

1 A bill to be entitled
2 An act relating to nursing home facility staffing
3 requirements; amending s. 400.021, F.S.; revising a
4 definition; amending s. 400.23, F.S.; providing
5 definitions; specifying functions that do not
6 constitute direct care staffing hours for purposes of
7 required nursing home staffing ratios; requiring
8 nursing home facilities to determine their direct care
9 staffing needs based on the facility assessment and
10 the individual needs of a resident based on the
11 resident's care plan; revising nursing home staffing
12 requirements; requiring nursing home facilities to
13 maintain and report staffing information consistent
14 with federal law; specifying that evidence of a
15 facility's compliance with the minimum direct care
16 staffing requirements is not admissible as evidence of
17 compliance with certain federal requirements;
18 providing that certain paid feeding assistants and
19 direct care staff count toward compliance with the
20 overall direct care minimum staffing requirement;
21 providing an exception; requiring certain direct care
22 staff to complete a certain feeding assistant training
23 program; authorizing the Agency for Health Care
24 Administration to adopt rules; amending s. 400.024,
25 F.S.; providing that the transferee in a change of

26 ownership of a facility is responsible and liable for
 27 any unsatisfied or undischarged adverse final
 28 judgements; requiring the licensee or transferor who
 29 files an application for a change of ownership to
 30 provide written notice to each pending claimant or the
 31 claimant's attorney; requiring such notice to be
 32 provided within a specified timeframe and by certain
 33 methods; providing that a claimant has a specified
 34 period to object to an application for a change of
 35 ownership; requiring the agency to consider any
 36 objection in its decision to approve or deny such
 37 application; authorizing a claimant to file a petition
 38 to enjoin a change of ownership under certain
 39 circumstances; defining the term "claimant"; amending
 40 s. 400.141, F.S.; revising provisions relating to a
 41 facility's failure to comply with minimum staffing
 42 requirements; conforming cross-references and
 43 provisions to changes made by the act; providing an
 44 effective date.

45

46 Be It Enacted by the Legislature of the State of Florida:

47

48 Section 1. Subsection (18) of section 400.021, Florida
 49 Statutes, is amended to read:

50 400.021 Definitions.—When used in this part, unless the
 51 context otherwise requires, the term:

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

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

67 400.23 Rules; evaluation and deficiencies; licensure
 68 status.—

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

70 a. "Direct care staff" means persons who, through
 71 interpersonal contact with residents or resident care
 72 management, provide care and services to allow residents to
 73 attain or maintain the highest practicable physical, mental,
 74 and psychosocial well-being, including, but not limited to,

75 disciplines and professions that must be reported in accordance
 76 with 42 C.F.R. s. 483.70(q) in the categories of direct care
 77 services physician, nursing, pharmacy, dietary, therapeutic,
 78 dental, podiatry, and mental health. The term does not include
 79 a person whose primary duty is maintaining the physical
 80 environment of the facility, including, but not limited to,
 81 food preparation, laundry, and housekeeping.

82 b. "Facility assessment" means a process to determine the
 83 staff competencies necessary to provide the level and types of
 84 care needed for the facility's resident population considering
 85 the types of diseases, conditions, physical and cognitive
 86 disabilities, overall acuity, and other facts pertinent to that
 87 resident population, and performed in accordance with 42 C.F.R.
 88 s. 483.70(e).

89 2. For purposes of this subsection, direct care staffing
 90 hours do not include time spent on nursing administration,
 91 staff development, staffing coordination, and the
 92 administrative portion of the minimum data set and care plan
 93 coordination for Medicaid.

94 (b)1. Each facility must determine its direct care
 95 staffing needs based on the facility assessment and the
 96 individual needs of a resident based on the resident's care
 97 plan. At a minimum, staffing ~~The agency shall adopt rules~~
 98 ~~providing minimum staffing requirements for nursing home~~
 99 ~~facilities. These requirements must include, for each facility,~~

100 the following requirements:

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

105 b. A minimum ~~certified nursing assistant staffing of 2.0~~
 106 ~~2.5~~ hours of direct care by a certified nursing assistant per
 107 resident per day. A facility may not staff below one certified
 108 nursing assistant per 20 residents.

109 c. A minimum ~~licensed nursing staffing of 1.0 hour of~~
 110 direct care by a licensed nurse per resident per day. A
 111 facility may not staff below one licensed nurse per 40
 112 residents.

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

119 3. Each nursing home facility must document compliance
 120 with staffing standards as required under this paragraph and
 121 post daily the names of licensed nurses and certified nursing
 122 assistants ~~staff~~ on duty for the benefit of facility residents
 123 and the public. Facilities must maintain the records
 124 documenting compliance with minimum staffing standards for a

125 period of 5 years and must report staffing in accordance with
126 42 C.F.R. s. 483.70(q).

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

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

150 ~~(c)-(b)~~ Paid feeding assistants and direct care ~~nonnursing~~
 151 staff who provide ~~providing~~ eating assistance to residents
 152 shall ~~not~~ count toward compliance with overall direct care
 153 minimum staffing hours, but not the hours of direct care
 154 required for certified nursing assistants or licensed nurses.
 155 Direct care staff who are not certified nursing assistants or
 156 licensed nurses must successfully complete the feeding
 157 assistant training program under s. 400.141(1)(v) for purposes
 158 of this paragraph standards.

159 ~~(d)-(e)~~ Licensed practical nurses licensed under chapter
 160 464 who provide ~~are providing~~ nursing services in nursing home
 161 facilities under this part may supervise the activities of
 162 other licensed practical nurses, certified nursing assistants,
 163 and other unlicensed personnel providing services in such
 164 facilities in accordance with rules adopted by the Board of
 165 Nursing.

166 (e) The agency may adopt rules to implement this
 167 subsection.

168 Section 3. Subsection (4) of section 400.024, Florida
 169 Statutes, is amended to read:

170 400.024 Failure to satisfy a judgment or settlement
 171 agreement.—

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

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

177 (b) If a change of ownership application for the facility
178 at issue is submitted by the licensee, by a person or entity
179 identified as having a controlling interest in the licensee, or
180 by a related party, the unsatisfied or undischarged adverse
181 final judgment under subsection (1) becomes the responsibility
182 and liability of the transferee and the agency shall deny the
183 change of ownership application unless compliance with this
184 section is achieved.

185 (c) If a change of ownership application for the facility
186 at issue is filed by the licensee, by a person or entity
187 identified as having a controlling interest in the licensee, or
188 by a related party:

189 1. The licensee or transferor must provide written notice
190 of the filing of the application to each pending claimant or
191 the claimant's attorney of record, if applicable. The written
192 notice must be provided within 14 days after the date the
193 application is filed with the agency.

194 2. Notice must be provided by certified mail, return
195 receipt requested, or other method that provides verification
196 of receipt.

197 3. A claimant has 30 days after the date of receipt of the
198 written notice to object to the application if the claimant has

199 reason to believe that the approval of the application would
200 facilitate a fraudulent transfer or allow the transferor to
201 avoid financial responsibility for the claimant's pending
202 claim.

203 4. The agency must consider any objection brought pursuant
204 to this subsection in its decision to approve or deny an
205 application for change of ownership under this part and part II
206 of chapter 408.

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

210
211 As used in this paragraph, the term "claimant" means a
212 resident, the resident's family, or a personal representative
213 who has notified the licensee or facility of a potential claim
214 by written notice of intent or who has initiated an action,
215 claim, or arbitration proceeding against the licensee or
216 facility.

217 Section 4. Paragraphs (g), (n), and (r) of subsection (1)
218 of section 400.141, Florida Statutes, are amended to read:

219 400.141 Administration and management of nursing home
220 facilities.—

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

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

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

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

254 1. A facility that has failed to comply with state
 255 minimum-staffing requirements for 48 ~~2~~ consecutive hours ~~days~~
 256 is prohibited from accepting new admissions until the facility
 257 has achieved the minimum-staffing requirements for 6
 258 consecutive days. For the purposes of this subparagraph, any
 259 person who was a resident of the facility and was absent from
 260 the facility for the purpose of receiving medical care at a
 261 separate location or was on a leave of absence is not
 262 considered a new admission. Failure by the facility to impose
 263 such an admissions moratorium is subject to a \$1,000 fine.

264 2. A facility that does not have a conditional license may
 265 be cited for failure to comply with the standards in s.
 266 400.23(3) (b) 1.b. and c. ~~s. 400.23(3) (a) 1.b. and c.~~ only if it
 267 has failed to meet those standards for 48 ~~on 2~~ consecutive
 268 hours ~~days~~ or if it has failed to meet at least 97 percent of
 269 those standards on any one day.

270 3. A facility that has a conditional license must be in
 271 compliance with the standards in s. 400.23(3) (b) ~~s.~~
 272 ~~400.23(3) (a)~~ at all times.

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273 (r) Maintain in the medical record for each resident a
274 daily chart of direct care ~~certified nursing assistant~~ services
275 provided to the resident. The direct care staff ~~certified~~
276 ~~nursing assistant who is~~ caring for the resident must complete
277 this record by the end of his or her shift. This record must
278 indicate assistance with activities of daily living, assistance
279 with eating, ~~and~~ assistance with drinking, and must record each
280 offering of nutrition and hydration for those residents whose
281 plan of care or assessment indicates a risk for malnutrition or
282 dehydration.

283 Section 5. This act shall take effect upon becoming a law.