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LEGISLATIVE ACTION

Senate

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House

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Floor: NC/2R

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03/04/2022 04:52 PM

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Senator Gibson moved the following:

**Senate Amendment (with title amendment)**

Between lines 296 and 297

insert:

Section 6. 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)(e). 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 7. 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 name 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 needed accommodations 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 8. Present paragraphs (e) through (l) and (m)  
126 through (w) of subsection (1) of section 400.141, Florida  
127 Statutes, are redesignated as paragraphs (f) through (m) and (o)



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128 through (y), respectively, and new paragraphs (e) and (n) are  
129 added to that subsection, to read:

130 400.141 Administration and management of nursing home  
131 facilities.—

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

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



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157           (n) Maintain on its website the name and contact  
158 information for the medical director, managers, directors of  
159 nursing, care coordinators, administrator, and billing staff of  
160 the facility. The facility shall also publicly display in the  
161 facility the names of the manager and director of nursing on  
162 duty each day or, if different, each shift.

163           Section 9. Subsections (1) and (8) of section 400.145,  
164 Florida Statutes, are amended to read:

165           400.145 Copies of records of care and treatment of  
166 resident.—

167           (1) (a) Upon receipt of a written request that complies with  
168 the federal Health Insurance Portability and Accountability Act  
169 of 1996 (HIPAA) and this section, a nursing home facility shall  
170 furnish to a competent resident, or to a representative of that  
171 resident who is authorized to make requests for the resident's  
172 records under HIPAA or subsection (2), copies of the resident's  
173 paper and electronic records that are in possession of the  
174 facility. Such records must include any medical records and  
175 records concerning the care and treatment of the resident  
176 performed by the facility, except for progress notes and  
177 consultation report sections of a psychiatric nature. The  
178 facility shall provide the requested records within 3 calendar  
179 ~~14 working~~ days after receipt of a request relating to a current  
180 resident or within 14 calendar ~~30 working~~ days after receipt of  
181 a request relating to a former resident.

182           (b) If a current resident of the facility or his or her  
183 legal representative has selected a personal physician outside  
184 of the facility for the resident or has requested that any of  
185 the resident's health care providers outside of the facility be



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

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

204 Section 10. Paragraph (a) of subsection (3) of section  
205 400.23, Florida Statutes, is amended to read:

206 400.23 Rules; evaluation and deficiencies; licensure  
207 status.—

208 (3)(a)1. The agency shall adopt rules providing minimum  
209 staffing requirements for nursing home facilities. These  
210 requirements must include, for each facility:

211 a. A minimum weekly average of certified nursing assistant  
212 and licensed nursing staffing combined of 3.6 hours of direct  
213 care per resident per day. As used in this sub-subparagraph, a  
214 week is defined as Sunday through Saturday.





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215           b. A minimum certified nursing assistant staffing of 2.5  
216 hours of direct care per resident per day. A facility may not  
217 staff below one certified nursing assistant per 20 residents.

218           c. A minimum licensed nursing staffing of 1.0 hour of  
219 direct care per resident per day. A facility may not staff below  
220 one licensed nurse per 40 residents.

221           2. Nursing assistants employed under s. 400.211(2) may be  
222 included in computing the staffing ratio for certified nursing  
223 assistants if their job responsibilities include only nursing-  
224 assistant-related duties.

225           3. Each nursing home facility shall ~~must~~ document  
226 compliance with staffing standards as required under this  
227 paragraph and, for the benefit of facility residents and the  
228 public, shall post on its website daily the names of staff on  
229 duty and their affiliated staffing agency, if any; the average  
230 daily resident-to-staff ratio at the facility; the monthly staff  
231 turnover rate at the facility; and any fines imposed by the  
232 agency for noncompliance with the staffing standards specified  
233 in this paragraph. The facility shall post such information in a  
234 conspicuous location on its website in an easily accessible  
235 format ~~for the benefit of facility residents and the public.~~

236           4. The agency must ~~shall~~ recognize the use of licensed  
237 nurses for compliance with minimum staffing requirements for  
238 certified nursing assistants if the nursing home facility  
239 otherwise meets the minimum staffing requirements for licensed  
240 nurses and the licensed nurses are performing the duties of a  
241 certified nursing assistant. Unless otherwise approved by the  
242 agency, licensed nurses counted toward the minimum staffing  
243 requirements for certified nursing assistants must exclusively



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244 perform the duties of a certified nursing assistant for the  
245 entire shift and not also be counted toward the minimum staffing  
246 requirements for licensed nurses. If the agency approved a  
247 facility's request to use a licensed nurse to perform both  
248 licensed nursing and certified nursing assistant duties, the  
249 facility must allocate the amount of staff time specifically  
250 spent on certified nursing assistant duties for the purpose of  
251 documenting compliance with minimum staffing requirements for  
252 certified and licensed nursing staff. The hours of a licensed  
253 nurse with dual job responsibilities may not be counted twice.

254 Section 11. Subsection (1) of section 400.172, Florida  
255 Statutes, is amended to read:

256 400.172 Respite care provided in nursing home facilities.-

257 (1) For each person admitted for respite care as authorized  
258 under s. 400.141(1)(g) ~~s. 400.141(1)(f)~~, a nursing home facility  
259 operated by a licensee must:

260 (a) Have a written abbreviated plan of care that, at a  
261 minimum, includes nutritional requirements, medication orders,  
262 physician orders, nursing assessments, and dietary preferences.  
263 The nursing or physician assessments may take the place of all  
264 other assessments required for full-time residents.

265 (b) Have a contract that, at a minimum, specifies the  
266 services to be provided to a resident receiving respite care,  
267 including charges for services, activities, equipment, emergency  
268 medical services, and the administration of medications. If  
269 multiple admissions for a single person for respite care are  
270 anticipated, the original contract is valid for 1 year after the  
271 date the contract is executed.

272 (c) Ensure that each resident is released to his or her



273 caregiver or an individual designated in writing by the  
274 caregiver.

275 Section 12. Paragraph (d) of subsection (2) of section  
276 400.211, Florida Statutes, is amended to read:

277 400.211 Persons employed as nursing assistants;  
278 certification requirement.—

279 (2) The following categories of persons who are not  
280 certified as nursing assistants under part II of chapter 464 may  
281 be employed by a nursing facility for a single consecutive  
282 period of 4 months:

283 (d) Persons who are employed as personal care attendants  
284 and who have completed the personal care attendant training  
285 program developed pursuant to s. 400.141(1)(y) ~~s. 400.141(1)(w)~~.  
286 As used in this paragraph, the term “personal care attendants”  
287 means persons who meet the training requirement in s.  
288 400.141(1)(y) ~~s. 400.141(1)(w)~~ and provide care to and assist  
289 residents with tasks related to the activities of daily living.

290  
291 The certification requirement must be met within 4 months after  
292 initial employment as a nursing assistant in a licensed nursing  
293 facility.

294 Section 13. Subsection (1) of section 408.822, Florida  
295 Statutes, is amended to read:

296 408.822 Direct care workforce survey.—

297 (1) For purposes of this section, the term “direct care  
298 worker” means a certified nursing assistant, a home health aide,  
299 a personal care assistant, a companion services or homemaker  
300 services provider, a paid feeding assistant trained under s.  
301 400.141(1)(x) ~~s. 400.141(1)(v)~~, or another individual who



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302 provides personal care as defined in s. 400.462 to individuals  
303 who are elderly, developmentally disabled, or chronically ill.

304 Section 14. Paragraph (e) of subsection (4) of section  
305 409.221, Florida Statutes, is amended to read:

306 409.221 Consumer-directed care program.—

307 (4) CONSUMER-DIRECTED CARE.—

308 (e) *Services.*—Consumers shall use the budget allowance only  
309 to pay for home and community-based services that meet the  
310 consumer's long-term care needs and are a cost-efficient use of  
311 funds. Such services may include, but are not limited to, the  
312 following:

313 1. Personal care.

314 2. Homemaking and chores, including housework, meals,  
315 shopping, and transportation.

316 3. Home modifications and assistive devices which may  
317 increase the consumer's independence or make it possible to  
318 avoid institutional placement.

319 4. Assistance in taking self-administered medication.

320 5. Day care and respite care services, including those  
321 provided by nursing home facilities pursuant to s. 400.141(1)(g)  
322 ~~s. 400.141(1)(f)~~ or by adult day care facilities licensed  
323 pursuant to s. 429.907.

324 6. Personal care and support services provided in an  
325 assisted living facility.

326 Section 15. Subsection (3) of section 430.80, Florida  
327 Statutes, is amended to read:

328 430.80 Implementation of a teaching nursing home pilot  
329 project.—

330 (3) To be designated as a teaching nursing home, a nursing



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331 home licensee must, at a minimum:

332 (a) Provide a comprehensive program of integrated senior  
333 services that include institutional services and community-based  
334 services;

335 (b) Participate in a nationally recognized accrediting  
336 program and hold a valid accreditation, such as the  
337 accreditation awarded by the Joint Commission, or, at the time  
338 of initial designation, possess a Gold Seal Award as conferred  
339 by the state on its licensed nursing home;

340 (c) Have been in business in this state for a minimum of 10  
341 consecutive years;

342 (d) Demonstrate an active program in multidisciplinary  
343 education and research that relates to gerontology;

344 (e) Have a formalized contractual relationship with at  
345 least one accredited health profession education program located  
346 in this state;

347 (f) Have senior staff members who hold formal faculty  
348 appointments at universities, which must include at least one  
349 accredited health profession education program; and

350 (g) Maintain insurance coverage pursuant to s.  
351 400.141(1)(s) ~~s. 400.141(1)(q)~~ or proof of financial  
352 responsibility in a minimum amount of \$750,000. Such proof of  
353 financial responsibility may include:

354 1. Maintaining an escrow account consisting of cash or  
355 assets eligible for deposit in accordance with s. 625.52; or

356 2. Obtaining and maintaining pursuant to chapter 675 an  
357 unexpired, irrevocable, nontransferable and nonassignable letter  
358 of credit issued by any bank or savings association organized  
359 and existing under the laws of this state or any bank or savings



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360 association organized under the laws of the United States that  
361 has its principal place of business in this state or has a  
362 branch office which is authorized to receive deposits in this  
363 state. The letter of credit shall be used to satisfy the  
364 obligation of the facility to the claimant upon presentment of a  
365 final judgment indicating liability and awarding damages to be  
366 paid by the facility or upon presentment of a settlement  
367 agreement signed by all parties to the agreement when such final  
368 judgment or settlement is a result of a liability claim against  
369 the facility.

370 Section 16. Paragraph (h) of subsection (2) of section  
371 430.81, Florida Statutes, is amended to read:

372 430.81 Implementation of a teaching agency for home and  
373 community-based care.—

374 (2) The Department of Elderly Affairs may designate a home  
375 health agency as a teaching agency for home and community-based  
376 care if the home health agency:

377 (h) Maintains insurance coverage pursuant to s.  
378 400.141(1)(s) ~~s. 400.141(1)(g)~~ or proof of financial  
379 responsibility in a minimum amount of \$750,000. Such proof of  
380 financial responsibility may include:

381 1. Maintaining an escrow account consisting of cash or  
382 assets eligible for deposit in accordance with s. 625.52; or

383 2. Obtaining and maintaining, pursuant to chapter 675, an  
384 unexpired, irrevocable, nontransferable, and nonassignable  
385 letter of credit issued by any bank or savings association  
386 authorized to do business in this state. This letter of credit  
387 shall be used to satisfy the obligation of the agency to the  
388 claimant upon presentation of a final judgment indicating



389 liability and awarding damages to be paid by the facility or  
390 upon presentment of a settlement agreement signed by all parties  
391 to the agreement when such final judgment or settlement is a  
392 result of a liability claim against the agency.

393 Section 17. Subsection (13) of section 651.118, Florida  
394 Statutes, is amended to read:

395 651.118 Agency for Health Care Administration; certificates  
396 of need; sheltered beds; community beds.—

397 (13) Residents, as defined in this chapter, are not  
398 considered new admissions for the purpose of s. 400.141(1)(p)1  
399 ~~s. 400.141(1)(n)1~~.

400  
401 ===== T I T L E A M E N D M E N T =====

402 And the title is amended as follows:

403 Delete line 41

404 and insert:

405 with minimum staffing requirements; amending s.  
406 400.022, F.S.; requiring a resident's attending health  
407 care provider in a nursing home facility to consult  
408 with the resident's personal physician, if selected,  
409 in the provision of acute care to the resident and  
410 before ordering or prescribing medication to the  
411 resident; requiring the resident's attending health  
412 care provider to document any such consultations in  
413 the resident's records; requiring the nursing home  
414 facility to provide the resident's records to the  
415 resident's personal physician in accordance with  
416 specified provisions; providing that residents or  
417 their legal representatives have the right to receive



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418 a response from a nursing home facility within a  
419 specified timeframe of an inquiry or request for  
420 information; creating s. 400.0221, F.S.; requiring  
421 nursing home facilities to take certain measures  
422 before admitting a resident; requiring nursing home  
423 facilities to provide residents or their legal  
424 representatives with a copy of the resident care plan  
425 immediately after it is developed; requiring a  
426 physician, registered nurse, or care coordinator to  
427 discuss the plan with the resident or the resident's  
428 legal representative for a specified purpose;  
429 requiring such plan to be reviewed at least quarterly  
430 by specified individuals; requiring the plan to be  
431 revised under certain circumstances; amending s.  
432 400.141, F.S.; requiring nursing home facilities to  
433 provide each resident with the opportunity to select a  
434 personal physician; requiring the attending health  
435 care provider at the facility, if selected, to consult  
436 with the resident's personal physician for certain  
437 care or before ordering or prescribing medication to  
438 the resident; requiring the attending health care  
439 provider to document such consultations in the  
440 resident's records; requiring the facility to provide  
441 the resident's records to his or her personal  
442 physician on a monthly basis and within a specified  
443 timeframe of any changes in the resident's condition,  
444 care, or treatment; requiring the facility to  
445 immediately forward the results of any test or  
446 examination of the resident to the resident's personal





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447 physician; requiring the facility to continue  
448 providing such records until notified otherwise by the  
449 resident or the resident's legal representative;  
450 requiring nursing home facilities to maintain the  
451 names and contact information of specified individuals  
452 on their websites; requiring nursing home facilities  
453 to publicly display in the facility the names of the  
454 manager and director of nursing on duty; amending s.  
455 400.145, F.S.; revising the timeframe in which nursing  
456 home facilities must furnish requested records of a  
457 current or former resident; requiring nursing home  
458 facilities to provide a resident's records to the  
459 resident's selected health care providers outside of  
460 the facility on a monthly basis and within a specified  
461 timeframe of any change in the resident's condition,  
462 care, or treatment; requiring facilities to  
463 immediately provide the results of any test or  
464 examination conducted on the resident to the  
465 applicable health care providers; requiring the  
466 facility to continue providing such records until  
467 notified otherwise by the resident or the resident's  
468 legal representative; authorizing the agency to cite  
469 nursing home facilities during the survey process for  
470 alleged or actual noncompliance with certain  
471 requirements; amending s. 400.23, F.S.; requiring  
472 nursing home facilities to post on their websites  
473 specified information relating to staffing at their  
474 facilities; requiring such information to be in a  
475 conspicuous location on their websites and in a



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476 specified format; amending ss. 400.172, 400.211,  
477 408.822, 409.221, 430.80, 430.81, and 651.118, F.S.;  
478 conforming cross-references; providing an