

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 804

INTRODUCER: Senator Albritton

SUBJECT: Modernization of Nursing Home Facility Staffing

DATE: February 9, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	Pre-meeting
2.			CA	
3.			RC	

I. Summary:

SB 804 amends ss. 400.23 and 400.141, F.S., to modify nursing home staffing requirements. The bill defines the terms “average monthly hours of direct care per resident per day,” “direct care staff,” and “non-nursing direct care staff.” The bill replaces the requirement that a nursing home provide a minimum of 2.5 hours of certified nursing assistant (CNA) staffing per resident per day with the requirement that a nursing home provide 2.5 hours of direct care by non-nursing direct care staff (NNDCS) per resident per day.

The bill also replaces other references to CNAs with references to NNDCS to conform. The bill specifies that the required 2.5 direct care staffing hours includes hours provided by paid feeding assistants or NNDCS who have completed a feeding assistant training program, does not include time spent on certain administrative tasks, and that nursing assistants employed under CNA training and personal care attendant programs¹ may still count toward providing such hours of care. The bill also requires nursing homes to provide a minimum monthly average of 3.6 direct care hours per resident per day, rather than the same minimum weekly average.

The bill requires nursing homes to document compliance with staffing standards and to maintain records and report staffing in accordance with specified federal statutes. The bill also repeals the prohibition on a nursing home accepting new patients if the nursing home has failed to comply with minimum staffing requirements.

The bill provides an effective date of July 1, 2022.

¹ These include CNAs in training and those who have preliminarily passed the certification exam; CNAs certified or registered in other states who have no findings of abuse, neglect, or exploitation; and personal care attendants. *See* s. 400.211(2), F.S.

II. Present Situation:

Direct Care Staff

Federal law defines “direct care staff” as those individuals who, through interpersonal contact with nursing home residents or resident care management, provide care and services to allow residents to attain or maintain the highest practicable physical, mental, and psychosocial well-being. Direct care staff does not include individuals whose primary duty is maintaining the physical environment of the long-term care facility (for example, housekeeping).²

Direct care staff are the primary providers of paid, hands-on care for more than 13 million elderly and disabled Americans. They assist individuals with a broad range of support, including preparing meals, helping with medications, bathing, dressing, getting about (mobility), and getting to planned activities on a daily basis.³

Direct care staff fall into three main categories tracked by the U.S. Bureau of Labor Statistics: Nursing Assistants (usually known as Certified Nursing Assistants or CNAs), Home Health Aides, and Personal Care Aides:

- Nursing Assistants or Nursing Aides generally work in nursing homes, although some work in assisted living facilities, other community-based settings, or hospitals. They assist residents with activities of daily living (ADLs) such as eating, dressing, bathing, and toileting. They also perform clinical tasks such as range-of motion exercises and blood pressure readings.
- Home Health Aides provide essentially the same care and services as nursing assistants, but they assist people in their homes or in community settings under the supervision of a nurse or therapist. They may also perform light housekeeping tasks such as preparing food or changing linens.
- Personal Care Aides work in either private or group homes. They have many titles, including personal care attendant, home care worker, homemaker, and direct support professional. (The latter work with people with intellectual and developmental disabilities.) In addition to providing assistance with ADLs, these aides often help with housekeeping chores, meal preparation, and medication management. They also help individuals go to work and remain engaged in their communities. A growing number of these workers are employed and supervised directly by consumers.⁴

The federal government requires training only for nursing assistants and home health aides who work in Medicare-certified and Medicaid-certified nursing homes and home health agencies. Such training includes training on residents’ rights; abuse, neglect, and exploitation; quality

² 42 CFR s. 483.70(q)(1)

³ Khatutsky, et al., *Understanding Direct Care Workers: a Snapshot of Two of America’s Most Important Jobs, Certified Nursing Assistants and Home Health Aides*, (March 2011), available at <https://aspe.hhs.gov/basic-report/understanding-direct-care-workers-snapshot-two-americas-most-important-jobs-certified-nursing-assistants-and-home-health-aides#intro> (last visited on Feb. 4, 2022).

⁴ Paraprofessional Healthcare Institute, *Who are Direct Care Workers?*, Feb. 2011, available at: <https://phinational.org/wp-content/uploads/legacy/clearinghouse/NCDCW%20Fact%20Sheet-1.pdf> (last visited on Feb. 4, 2022).

assurance; infection control; and compliance and ethics; and specifies that direct care staff must be trained in effective communications.⁵

Federal Requirement for a Nursing Home Facility Assessment

Federal law in 42 CFR s. 483.70(e) requires that a nursing home conduct and document a facility-wide assessment to determine what resources are necessary to care for its residents competently during both day-to-day operations and emergencies. Facilities must review and update this assessment at least annually or whenever there is an actual or planned change that would require a substantial modification of any part of the assessment. The assessment must include:

- The facility's resident population, including, but not limited to:
 - Both the number of residents and the facility's resident capacity;
 - The care required by the resident population considering the types of diseases, conditions, physical and cognitive disabilities, overall acuity, and other pertinent facts that are present within that population;
 - The staff competencies that are necessary to provide the level and types of care needed for the resident population;
 - The physical environment, equipment, services, and other physical plant considerations that are necessary to care for this population; and
 - Any ethnic, cultural, or religious factors that may potentially affect the care provided by the facility, including, but not limited to, activities and food and nutrition services.
- The facility's resources, including but not limited to:
 - All buildings and/or other physical structures and vehicles;
 - Equipment (medical and non-medical);
 - Services provided, such as physical therapy, pharmacy, and specific rehabilitation therapies;
 - All personnel, including managers, staff (both employees and those who provide services under contract), and volunteers, as well as their education and/or training and any competencies related to resident care;
 - Contracts, memoranda of understanding, or other agreements with third parties to provide services or equipment to the facility during both normal operations and emergencies; and
 - Health information technology resources, such as systems for electronically managing patient records and electronically sharing information with other organizations.
- A facility-based and community-based risk assessment, utilizing an all-hazards approach.

Florida Nursing Home Staffing Standards

Section 400.23(3), F.S., requires the Agency for Health Care Administration to adopt rules providing minimum staffing requirements for nursing home facilities.⁶ The requirements must include:

⁵ 42 CFR s. 483.95

⁶ These requirements apply to all nursing homes, s. 400.23(5), F.S., provides additional requirements specific to nursing homes that treat persons under the age of 21.

- A minimum weekly average of 3.6 hours of direct care per resident per day provided by a combination of certified nursing assistants and licensed nursing staff. A week is defined as Sunday through Saturday.
- A minimum of 2.5 hours of direct care per resident per day provided by certified nursing assistant staff. A facility may not staff at a ratio of less than one certified nursing assistant per 20 residents.
- A minimum of 1.0 hour of direct care per resident per day provided by licensed nursing staff. A facility may not staff at a ratio of less than one licensed nurse per 40 residents.
- Nursing assistants employed under s. 400.211(2), F.S.,⁷ may be included in computing the staffing ratio for certified nursing assistants if their job responsibilities include only nursing-assistant-related duties.
- Each nursing home facility must document compliance with staffing standards and post daily the names of staff on duty for the benefit of facility residents and the public.
- Licensed nurses may be used to meet staffing requirements for CNAs if the licensed nurses are performing the duties of a CNA and the facility otherwise meets minimum staffing requirements for licensed nurses.
- Paid feeding assistants and non-nursing staff providing eating assistance to residents do not count toward compliance with minimum staffing standards.

III. Effect of Proposed Changes:

SB 804 amends ss. 400.23 and 400.141, F.S., to modify nursing home staffing requirements. The bill defines the terms:

- “Average monthly hours of direct care per resident per day” to mean the total number of direct care service hours provided by direct care staff in a month at the facility divided by the sum of each daily resident census for that month.
- “Direct care staff” to mean individuals who, through interpersonal contact with residents or resident care management, provide care and services to allow residents to attain or maintain the highest practicable physical, mental, and psychosocial well-being. The term does not include individuals whose primary duty is maintaining the physical environment of the facility, including, but not limited to, food preparation, laundry, and housekeeping. The term includes, but is not limited to, disciplines and professions that must be reported in accordance with 42 C.F.R. s. 483.70(q) and all of the following:
 - Licensed nurses.
 - Certified nursing assistants.
 - Physical therapy staff.
 - Occupational therapy staff.
 - Speech therapy staff.
 - Respiratory therapy staff.
 - Activities staff.
 - Social services staff.
 - Mental health service workers.
- “Non-nursing direct care staff” to mean direct care staff who are not licensed to practice nursing under part I of ch. 464, F.S.

⁷ *Supra* n. 1.

The bill makes the following changes regarding minimum staffing requirements for nursing homes:

- Repeals the requirement that a nursing home must provide 2.5 hours of direct care by CNAs and replaces it with the requirement that nursing home must provide 2.5 hours of direct care by NNDCS. Hours provided by a CNA still qualify towards this requirement and the bill specifies that direct care provided by nursing assistants who are employed under s. 400.211(2), F.S.,⁸ also qualifies.
- Allows hours of eating assistance provided by paid feeding assistants or NNDCS who have completed the feeding assistant training program established under s. 400.141(1)(v), F.S., to qualify towards fulfilling the 2.5 hour requirement detailed above.
- Requires a nursing home to demonstrate a minimum monthly average, rather than a weekly average, of 3.6 hours of direct care per resident per day and specifies that the required direct care must be determined by the facility assessment of staffing needs based on the assessment conducted under 42 CFR s. 483.70(e).
- Repeals a prohibition on a nursing home that has not met the minimum staffing requirements for two consecutive days, accepting new residents until the nursing home has met minimum staffing requirements for six consecutive days.

The bill also specifies that each nursing home must maintain records of staffing and report staffing in accordance with 42 CFR ss. 483.35(g) and 483.70(q), respectively. The bill amends current posting requirements to require that a nursing home post only the names of CNAs and licensed nurses, rather than all staff, who are on duty for the benefit of facility residents and the public.

The bill makes other conforming and cross-reference changes.

The bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

⁸ *Id.*

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 804 may have an indeterminate positive fiscal impact on nursing homes that are authorized to use staff other than CNAs to fulfill staffing requirements.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

SB 804 creates three new definitions in section 1 of the bill and limits the application of those definitions to s. 400.23(3), F.S. However, the bill uses these defined terms when amending s. 400.141, F.S., in section 2 of the bill. The bill should be amended to apply the definitions to the instances where the defined terms are used in section 2 of the bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.23 and 400.141.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.