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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2022	.	
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The Committee on Health Policy (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.



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11 s. 483.21(b) which is, ~~maintained,~~ and reviewed at least ~~not~~
12 ~~less than~~ quarterly by a registered nurse, with participation
13 from other facility staff and the resident or his or her
14 designee or legal representative. The resident care plan must
15 include, ~~which includes~~ a comprehensive assessment of the needs
16 of an individual resident; the type and frequency of services
17 required to provide the necessary care for the resident to
18 attain or maintain the highest practicable physical, mental, and
19 psychosocial well-being; a listing of services provided within
20 or outside the facility to meet those needs; and an explanation
21 of service goals.

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

24 400.23 Rules; evaluation and deficiencies; licensure
25 status.—

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, and
31 psychosocial well-being. The term includes, but is not limited
32 to, disciplines and professions that must be reported in
33 accordance with 42 C.F.R. s. 483.70(q) in the following
34 categories of direct care services:

35 (I) Physician.

36 (II) Nursing.

37 (III) Pharmacy.

38 (IV) Dietary.

39 (V) Therapeutic.



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- 40 (VI) Dental.
- 41 (VII) Podiatry.
- 42 (VIII) Mental health.

43

44 The term does not include individuals 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 to determine the
48 staff competencies that are necessary to provide the level and
49 types of care needed for the facility's resident population
50 considering the types of diseases, conditions, physical and
51 cognitive disabilities, overall acuity, and other pertinent
52 factors that are present within that resident population.

53 Additional requirements for conducting a facility assessment
54 must be performed in accordance with 42 C.F.R. s. 483.70(e).

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

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

66 a. A minimum weekly average of ~~certified nursing assistant~~
67 ~~and licensed nursing staffing combined of 3.6 hours of direct~~
68 care per resident per day. As used in this subparagraph ~~sub-~~



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69 ~~subparagraph~~, a week is defined as Sunday through Saturday.

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 a ratio of one
73 certified 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 a ratio of one licensed nurse per 40
77 residents.

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

83 3. Each nursing home facility must document compliance with
84 staffing standards as required under this paragraph and post
85 daily the names of licensed nurses and certified nursing
86 assistants ~~staff~~ on duty for the benefit of facility residents
87 and the public. Facilities must maintain the records documenting
88 compliance with minimum staffing standards for a period of 5
89 years and must report staffing in accordance with 42 C.F.R. s.
90 483.70(q).

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



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

109 5. The nurse staffing requirements imposed in this
110 paragraph are minimum nurse staffing requirements for nursing
111 home facilities. Evidence that a facility complied with the
112 minimum direct care staffing requirements under subparagraph 1.
113 is not admissible as evidence of compliance with the nursing
114 services requirements under 42 C.F.R. s. 483.35 or 42 C.F.R. s.
115 483.70.

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

124 (d) ~~(e)~~ Licensed practical nurses licensed under chapter 464
125 who provide ~~are providing~~ nursing services in nursing home
126 facilities under this part may supervise the activities of other



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127 licensed practical nurses, certified nursing assistants, and
128 other unlicensed personnel providing services in such facilities
129 in accordance with rules adopted by the Board of Nursing.

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

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

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

137 (2) Forms filed with the agency pursuant to s. 408.061(5)
138 and (6) are not confidential or exempt from the provisions of s.
139 119.07(1) and s. 24(a), Art. I of the State Constitution and may
140 be discoverable and admissible in a civil action under this part
141 or an administrative action under this part or part II of
142 chapter 408.

143 Section 4. Subsection (4) of section 400.024, Florida
144 Statutes, is amended to read:

145 400.024 Failure to satisfy a judgment or settlement
146 agreement.—

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

149 (a) If the license is subject to renewal, the agency may
150 deny the license renewal unless compliance with this section is
151 achieved. ~~and~~

152 (b) If a change of ownership application for the facility
153 at issue is filed ~~submitted~~ by the licensee, by a person or
154 entity identified as having a controlling interest in the
155 licensee, or by a related party, the unsatisfied or undischarged



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156 adverse final judgment under subsection (1) becomes the
157 responsibility and liability of the transferee, and the agency
158 shall deny the change of ownership application unless compliance
159 with this section is achieved.

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

164 1. The licensee or transferor must provide written notice
165 of the filing of the application to each pending claimant or the
166 claimant's attorney of record, if applicable, within 14 days
167 after the date the application is filed with the agency.

168 2. The written notice must be provided by certified mail,
169 return receipt requested, or other method that provides
170 verification of receipt.

171 3. A claimant has 30 days after the date of receipt of the
172 written notice to object to the application if the claimant has
173 reason to believe that the approval of the application would
174 facilitate a fraudulent transfer or allow the transferor to
175 avoid financial responsibility for the claimant's pending claim.

176 4. The agency must consider any objection brought pursuant
177 to this subsection in its decision to approve or deny an
178 application for change of ownership under this part and part II
179 of chapter 408.

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

183 6. As used in this paragraph, "claimant" means a resident
184 or the resident's family or personal representative who has



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185 notified the licensee or facility of a potential claim by notice
186 of intent letter or who has initiated an action, claim, or
187 arbitration proceeding against the licensee or facility.

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

190 400.141 Administration and management of nursing home
191 facilities.-

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

194 (g) If the facility has a standard license, exceeds the
195 minimum required hours of direct care provided by licensed
196 nurses nursing and certified nursing assistants ~~assistant-direct~~
197 ~~care~~ per resident per day, and is part of a continuing care
198 facility licensed under chapter 651 or is a retirement community
199 that offers other services pursuant to part III of this chapter
200 or part I or part III of chapter 429 on a single campus, be
201 allowed to share programming and staff. At the time of
202 inspection, a continuing care facility or retirement community
203 that uses this option must demonstrate through staffing records
204 that minimum staffing requirements for the facility were met.
205 Licensed nurses and certified nursing assistants who work in the
206 facility may be used to provide services elsewhere on campus if
207 the facility exceeds the minimum number of direct care hours
208 required per resident per day and the total number of residents
209 receiving direct care services from a licensed nurse or a
210 certified nursing assistant does not cause the facility to
211 violate the staffing ratios required under s. 400.23(3)(b) ~~s.~~
212 ~~400.23(3)(a)~~. Compliance with the minimum staffing ratios must
213 be based on the total number of residents receiving direct care



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214 services, regardless of where they reside on campus. If the
215 facility receives a conditional license, it may not share staff
216 until the conditional license status ends. This paragraph does
217 not restrict the agency's authority under federal or state law
218 to require additional staff if a facility is cited for
219 deficiencies in care which are caused by an insufficient number
220 of certified nursing assistants or licensed nurses. The agency
221 may adopt rules for the documentation necessary to determine
222 compliance with this provision.

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

224 1. The agency may impose a moratorium on new admissions for
225 a facility that has failed for 48 consecutive hours to comply
226 with the minimum hours of direct care required to be provided by
227 a licensed nurse or certified nursing assistant. The moratorium
228 may be imposed until the facility is able to document compliance
229 with the minimum direct care hours required per resident per day
230 for licensed nurses and certified nursing assistants state
231 ~~minimum-staffing requirements for 2 consecutive days is~~
232 ~~prohibited from accepting new admissions until the facility has~~
233 ~~achieved the minimum-staffing requirements for 6 consecutive~~
234 ~~days.~~ For the purposes of this subparagraph, any person who was
235 a resident of the facility and was absent from the facility for
236 the purpose of receiving medical care at a separate location or
237 was on a leave of absence is not considered a new admission.
238 ~~Failure by the facility to impose such an admissions moratorium~~
239 ~~is subject to a \$1,000 fine.~~

240 2. A facility that has a standard ~~does not have a~~
241 ~~conditional~~ license may be cited for failure to comply with the
242 standards in s. 400.23(3)(b)1.b. and c. ~~s. 400.23(3)(a)1.b. and~~



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243 ~~e.~~ only if it has failed to meet those standards on 2
244 consecutive days ~~or if it has failed to meet at least 97 percent~~
245 ~~of those standards on any one day.~~

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

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

259 Section 6. Nursing Home Sustainability Task Force.—There is
260 created the Nursing Home Sustainability Task Force. The task
261 force shall review, analyze, and make recommendations specific
262 to the sustainability of the state's model of providing quality
263 nursing home care. The task force shall consist of
264 representatives of nursing home providers and other interested
265 stakeholders. The task force shall review all areas of the
266 provision of health care services to residents, regulation,
267 liability, licensing, quality initiatives, and the availability
268 of quality, affordable, and accessible health care. The task
269 force shall make any recommendations to the Agency for Health
270 Care Administration, the Governor, the President of the Senate,
271 and the Speaker of the House by January 1, 2025.



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272 Section 7. Subsection (6) of section 651.118, Florida
273 Statutes, is amended to read:

274 651.118 Agency for Health Care Administration; certificates
275 of need; sheltered beds; community beds.—

276 (6) Unless the provider already has a component that is to
277 be a part of the continuing care facility and that is licensed
278 under chapter 395, part II of chapter 400, or part I of chapter
279 429 at the time of construction of the continuing care facility,
280 the provider must construct the non-nursing ~~nonnursing~~ home
281 portion of the facility and the nursing home portion of the
282 facility at the same time. If a provider constructs less than
283 the number of residential units approved in the certificate of
284 authority, the number of licensed sheltered nursing home beds
285 shall be reduced by a proportionate share.

286 Section 8. This act shall take effect upon becoming a law.

287

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

289 And the title is amended as follows:

290 Delete everything before the enacting clause
291 and insert:

292 A bill to be entitled

293 An act relating to modernization of nursing home
294 facility staffing; amending s. 400.021, F.S.; revising
295 the definition of the term "resident care plan";
296 amending s. 400.23, F.S.; defining the terms "direct
297 care staff" and "facility assessment"; specifying
298 functions that do not constitute direct care staffing
299 hours for purposes of required nursing home staffing
300 ratios; revising nursing home staffing requirements;



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301 requiring nursing home facilities to maintain staffing
302 records for a specified time and report staffing
303 information consistent with federal law; providing
304 construction; providing that evidence of compliance
305 with state minimum staffing requirements is not
306 admissible as evidence for compliance with specified
307 provisions of federal law; providing that eating
308 assistance to residents provided by certain direct
309 care staff counts toward certain minimum direct care
310 staffing requirements; authorizing the Agency for
311 Health Care Administration to adopt rules; amending s.
312 400.0234, F.S.; providing that certain forms filed
313 with the agency are not confidential or exempt and may
314 be discoverable and admissible in civil or
315 administrative proceedings; amending s. 400.024, F.S.;
316 providing that an unsatisfied or undischarged adverse
317 final judgment in connection with a nursing home
318 facility becomes the responsibility and liability of a
319 new owner if ownership of the facility is transferred;
320 requiring a licensee to provide written notice to any
321 pending claimants or their attorneys of record within
322 a specified timeframe after filing a change of
323 ownership application with the agency; providing
324 requirements for the notice; providing that claimants
325 may object to the application within a specified
326 timeframe under certain circumstances; requiring the
327 agency to consider any such objections in its
328 decision; providing for the filing of such objections
329 in circuit court under certain circumstances; defining



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330 the term "claimant"; amending s. 400.141, F.S.;

331 conforming cross-references and provisions to changes

332 made by the act; revising provisions related to

333 moratoriums on new admissions for facilities that fail

334 to comply with minimum staffing requirements; deleting

335 a certain fine; creating the Nursing Home

336 Sustainability Task Force; providing duties and

337 membership of the task force; requiring the task force

338 to submit its recommendations to the agency, the

339 Governor, and the Legislature by a specified date;

340 amending s. 651.118, F.S.; making a technical change;

341 providing an effective date.