health
301 care provider at the facility to consult with the



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302 resident's personal physician, if selected, for
303 certain care or before ordering or prescribing
304 medication to the resident; requiring the attending
305 health care provider to document such consultations in
306 the resident's records; requiring the facility to
307 provide the resident's records to his or her personal
308 physician on a monthly basis and within a specified
309 timeframe after any changes in the resident's
310 condition, care, or treatment; requiring the facility
311 to immediately forward the results of any test or
312 examination of the resident to the resident's personal
313 physician; requiring the facility to continue
314 providing such records until notified otherwise by the
315 resident or the resident's legal representative;
316 requiring nursing home facilities to maintain the
317 names and contact information of specified individuals
318 on the facilities' websites; requiring nursing home
319 facilities to publicly display in the facility the
320 names of the manager and director of nursing on duty;
321 amending s. 400.145, F.S.; revising the timeframe in
322 which nursing home facilities must furnish requested
323 records of a current or former resident; requiring
324 nursing home facilities to provide a resident's
325 records to the resident's selected health care
326 providers outside of the facility on a monthly basis
327 and within a specified timeframe after any change in
328 the resident's condition, care, or treatment;
329 requiring facilities to immediately provide the
330 results of any test or examination conducted on the



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331 resident to the applicable health care providers;
332 requiring the facility to continue providing such
333 records until notified otherwise by the resident or
334 the resident's legal representative; authorizing the
335 agency to cite nursing home facilities during the
336 survey process for alleged or actual noncompliance
337 with certain requirements; amending s. 400.23, F.S.;
338 providing definitions; specifying functions that do
339 not constitute direct care staffing hours for purposes
340 of required nursing home staffing ratios; requiring
341 nursing home facilities to determine their direct care
342 staffing needs based on the facility assessment and
343 the individual needs of a resident based on the
344 resident's care plan; revising nursing home staffing
345 requirements; requiring nursing home facilities to
346 post on their websites specified information relating
347 to staffing at their facilities; requiring such
348 information to be in a conspicuous location on their
349 websites and in a specified format; requiring nursing
350 home facilities to