

By Senator Albritton

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1 A bill to be entitled
 2 An act relating to modernization of nursing home
 3 facility staffing; amending s. 400.23, F.S.; defining
 4 terms; specifying functions that do not constitute
 5 direct care staffing hours for purposes of required
 6 nursing home staffing ratios; revising nursing home
 7 staffing requirements; requiring nursing home
 8 facilities to maintain and report staffing information
 9 consistent with federal law; amending s. 400.141,
 10 F.S.; conforming cross-references and provisions to
 11 changes made by the act; providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:
 14

15 Section 1. Subsection (3) of section 400.23, Florida
 16 Statutes, is amended to read:

17 400.23 Rules; evaluation and deficiencies; licensure
 18 status.—

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

20 a. "Average monthly hours of direct care per resident per
 21 day" means the total number of direct care service hours
 22 provided by direct care staff in a month at the facility divided
 23 by the sum of each daily resident census for that month.

24 b. "Direct care staff" means individuals who, through
 25 interpersonal contact with residents or resident care
 26 management, provide care and services to allow residents to
 27 attain or maintain the highest practicable physical, mental, and
 28 psychosocial well-being. The term includes, but is not limited
 29 to, disciplines and professions that must be reported in

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30 accordance with 42 C.F.R. s. 483.70(q) and all of the following:

31 (I) Licensed nurses.

32 (II) Certified nursing assistants.

33 (III) Physical therapy staff.

34 (IV) Occupational therapy staff.

35 (V) Speech therapy staff.

36 (VI) Respiratory therapy staff.

37 (VII) Activities staff.

38 (VIII) Social services staff.

39 (IX) Mental health service workers.

40
41 The term does not include individuals whose primary duty is
42 maintaining the physical environment of the facility, including,
43 but not limited to, food preparation, laundry, and housekeeping.

44 c. "Non-nursing direct care staff" means direct care staff
45 who are not licensed to practice nursing under part I of chapter
46 464.

47 2. For purposes of this subsection, direct care staffing
48 hours do not include time spent on nursing administration, staff
49 development, staffing coordination, and the administrative
50 portion of the minimum data set and care plan coordination for
51 Medicaid.

52 (b)1. The agency shall adopt rules providing minimum
53 staffing requirements for nursing home facilities. These
54 requirements must include, for each facility:

55 a. A minimum ~~monthly~~ weekly average of ~~certified nursing~~
56 assistant and licensed nursing staffing combined of 3.6 hours of
57 direct care per resident per day, as determined by the facility
58 assessment staffing needs in accordance with 42 C.F.R. s.

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59 ~~483.70(e). As used in this sub-subparagraph, a week is defined~~
60 ~~as Sunday through Saturday.~~

61 b. A minimum ~~certified nursing assistant staffing~~ of 2.5
62 hours of direct care by non-nursing direct care staff per
63 resident per day. A facility may not staff below a ratio of one
64 certified nursing assistant per 20 residents.

65 c. A minimum ~~licensed nursing staffing~~ of 1.0 hour of
66 direct care by licensed nurses per resident per day. A facility
67 may not staff below a ratio of one licensed nurse per 40
68 residents.

69 2. Nursing assistants employed under s. 400.211(2) may be
70 included in computing the hours of non-nursing direct care
71 provided to residents and may be included in computing the
72 staffing ratio for certified nursing assistants if their job
73 responsibilities include only nursing-assistant-related duties.

74 3. Each nursing home facility must document compliance with
75 staffing standards as required under this paragraph and post
76 daily the names of licensed nurses and certified nursing
77 assistants ~~staff~~ on duty for the benefit of facility residents
78 and the public. Facilities must maintain records of staffing in
79 accordance with 42 C.F.R. s. 483.35(g) and must report staffing
80 in accordance with 42 C.F.R. s. 483.70(q).

81 4. The agency must ~~shall~~ recognize the use of licensed
82 nurses for compliance with minimum staffing requirements for
83 non-nursing direct care staff ~~certified nursing assistants~~ if
84 the nursing home facility otherwise meets the minimum staffing
85 requirements for licensed nurses and the licensed nurses are
86 performing the duties of a certified nursing assistant. Unless
87 otherwise approved by the agency, licensed nurses counted toward

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88 the minimum staffing requirements for non-nursing direct care
89 staff ~~certified nursing assistants~~ must exclusively perform the
90 duties of a certified nursing assistant for the entire shift and
91 not also be counted toward the minimum staffing requirements for
92 licensed nurses. If the agency approved a facility's request to
93 use a licensed nurse to perform both licensed nursing and
94 certified nursing assistant duties, the facility must allocate
95 the amount of staff time specifically spent on certified nursing
96 assistant duties for the purpose of documenting compliance with
97 minimum staffing requirements for non-nursing direct care staff
98 ~~certified~~ and licensed nursing staff. The hours of a licensed
99 nurse with dual job responsibilities may not be counted twice.

100 (c) ~~(b)~~ Paid feeding assistants and non-nursing direct care
101 ~~nonnursing~~ staff who have successfully completed the feeding
102 assistant training program under s. 400.141(1)(v) and who
103 provide ~~providing~~ eating assistance to residents ~~shall not~~ count
104 toward compliance with minimum staffing standards.

105 (d) ~~(e)~~ Licensed practical nurses licensed under chapter 464
106 who provide ~~are providing~~ nursing services in nursing home
107 facilities under this part may supervise the activities of other
108 licensed practical nurses, certified nursing assistants, and
109 other unlicensed personnel providing services in such facilities
110 in accordance with rules adopted by the Board of Nursing.

111 Section 2. Paragraphs (g), (n), and (r) of subsection (1)
112 of section 400.141, Florida Statutes, are amended to read:

113 400.141 Administration and management of nursing home
114 facilities.—

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

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117 (g) If the facility has a standard license, exceeds the
118 minimum required hours of direct care provided by licensed
119 nurses ~~nursing~~ and non-nursing ~~certified nursing assistant~~
120 direct care staff per resident per day, and is part of a
121 continuing care facility licensed under chapter 651 or a
122 retirement community that offers other services pursuant to part
123 III of this chapter or part I or part III of chapter 429 on a
124 single campus, be allowed to share programming and staff. At the
125 time of inspection, a continuing care facility or retirement
126 community that uses this option must demonstrate through
127 staffing records that minimum staffing requirements for the
128 facility were met. Licensed nurses and non-nursing direct care
129 staff ~~certified nursing assistants~~ who work in the facility may
130 be used to provide services elsewhere on campus if the facility
131 exceeds the minimum number of direct care hours required per
132 resident per day and the total number of residents receiving
133 direct care services from a licensed nurse or non-nursing direct
134 care staff ~~a certified nursing assistant~~ does not cause the
135 facility to violate the staffing ratios required under s.
136 400.23(3)(b) ~~s. 400.23(3)(a)~~. Compliance with the minimum
137 staffing ratios must be based on the total number of residents
138 receiving direct care services, regardless of where they reside
139 on campus. If the facility receives a conditional license, it
140 may not share staff until the conditional license status ends.
141 This paragraph does not restrict the agency's authority under
142 federal or state law to require additional staff if a facility
143 is cited for deficiencies in care which are caused by an
144 insufficient number of certified nursing assistants or licensed
145 nurses. The agency may adopt rules for the documentation

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146 necessary to determine compliance with this provision.

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

148 1. A facility that has failed to comply with state minimum-
149 staffing requirements for 2 consecutive days is ~~prohibited from~~
150 ~~accepting new admissions until the facility has achieved the~~
151 ~~minimum staffing requirements for 6 consecutive days. For the~~
152 ~~purposes of this subparagraph, any person who was a resident of~~
153 ~~the facility and was absent from the facility for the purpose of~~
154 ~~receiving medical care at a separate location or was on a leave~~
155 ~~of absence is not considered a new admission. Failure by the~~
156 ~~facility to impose such an admissions moratorium is subject to a~~
157 \$1,000 fine.

158 2. A facility that does not have a conditional license may
159 be cited for failure to comply with the standards in s.
160 400.23(3)(b)1.b. and c. ~~s. 400.23(3)(a)1.b. and e.~~ only if it
161 has failed to meet those standards on 2 consecutive days or if
162 it has failed to meet at least 97 percent of those standards on
163 any one day.

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

167 (r) Maintain in the medical record for each resident a
168 daily chart of direct care ~~certified nursing assistant~~ services
169 provided to the resident. The direct care staff ~~certified~~
170 ~~nursing assistant who is~~ caring for the resident must complete
171 this record by the end of his or her shift. This record must
172 indicate assistance with activities of daily living, assistance
173 with eating, ~~and~~ assistance with drinking, and any other direct
174 care provided and must record each offering of nutrition and

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175 hydration for those residents whose plan of care or assessment
176 indicates a risk for malnutrition or dehydration.

177 Section 3. This act shall take effect July 1, 2022.