

By the Committee on Health Policy; and 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. 400.021, F.S.; revising  
4           the definition of the term "resident care plan";  
5           amending s. 400.23, F.S.; defining the terms "direct  
6           care staff" and "facility assessment"; specifying  
7           functions that do not constitute direct care staffing  
8           hours for purposes of required nursing home staffing  
9           ratios; revising nursing home staffing requirements;  
10          requiring nursing home facilities to maintain staffing  
11          records for a specified time and report staffing  
12          information consistent with federal law; providing  
13          construction; providing that evidence of compliance  
14          with state minimum staffing requirements is not  
15          admissible as evidence for compliance with specified  
16          provisions of federal law; providing that eating  
17          assistance to residents provided by certain direct  
18          care staff counts toward certain minimum direct care  
19          staffing requirements; authorizing the Agency for  
20          Health Care Administration to adopt rules; amending s.  
21          400.0234, F.S.; providing that certain forms filed  
22          with the agency are not confidential or exempt and may  
23          be discoverable and admissible in civil or  
24          administrative proceedings; amending s. 400.024, F.S.;  
25          providing that an unsatisfied or undischarged adverse  
26          final judgment in connection with a nursing home  
27          facility becomes the responsibility and liability of a  
28          new owner if ownership of the facility is transferred;  
29          requiring a licensee to provide written notice to any

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30 pending claimants or their attorneys of record within  
31 a specified timeframe after filing a change of  
32 ownership application with the agency; providing  
33 requirements for the notice; providing that claimants  
34 may object to the application within a specified  
35 timeframe under certain circumstances; requiring the  
36 agency to consider any such objections in its  
37 decision; providing for the filing of such objections  
38 in circuit court under certain circumstances; defining  
39 the term "claimant"; amending s. 400.141, F.S.;  
40 conforming cross-references and provisions to changes  
41 made by the act; revising provisions related to  
42 moratoriums on new admissions for facilities that fail  
43 to comply with minimum staffing requirements; deleting  
44 a certain fine; creating the Nursing Home  
45 Sustainability Task Force; providing duties and  
46 membership of the task force; requiring the task force  
47 to submit its recommendations to the agency, the  
48 Governor, and the Legislature by a specified date;  
49 amending s. 651.118, F.S.; making a technical change;  
50 providing an effective date.

51  
52 Be It Enacted by the Legislature of the State of Florida:

53  
54 Section 1. Subsection (18) of section 400.021, Florida  
55 Statutes, is amended to read:

56 400.021 Definitions.—When used in this part, unless the  
57 context otherwise requires, the term:

58 (18) "Resident care plan" means a written, comprehensive

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59 person-centered care plan developed in accordance with 42 C.F.R.  
60 s. 483.21(b) which is, ~~maintained, and~~ reviewed at least ~~not~~  
61 ~~less than~~ quarterly by a registered nurse, with participation  
62 from other facility staff and the resident or his or her  
63 designee or legal representative. The resident care plan must  
64 include, ~~which includes~~ a comprehensive assessment of the needs  
65 of an individual resident; the type and frequency of services  
66 required to provide the necessary care for the resident to  
67 attain or maintain the highest practicable physical, mental, and  
68 psychosocial well-being; a listing of services provided within  
69 or outside the facility to meet those needs; and an explanation  
70 of service goals.

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

73 400.23 Rules; evaluation and deficiencies; licensure  
74 status.—

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

76 a. "Direct care staff" means individuals who, through  
77 interpersonal contact with residents or resident care  
78 management, provide care and services to allow residents to  
79 attain or maintain the highest practicable physical, mental, and  
80 psychosocial well-being. The term includes, but is not limited  
81 to, disciplines and professions that must be reported in  
82 accordance with 42 C.F.R. s. 483.70(q) in the following  
83 categories of direct care services:

84 (I) Physician.

85 (II) Nursing.

86 (III) Pharmacy.

87 (IV) Dietary.

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- 88       (V) Therapeutic.  
89       (VI) Dental.  
90       (VII) Podiatry.  
91       (VIII) Mental health.

92  
93       The term does not include individuals whose primary duty is  
94       maintaining the physical environment of the facility, including,  
95       but not limited to, food preparation, laundry, and housekeeping.

96       b. "Facility assessment" means a process to determine the  
97       staff competencies that are necessary to provide the level and  
98       types of care needed for the facility's resident population  
99       considering the types of diseases, conditions, physical and  
100       cognitive disabilities, overall acuity, and other pertinent  
101       factors that are present within that resident population.

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

104       2. For purposes of this subsection, direct care staffing  
105       hours do not include time spent on nursing administration, staff  
106       development, staffing coordination, and the administrative  
107       portion of the minimum data set and care plan coordination for  
108       Medicaid.

109       (b)1. Each facility must determine its direct care staffing  
110       needs based on the facility assessment and the individual needs  
111       of each resident based on the resident's care plan. At a  
112       minimum, staffing ~~The agency shall adopt rules providing minimum~~  
113       ~~staffing requirements for nursing home facilities. These~~  
114       requirements must include, for each facility:

115       a. A minimum weekly average of ~~certified nursing assistant~~  
116       ~~and licensed nursing staffing combined~~ of 3.6 hours of direct

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117 care per resident per day. As used in this subparagraph ~~sub-~~  
118 ~~subparagraph~~, a week is defined as Sunday through Saturday.

119 b. A minimum ~~certified nursing assistant staffing~~ of 2.0  
120 ~~2.5~~ hours of direct care by a certified nursing assistant per  
121 resident per day. A facility may not staff below a ratio of one  
122 certified nursing assistant per 20 residents.

123 c. A minimum ~~licensed nursing staffing~~ of 1.0 hour of  
124 direct care by a licensed nurse per resident per day. A facility  
125 may not staff below a ratio of one licensed nurse per 40  
126 residents.

127 2. Nursing assistants employed under s. 400.211(2) may be  
128 included in computing the hours of direct care provided by  
129 certified nursing assistants and may be included in computing  
130 the staffing ratio for certified nursing assistants if their job  
131 responsibilities include only nursing-assistant-related duties.

132 3. Each nursing home facility must document compliance with  
133 staffing standards as required under this paragraph and post  
134 daily the names of licensed nurses and certified nursing  
135 assistants ~~staff~~ on duty for the benefit of facility residents  
136 and the public. Facilities must maintain the records documenting  
137 compliance with minimum staffing standards for a period of 5  
138 years and must report staffing in accordance with 42 C.F.R. s.  
139 483.70(q).

140 4. The agency must ~~shall~~ recognize the use of licensed  
141 nurses for compliance with minimum staffing requirements for  
142 certified nursing assistants if the nursing home facility  
143 otherwise meets the minimum staffing requirements for licensed  
144 nurses and the licensed nurses are performing the duties of a  
145 certified nursing assistant. Unless otherwise approved by the

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146 agency, licensed nurses counted toward the minimum staffing  
147 requirements for certified nursing assistants must exclusively  
148 perform the duties of a certified nursing assistant for the  
149 entire shift and not also be counted toward the minimum staffing  
150 requirements for licensed nurses. If the agency approved a  
151 facility's request to use a licensed nurse to perform both  
152 licensed nursing and certified nursing assistant duties, the  
153 facility must allocate the amount of staff time specifically  
154 spent on certified nursing assistant duties for the purpose of  
155 documenting compliance with minimum staffing requirements for  
156 certified and licensed nursing staff. The hours of a licensed  
157 nurse with dual job responsibilities may not be counted twice.

158 5. The nurse staffing requirements imposed in this  
159 paragraph are minimum nurse staffing requirements for nursing  
160 home facilities. Evidence that a facility complied with the  
161 minimum direct care staffing requirements under subparagraph 1.  
162 is not admissible as evidence of compliance with the nursing  
163 services requirements under 42 C.F.R. s. 483.35 or 42 C.F.R. s.  
164 483.70.

165 (c) ~~(b)~~ Paid feeding assistants and direct care staff, other  
166 than certified nursing assistants, who have successfully  
167 completed the feeding assistant training program under s.  
168 400.141(1)(v) and who provide ~~nonnursing staff providing~~ eating  
169 assistance to residents shall ~~not~~ count toward compliance with  
170 overall direct care minimum staffing hours but not the hours of  
171 direct care required for certified nursing assistants or  
172 licensed nurses standards.

173 (d) ~~(e)~~ Licensed practical nurses licensed under chapter 464  
174 who provide ~~are providing~~ nursing services in nursing home

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175 facilities under this part may supervise the activities of other  
176 licensed practical nurses, certified nursing assistants, and  
177 other unlicensed personnel providing services in such facilities  
178 in accordance with rules adopted by the Board of Nursing.

179 (e) The agency may adopt rules to implement this  
180 subsection.

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

184 400.0234 Availability of facility records for investigation  
185 of resident's rights violations and defenses; penalty.—

186 (2) Forms filed with the agency pursuant to s. 408.061(5)  
187 and (6) are not confidential or exempt from the provisions of s.  
188 119.07(1) and s. 24(a), Art. I of the State Constitution and may  
189 be discoverable and admissible in a civil action under this part  
190 or an administrative action under this part or part II of  
191 chapter 408.

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

194 400.024 Failure to satisfy a judgment or settlement  
195 agreement.—

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

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

201 (b) If a change of ownership application for the facility  
202 at issue is filed ~~submitted~~ by the licensee, by a person or  
203 entity identified as having a controlling interest in the

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204 licensee, or by a related party, the unsatisfied or undischarged  
205 adverse final judgment under subsection (1) becomes the  
206 responsibility and liability of the transferee, and the agency  
207 shall deny the change of ownership application unless compliance  
208 with this section is achieved.

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

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

217 2. The written notice must be provided by certified mail,  
218 return receipt requested, or other method that provides  
219 verification of receipt.

220 3. A claimant has 30 days after the date of receipt of the  
221 written notice to object to the application if the claimant has  
222 reason to believe that the approval of the application would  
223 facilitate a fraudulent transfer or allow the transferor to  
224 avoid financial responsibility for the claimant's pending claim.

225 4. The agency must consider any objection brought pursuant  
226 to this subsection in its decision to approve or deny an  
227 application for change of ownership under this part and part II  
228 of chapter 408.

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

232 6. As used in this paragraph, "claimant" means a resident



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233 or the resident's family or personal representative who has  
234 notified the licensee or facility of a potential claim by notice  
235 of intent letter or who has initiated an action, claim, or  
236 arbitration proceeding against the licensee or facility.

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

239 400.141 Administration and management of nursing home  
240 facilities.—

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

243 (g) If the facility has a standard license, exceeds the  
244 minimum required hours of direct care provided by licensed  
245 nurses nursing and certified nursing assistants ~~assistant-direct~~  
246 ~~care~~ per resident per day, and is part of a continuing care  
247 facility licensed under chapter 651 or is a retirement community  
248 that offers other services pursuant to part III of this chapter  
249 or part I or part III of chapter 429 on a single campus, be  
250 allowed to share programming and staff. At the time of  
251 inspection, a continuing care facility or retirement community  
252 that uses this option must demonstrate through staffing records  
253 that minimum staffing requirements for the facility were met.  
254 Licensed nurses and certified nursing assistants who work in the  
255 facility may be used to provide services elsewhere on campus if  
256 the facility exceeds the minimum number of direct care hours  
257 required per resident per day and the total number of residents  
258 receiving direct care services from a licensed nurse or a  
259 certified nursing assistant does not cause the facility to  
260 violate the staffing ratios required under s. 400.23(3)(b) ~~s.~~  
261 ~~400.23(3)(a)~~. Compliance with the minimum staffing ratios must

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262 be based on the total number of residents receiving direct care  
263 services, regardless of where they reside on campus. If the  
264 facility receives a conditional license, it may not share staff  
265 until the conditional license status ends. This paragraph does  
266 not restrict the agency's authority under federal or state law  
267 to require additional staff if a facility is cited for  
268 deficiencies in care which are caused by an insufficient number  
269 of certified nursing assistants or licensed nurses. The agency  
270 may adopt rules for the documentation necessary to determine  
271 compliance with this provision.

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

273 1. The agency may impose a moratorium on new admissions for  
274 a facility that has failed for 48 consecutive hours to comply  
275 with the minimum hours of direct care required to be provided by  
276 a licensed nurse or certified nursing assistant. The moratorium  
277 may be imposed until the facility is able to document compliance  
278 with the minimum direct care hours required per resident per day  
279 for licensed nurses and certified nursing assistants ~~state~~  
280 ~~minimum-staffing requirements for 2 consecutive days is~~  
281 ~~prohibited from accepting new admissions until the facility has~~  
282 ~~achieved the minimum-staffing requirements for 6 consecutive~~  
283 ~~days.~~ For the purposes of this subparagraph, any person who was  
284 a resident of the facility and was absent from the facility for  
285 the purpose of receiving medical care at a separate location or  
286 was on a leave of absence is not considered a new admission.  
287 ~~Failure by the facility to impose such an admissions moratorium~~  
288 ~~is subject to a \$1,000 fine.~~

289 2. A facility that has a standard ~~does not have a~~  
290 ~~conditional~~ license may be cited for failure to comply with the

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291 standards in s. 400.23(3)(b)1.b. and c. ~~s. 400.23(3)(a)1.b. and~~  
292 ~~e.~~ only if it has failed to meet those standards on 2  
293 consecutive days ~~or if it has failed to meet at least 97 percent~~  
294 ~~of those standards on any one day.~~

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

298 (r) Maintain in the medical record for each resident a  
299 daily chart of direct care ~~certified nursing assistant~~ services  
300 provided to the resident. The direct care staff ~~certified~~  
301 ~~nursing assistant who is~~ caring for the resident must complete  
302 this record by the end of his or her shift. This record must  
303 indicate assistance with activities of daily living, assistance  
304 with eating, and assistance with drinking, and must record each  
305 offering of nutrition and hydration for those residents whose  
306 plan of care or assessment indicates a risk for malnutrition or  
307 dehydration.

308 Section 6. Nursing Home Sustainability Task Force.—There is  
309 created the Nursing Home Sustainability Task Force. The task  
310 force shall review, analyze, and make recommendations specific  
311 to the sustainability of the state's model of providing quality  
312 nursing home care. The task force shall consist of  
313 representatives of nursing home providers and other interested  
314 stakeholders. The task force shall review all areas of the  
315 provision of health care services to residents, regulation,  
316 liability, licensing, quality initiatives, and the availability  
317 of quality, affordable, and accessible health care. The task  
318 force shall make any recommendations to the Agency for Health  
319 Care Administration, the Governor, the President of the Senate,

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320 and the Speaker of the House of Representatives by January 1,  
321 2025.

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

324 651.118 Agency for Health Care Administration; certificates  
325 of need; sheltered beds; community beds.—

326 (6) Unless the provider already has a component that is to  
327 be a part of the continuing care facility and that is licensed  
328 under chapter 395, part II of chapter 400, or part I of chapter  
329 429 at the time of construction of the continuing care facility,  
330 the provider must construct the non-nursing ~~nonnursing~~ home  
331 portion of the facility and the nursing home portion of the  
332 facility at the same time. If a provider constructs less than  
333 the number of residential units approved in the certificate of  
334 authority, the number of licensed sheltered nursing home beds  
335 shall be reduced by a proportionate share.

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