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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2022	.	
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The Committee on Rules (Albritton) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(18) "Resident care plan" means a written, comprehensive
person-centered care plan developed in accordance with 42 C.F.R.
s. 483.21(b) by an interdisciplinary team within 7 days after



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12 completion of a comprehensive assessment and with participation
13 by the resident or the resident's designee. The resident care
14 plan must be reviewed and revised after each comprehensive
15 assessment, which may be a new admission assessment, an annual
16 assessment, or an assessment after a significant change in
17 status, and after a quarterly review assessment. A care plan
18 includes measurable objectives and timeframes to meet the
19 resident's medical, nursing, mental, and psychosocial needs and
20 preferences, and must describe the services to be furnished,
21 ~~maintained, and reviewed not less than quarterly by a registered~~
22 ~~nurse, with participation from other facility staff and the~~
23 ~~resident or his or her designee or legal representative, which~~
24 ~~includes a comprehensive assessment of the needs of an~~
25 ~~individual resident; the type and frequency of services required~~
26 ~~to provide the necessary care for the resident to attain or~~
27 ~~maintain the resident's highest practicable physical, mental,~~
28 ~~and psychosocial well-being; a listing of services provided~~
29 ~~within or outside the facility to meet those needs; and an~~
30 ~~explanation of service goals.~~

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

33 400.23 Rules; evaluation and deficiencies; licensure
34 status.—

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

36 a. "Direct care staff" means persons who, through
37 interpersonal contact with residents or resident care
38 management, provide care and services to allow residents to
39 attain or maintain the highest practicable physical, mental, and
40 psychosocial well-being, including, but not limited to,



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41 disciplines and professions that must be reported in accordance
42 with 42 C.F.R. s. 483.70(q) in the categories of direct care
43 services of nursing, dietary, therapeutic, and mental health.

44 The term does not include a person whose primary duty is
45 maintaining the physical environment of the facility, including,
46 but not limited to, food preparation, laundry, and housekeeping.

47 b. "Facility assessment" means a process, performed in
48 accordance with 42 C.F.R. s. 483.70(e), to determine the staff
49 competencies necessary to provide the level and types of care
50 needed for the facility's resident population, considering the
51 types of diseases, conditions, physical and cognitive
52 disabilities, overall acuity, and other factors pertinent to
53 that resident population.

54 2. For purposes of this subsection, direct care staffing
55 hours do not include time spent on nursing administration,
56 activities program administration, staff development, staffing
57 coordination, and the administrative portion of the minimum data
58 set and care plan coordination for Medicaid.

59 (b)1. Each facility must determine its direct care staffing
60 needs based on the facility assessment and the individual needs
61 of a resident based on the resident's care plan. At a minimum,
62 staffing ~~The agency shall adopt rules providing minimum staffing~~
63 ~~requirements for nursing home facilities. These requirements~~
64 must include the following, for each facility:

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



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70 b. A minimum ~~certified nursing assistant staffing~~ of 2.0
71 2.5 hours of direct care by a certified nursing assistant per
72 resident per day. A facility may not staff below one certified
73 nursing assistant per 20 residents.

74 c. A minimum ~~licensed nursing staffing~~ of 1.0 hour of
75 direct care by a licensed nurse per resident per day. A facility
76 may not staff below one licensed nurse per 40 residents.

77 2. Nursing assistants employed under s. 400.211(2) may be
78 included in computing the hours of direct care provided by
79 certified nursing assistants and may be included in computing
80 the staffing ratio for certified nursing assistants if their job
81 responsibilities include only nursing-assistant-related duties.

82 3. Each nursing home facility must document compliance with
83 staffing standards as required under this paragraph and post
84 daily the names of licensed nurses and certified nursing
85 assistants ~~staff~~ on duty for the benefit of facility residents
86 and the public. Facilities must maintain the records documenting
87 compliance with minimum staffing standards for a period of 5
88 years and must report staffing in accordance with 42 C.F.R. s.
89 483.70(q).

90 4. The agency must ~~shall~~ recognize the use of licensed
91 nurses for compliance with minimum staffing requirements for
92 certified nursing assistants if the nursing home facility
93 otherwise meets the minimum staffing requirements for licensed
94 nurses and the licensed nurses are performing the duties of a
95 certified nursing assistant. Unless otherwise approved by the
96 agency, licensed nurses counted toward the minimum staffing
97 requirements for certified nursing assistants must exclusively
98 perform the duties of a certified nursing assistant for the



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

108 5. Evidence that a facility complied with the minimum
109 direct care staffing requirements under subparagraph 1. is not
110 admissible as evidence of compliance with the nursing services
111 requirements under 42 C.F.R. s. 483.35 or 42 C.F.R. s. 483.70.

112 (c) ~~(b)~~ Paid feeding assistants and direct care nonnursing
113 staff, other than certified nursing assistants and licensed
114 nurses, who have successfully completed the feeding assistant
115 training program under s. 400.141(1)(v) and who provide
116 providing eating assistance to residents shall ~~not~~ count toward
117 compliance with overall direct care minimum staffing hours but
118 not the hours of direct care required for certified nursing
119 assistants or licensed nurses. Time spent by certified nursing
120 assistants or licensed nurses on providing eating assistance to
121 residents shall count toward the hours of direct care required
122 for certified nursing assistants or licensed nurses ~~standards.~~

123 (d) ~~(e)~~ Licensed practical nurses licensed under chapter 464
124 who provide ~~are providing~~ nursing services in nursing home
125 facilities under this part may supervise the activities of other
126 licensed practical nurses, certified nursing assistants, and
127 other unlicensed personnel providing services in such facilities



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128 in accordance with rules adopted by the Board of Nursing.

129 (e) The agency may adopt rules to implement this
130 subsection.

131 Section 3. Present subsection (2) of section 400.0234,
132 Florida Statutes, is redesignated as subsection (3), and a new
133 subsection (2) is added to that section, to read:

134 400.0234 Availability of facility records for investigation
135 of resident's rights violations and defenses; penalty.—

136 (2) Information submitted pursuant to s. 408.061(5) and (6)
137 is discoverable and admissible in a civil action or an
138 administrative action under this part or part II of chapter 408.

139 Section 4. Subsection (4) of section 400.024, Florida
140 Statutes, is amended, and subsection (5) is added to that
141 section, to read:

142 400.024 Failure to satisfy a judgment or settlement
143 agreement; required notification to claimants.—

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

146 (a) If the license is subject to renewal, the agency may
147 deny the license renewal unless compliance with this section is
148 achieved.; ~~and~~

149 (b) If a change of ownership application for the facility
150 at issue is filed ~~submitted~~ by the licensee, by a person or
151 entity identified as having a controlling interest in the
152 licensee, or by a related party, the agency shall deny the
153 change of ownership application unless compliance with this
154 section is achieved.

155 (c) If an adverse final judgment under subsection (1) is
156 entered but payment is not yet due and a change of ownership



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157 application for the facility at issue is submitted by the
158 licensee, by a person or entity identified as having a
159 controlling interest in the licensee, or by a related party, the
160 adverse final judgment becomes the responsibility and liability
161 of the transferee if the agency approves the change of ownership
162 application.

163 (5) If a change of ownership application for the facility
164 at issue is filed by the licensee, by a person or entity
165 identified as having a controlling interest in the licensee, or
166 by a related party, then:

167 (a) The licensee or transferor must provide written notice
168 of the filing of the application to each pending claimant or the
169 claimant's attorney of record, if applicable. The written notice
170 must be provided within 14 days after the date the application
171 is filed with the agency.

172 (b) The written notice must be provided by certified mail,
173 return receipt requested, or other method that provides
174 verification of receipt.

175 (c) A claimant has 30 days after the date of receipt of the
176 written notice to object to the application if the claimant has
177 reason to believe that the approval of the application would
178 facilitate a fraudulent transfer or allow the transferor to
179 avoid financial responsibility for the claimant's pending claim.

180 (d) The agency must consider any objection brought pursuant
181 to this subsection in its decision to approve or deny an
182 application for change of ownership under this part and part II
183 of chapter 408.

184 (e) If a claim is pending in arbitration at the time that
185 the application for change of ownership is filed, the claimant



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186 may file a petition to enjoin the transfer in circuit court.

187 (f) As used in this subsection, the term "claimant" means a
188 resident or the resident's family or personal representative who
189 has notified the licensee or facility of a potential claim by
190 written notice of intent or who has initiated an action, claim,
191 or arbitration proceeding against the licensee or facility.

192 Section 5. Paragraphs (g), (n), and (r) of subsection (1)
193 of section 400.141, Florida Statutes, are amended to read:

194 400.141 Administration and management of nursing home
195 facilities.—

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

198 (g) If the facility has a standard license, exceeds the
199 minimum required hours of direct care provided by licensed
200 nurses nursing and certified nursing assistants ~~assistant-direct~~
201 ~~care~~ per resident per day, and is part of a continuing care
202 facility licensed under chapter 651 or is a retirement community
203 that offers other services pursuant to part III of this chapter
204 or part I or part III of chapter 429 on a single campus, be
205 allowed to share programming and staff. At the time of
206 inspection, a continuing care facility or retirement community
207 that uses this option must demonstrate through staffing records
208 that minimum staffing requirements for the facility were met.
209 Licensed nurses and certified nursing assistants who work in the
210 facility may be used to provide services elsewhere on campus if
211 the facility exceeds the minimum number of direct care hours
212 required per resident per day and the total number of residents
213 receiving direct care services from a licensed nurse or a
214 certified nursing assistant does not cause the facility to



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215 violate the staffing ratios required under s. 400.23(3)(b) ~~s.~~
216 ~~400.23(3)(a)~~. Compliance with the minimum staffing ratios must
217 be based on the total number of residents receiving direct care
218 services, regardless of where they reside on campus. If the
219 facility receives a conditional license, it may not share staff
220 until the conditional license status ends. This paragraph does
221 not restrict the agency's authority under federal or state law
222 to require additional staff if a facility is cited for
223 deficiencies in care which are caused by an insufficient number
224 of certified nursing assistants or licensed nurses. The agency
225 may adopt rules for the documentation necessary to determine
226 compliance with this provision.

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

228 1. A facility that has failed to comply with state minimum-
229 staffing requirements for 48 ~~2~~ consecutive hours ~~days~~ is
230 prohibited from accepting new admissions until the facility has
231 achieved the minimum-staffing requirements for 6 consecutive
232 days. For the purposes of this subparagraph, any person who was
233 a resident of the facility and was absent from the facility for
234 the purpose of receiving medical care at a separate location or
235 was on a leave of absence is not considered a new admission.
236 Failure by the facility to impose such an admissions moratorium
237 is subject to a \$1,000 fine.

238 2. A facility that does not have a conditional license may
239 be cited for failure to comply with the standards in s.
240 400.23(3)(b)1.b. and c. ~~s. 400.23(3)(a)1.b. and c.~~ only if it
241 has failed to meet those standards for 48 ~~on 2~~ consecutive hours
242 ~~days~~ or if it has failed to meet at least 97 percent of those
243 standards on any one day.



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

247 (r) Maintain in the medical record for each resident a
248 daily chart of direct care ~~certified nursing assistant~~ services
249 provided to the resident. The direct care staff ~~certified~~
250 ~~nursing assistant who is~~ caring for the resident must complete
251 this record by the end of his or her shift. This record must
252 indicate assistance with activities of daily living, assistance
253 with eating, and assistance with drinking, and must record each
254 offering of nutrition and hydration for those residents whose
255 plan of care or assessment indicates a risk for malnutrition or
256 dehydration.

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

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259 ===== T I T L E A M E N D M E N T =====

260 And the title is amended as follows:

261 Delete everything before the enacting clause
262 and insert:

263 A bill to be entitled
264 An act relating to nursing homes; amending s. 400.021,
265 F.S.; revising the definition of the term "resident
266 care plan"; amending s. 400.23, F.S.; defining the
267 terms "direct care staff" and "facility assessment";
268 specifying functions that do not constitute direct
269 care staffing hours for purposes of required nursing
270 home staffing ratios; revising nursing home staffing
271 requirements; requiring nursing home facilities to
272 maintain staffing records for a specified time and



273 report staffing information consistent with federal
274 law; providing that evidence of compliance with state
275 minimum staffing requirements is not admissible as
276 evidence for compliance with specified provisions of
277 federal law; providing that eating assistance to
278 residents provided by certain direct care staff counts
279 toward certain minimum direct care staffing
280 requirements; authorizing the Agency for Health Care
281 Administration to adopt rules; amending s. 400.0234,
282 F.S.; providing that certain information submitted to
283 the agency is discoverable and admissible in civil and
284 administrative proceedings; amending s. 400.024, F.S.;
285 providing that an unsatisfied or undischarged adverse
286 final judgment in connection with a nursing home
287 facility becomes the responsibility and liability of a
288 new owner if ownership of the facility is transferred;
289 requiring a licensee to provide written notice to any
290 pending claimants or their attorneys of record within
291 a specified timeframe after filing a change of
292 ownership application with the agency; providing
293 requirements for the notice; providing that claimants
294 may object to the application within a specified
295 timeframe under certain circumstances; requiring the
296 agency to consider any such objections in its
297 decision; providing for the filing of such objections
298 in circuit court under certain circumstances; defining
299 the term "claimant"; amending s. 400.141, F.S.;
300 conforming cross-references and provisions to changes
301 made by the act; revising provisions related to



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facilities that fail to comply with minimum staffing
requirements; providing an effective date.