

By the Committees on Rules; and Health Policy; and Senator Albritton

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

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30 filing a change of ownership application with the
31 agency; providing requirements for the notice;
32 providing that claimants may object to the application
33 within a specified timeframe under certain
34 circumstances; requiring the agency to consider any
35 such objections in its decision; providing for the
36 filing of such objections in circuit court under
37 certain circumstances; defining the term "claimant";
38 amending s. 400.141, F.S.; conforming cross-references
39 and provisions to changes made by the act; revising
40 provisions related to facilities that fail to comply
41 with minimum staffing requirements; providing an
42 effective date.

43
44 Be It Enacted by the Legislature of the State of Florida:

45
46 Section 1. Subsection (18) of section 400.021, Florida
47 Statutes, is amended to read:

48 400.021 Definitions.—When used in this part, unless the
49 context otherwise requires, the term:

50 (18) "Resident care plan" means a written, comprehensive
51 person-centered care plan developed in accordance with 42 C.F.R.
52 s. 483.21(b) by an interdisciplinary team within 7 days after
53 completion of a comprehensive assessment and with participation
54 by the resident or the resident's designee. The resident care
55 plan must be reviewed and revised after each comprehensive
56 assessment, which may be a new admission assessment, an annual
57 assessment, or an assessment after a significant change in
58 status, and after a quarterly review assessment. A resident care

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59 plan includes measurable objectives and timeframes to meet the
60 resident's medical, nursing, mental, and psychosocial needs and
61 preferences, and must describe the services to be furnished,
62 ~~maintained, and reviewed not less than quarterly by a registered~~
63 ~~nurse, with participation from other facility staff and the~~
64 ~~resident or his or her designee or legal representative, which~~
65 ~~includes a comprehensive assessment of the needs of an~~
66 ~~individual resident; the type and frequency of services required~~
67 ~~to provide the necessary care for the resident to attain or~~
68 ~~maintain the resident's highest practicable physical, mental,~~
69 ~~and psychosocial well-being; a listing of services provided~~
70 ~~within or outside the facility to meet those needs; and an~~
71 ~~explanation of service goals.~~

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

74 400.23 Rules; evaluation and deficiencies; licensure
75 status.-

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

77 a. "Direct care staff" means persons who, through
78 interpersonal contact with residents or resident care
79 management, provide care and services to allow residents to
80 attain or maintain the highest practicable physical, mental, and
81 psychosocial well-being, including, but not limited to,
82 disciplines and professions that must be reported in accordance
83 with 42 C.F.R. s. 483.70(q) in the categories of direct care
84 services of nursing, dietary, therapeutic, and mental health.
85 The term does not include a person whose primary duty is
86 maintaining the physical environment of the facility, including,
87 but not limited to, food preparation, laundry, and housekeeping.

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88 b. "Facility assessment" means a process, performed in
89 accordance with 42 C.F.R. s. 483.70(e), to determine the staff
90 competencies necessary to provide the level and types of care
91 needed for the facility's resident population, considering the
92 types of diseases, conditions, physical and cognitive
93 disabilities, overall acuity, and other factors pertinent to
94 that resident population.

95 2. For purposes of this subsection, direct care staffing
96 hours do not include time spent on nursing administration,
97 activities program administration, staff development, staffing
98 coordination, and the administrative portion of the minimum data
99 set and care plan coordination for Medicaid.

100 (b)1. Each facility must determine its direct care staffing
101 needs based on the facility assessment and the individual needs
102 of a resident based on the resident's care plan. At a minimum,
103 staffing ~~The agency shall adopt rules providing minimum staffing~~
104 ~~requirements for nursing home facilities. These requirements~~
105 must include the following, for each facility:

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

110 b. A minimum ~~certified nursing assistant staffing of 2.0~~
111 2.5 hours of direct care by a certified nursing assistant per
112 resident per day. A facility may not staff below one certified
113 nursing assistant per 20 residents.

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

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117 2. Nursing assistants employed under s. 400.211(2) may be
118 included in computing the hours of direct care provided by
119 certified nursing assistants and may be included in computing
120 the staffing ratio for certified nursing assistants if their job
121 responsibilities include only nursing-assistant-related duties.

122 3. Each nursing home facility must document compliance with
123 staffing standards as required under this paragraph and post
124 daily the names of licensed nurses and certified nursing
125 assistants ~~staff~~ on duty for the benefit of facility residents
126 and the public. Facilities must maintain the records documenting
127 compliance with minimum staffing standards for a period of 5
128 years and must report staffing in accordance with 42 C.F.R. s.
129 483.70(q).

130 4. The agency must ~~shall~~ recognize the use of licensed
131 nurses for compliance with minimum staffing requirements for
132 certified nursing assistants if the nursing home facility
133 otherwise meets the minimum staffing requirements for licensed
134 nurses and the licensed nurses are performing the duties of a
135 certified nursing assistant. Unless otherwise approved by the
136 agency, licensed nurses counted toward the minimum staffing
137 requirements for certified nursing assistants must exclusively
138 perform the duties of a certified nursing assistant for the
139 entire shift and not also be counted toward the minimum staffing
140 requirements for licensed nurses. If the agency approved a
141 facility's request to use a licensed nurse to perform both
142 licensed nursing and certified nursing assistant duties, the
143 facility must allocate the amount of staff time specifically
144 spent on certified nursing assistant duties for the purpose of
145 documenting compliance with minimum staffing requirements for

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146 certified and licensed nursing staff. The hours of a licensed
147 nurse with dual job responsibilities may not be counted twice.

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

152 (c) ~~(b)~~ Paid feeding assistants and direct care nonnursing
153 staff, other than certified nursing assistants and licensed
154 nurses, who have successfully completed the feeding assistant
155 training program under s. 400.141(1)(v) and who provide
156 providing eating assistance to residents shall not count toward
157 compliance with overall direct care minimum staffing hours but
158 not the hours of direct care required for certified nursing
159 assistants or licensed nurses. Time spent by certified nursing
160 assistants or licensed nurses on providing eating assistance to
161 residents shall count toward the hours of direct care required
162 for certified nursing assistants or licensed nurses standards.

163 (d) ~~(e)~~ Licensed practical nurses licensed under chapter 464
164 who provide are providing nursing services in nursing home
165 facilities under this part may supervise the activities of other
166 licensed practical nurses, certified nursing assistants, and
167 other unlicensed personnel providing services in such facilities
168 in accordance with rules adopted by the Board of Nursing.

169 (e) The agency may adopt rules to implement this
170 subsection.

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

174 400.0234 Availability of facility records for investigation

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175 of resident's rights violations and defenses; penalty.—

176 (2) Information submitted pursuant to s. 408.061(5) and (6)
177 is discoverable and may be admissible in a civil action or an
178 administrative action under this part or part II of chapter 408.

179 Section 4. Subsection (4) of section 400.024, Florida
180 Statutes, is amended, and subsection (5) is added to that
181 section, to read:

182 400.024 Failure to satisfy a judgment or settlement
183 agreement; required notification to claimants.—

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

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

189 (b) If a change of ownership application for the facility
190 at issue is filed ~~submitted~~ by the licensee, by a person or
191 entity identified as having a controlling interest in the
192 licensee, or by a related party, the agency shall deny the
193 change of ownership application unless compliance with this
194 section is achieved.

195 (c) If an adverse final judgment under subsection (1) is
196 entered but payment is not yet due and a change of ownership
197 application for the facility at issue is submitted by the
198 licensee, by a person or entity identified as having a
199 controlling interest in the licensee, or by a related party, the
200 adverse final judgment becomes the responsibility and liability
201 of the transferee if the agency approves the change of ownership
202 application.

203 (5) If a change of ownership application for the facility

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204 at issue is filed by the licensee, by a person or entity
205 identified as having a controlling interest in the licensee, or
206 by a related party, then:

207 (a) The licensee or transferor must provide written notice
208 of the filing of the application to each pending claimant or the
209 claimant's attorney of record, if applicable. The written notice
210 must be provided within 14 days after the date the application
211 is filed with the agency.

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

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

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

224 (e) If a claim is pending in arbitration at the time that
225 the application for change of ownership is filed, the claimant
226 may file a petition to enjoin the transfer in circuit court.

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

232 Section 5. Paragraphs (g), (n), and (r) of subsection (1)

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233 of section 400.141, Florida Statutes, are amended to read:

234 400.141 Administration and management of nursing home
235 facilities.—

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

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

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262 to require additional staff if a facility is cited for
263 deficiencies in care which are caused by an insufficient number
264 of certified nursing assistants or licensed nurses. The agency
265 may adopt rules for the documentation necessary to determine
266 compliance with this provision.

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

268 1. A facility that has failed to comply with state minimum-
269 staffing requirements for 48 ~~2~~ consecutive hours ~~days~~ is
270 prohibited from accepting new admissions until the facility has
271 achieved the minimum-staffing requirements for 6 consecutive
272 days. For the purposes of this subparagraph, any person who was
273 a resident of the facility and was absent from the facility for
274 the purpose of receiving medical care at a separate location or
275 was on a leave of absence is not considered a new admission.
276 Failure by the facility to impose such an admissions moratorium
277 is subject to a \$1,000 fine.

278 2. A facility that does not have a conditional license may
279 be cited for failure to comply with the standards in s.
280 400.23(3)(b)1.b. and c. ~~s. 400.23(3)(a)1.b. and c.~~ only if it
281 has failed to meet those standards for 48 ~~on 2~~ consecutive hours
282 ~~days~~ or if it has failed to meet at least 97 percent of those
283 standards on any one day.

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

287 (r) Maintain in the medical record for each resident a
288 daily chart of direct care ~~certified nursing assistant~~ services
289 provided to the resident. The direct care staff ~~certified~~
290 ~~nursing assistant who is~~ caring for the resident must complete

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291 this record by the end of his or her shift. This record must
292 indicate assistance with activities of daily living, assistance
293 with eating, and assistance with drinking, and must record each
294 offering of nutrition and hydration for those residents whose
295 plan of care or assessment indicates a risk for malnutrition or
296 dehydration.

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