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A bill to be entitled

An act relating to nursing homes; amending s. 400.021, F.S.; revising a definition; amending s. 400.23, F.S.; providing definitions; specifying functions that do not constitute direct care staffing hours for purposes of required nursing home staffing ratios; requiring nursing home facilities to determine their direct care staffing needs based on the facility assessment and the individual needs of a resident based on the resident's care plan; revising nursing home staffing requirements; requiring nursing home facilities to maintain and report staffing information consistent with federal law; specifying that evidence of a facility's compliance with the minimum direct care staffing requirements is not admissible as evidence of compliance with certain federal requirements; providing that certain paid feeding assistants and direct care staff count toward compliance with the overall direct care minimum staffing requirement; providing an exception; requiring certain direct care staff to complete a certain feeding assistant training program; authorizing the Agency for Health Care Administration to adopt rules; amending s. 400.0234, F.S.; providing that certain information submitted to the agency is discoverable and may be admissible in

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

26 certain civil or administrative proceedings; amending  
 27 s. 400.024, F.S.; providing that the transferee in a  
 28 change of ownership of a facility is responsible and  
 29 liable for any unsatisfied or undischarged adverse  
 30 final judgements; requiring the licensee or transferor  
 31 who submits an application for a change of ownership  
 32 to provide written notice to each pending claimant or  
 33 the claimant's attorney; requiring such notice to be  
 34 provided within a specified timeframe and by certain  
 35 methods; providing that a claimant has a specified  
 36 period to object to an application for a change of  
 37 ownership; requiring the agency to consider any  
 38 objection in its decision to approve or deny such  
 39 application; authorizing a claimant to file a petition  
 40 to enjoin a change of ownership under certain  
 41 circumstances; defining the term "claimant"; amending  
 42 s. 400.141, F.S.; revising provisions relating to a  
 43 facility's failure to comply with minimum staffing  
 44 requirements; conforming cross-references and  
 45 provisions to changes made by the act; providing an  
 46 effective date.

47

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

49

50 Section 1. Subsection (18) of section 400.021, Florida

51 Statutes, is amended to read:

52 400.021 Definitions.—When used in this part, unless the  
53 context otherwise requires, the term:

54 (18) "Resident care plan" means a written comprehensive  
55 person-centered care plan developed in accordance with 42  
56 C.F.R. s. 483.21(b) by an interdisciplinary team within 7 days  
57 after completion of a comprehensive assessment and with  
58 participation by the resident or the resident's designee. The  
59 resident care plan must be reviewed and revised after each  
60 comprehensive assessment which may be a new admission  
61 assessment, an annual assessment, or an assessment after a  
62 significant change in status and after a quarterly review  
63 assessment. A resident care plan includes measurable objectives  
64 and timeframes to meet the resident's medical, nursing, mental,  
65 and psychosocial needs and preferences and must describe the  
66 services to be furnished, maintained, and reviewed not less  
67 than quarterly by a registered nurse, with participation from  
68 other facility staff and the resident or his or her designee or  
69 legal representative, which includes a comprehensive assessment  
70 of the needs of an individual resident; the type and frequency  
71 of services required to provide the necessary care for the  
72 resident to attain or maintain the resident's highest  
73 practicable physical, mental, and psychosocial well-being; a  
74 listing of services provided within or outside the facility to  
75 meet those needs; and an explanation of service goals.

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

78 400.23 Rules; evaluation and deficiencies; licensure  
 79 status.—

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

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

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

100 2. For purposes of this subsection, direct care staffing

101 hours do not include time spent on nursing administration,  
 102 activities program administration, staff development, staffing  
 103 coordination, and the administrative portion of the minimum  
 104 data set and care plan coordination for Medicaid.

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

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

116 b. A minimum ~~certified nursing assistant staffing of 2.0~~  
 117 ~~2.5~~ hours of direct care by a certified nursing assistant per  
 118 resident per day. A facility may not staff below one certified  
 119 nursing assistant per 20 residents.

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

124 2. Nursing assistants employed under s. 400.211(2) may be  
 125 included in computing the hours of direct care provided by

126 certified nursing assistants and may be included in computing  
127 the staffing ratio for certified nursing assistants if their  
128 job responsibilities include only nursing-assistant-related  
129 duties.

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

138 4. The agency must ~~shall~~ recognize the use of licensed  
139 nurses for compliance with minimum staffing requirements for  
140 certified nursing assistants if the nursing home facility  
141 otherwise meets the minimum staffing requirements for licensed  
142 nurses and the licensed nurses are performing the duties of a  
143 certified nursing assistant. Unless otherwise approved by the  
144 agency, licensed nurses counted toward the minimum staffing  
145 requirements for certified nursing assistants must exclusively  
146 perform the duties of a certified nursing assistant for the  
147 entire shift and not also be counted toward the minimum  
148 staffing requirements for licensed nurses. If the agency  
149 approved a facility's request to use a licensed nurse to  
150 perform both licensed nursing and certified nursing assistant

151 duties, the facility must allocate the amount of staff time  
 152 specifically spent on certified nursing assistant duties for  
 153 the purpose of documenting compliance with minimum staffing  
 154 requirements for certified and licensed nursing staff. The  
 155 hours of a licensed nurse with dual job responsibilities may  
 156 not be counted twice.

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

161 (c)-(b) Paid feeding assistants and direct care nonnursing  
 162 staff who provide ~~providing~~ eating assistance to residents  
 163 shall ~~not~~ count toward compliance with overall direct care  
 164 minimum staffing hours, but not the hours of direct care  
 165 required for certified nursing assistants or licensed nurses.  
 166 Direct care staff who are not certified nursing assistants or  
 167 licensed nurses must successfully complete the feeding  
 168 assistant training program under s. 400.141(1)(v) for purposes  
 169 of this paragraph. Time spent by certified nursing assistants  
 170 or licensed nurses providing eating assistance to residents  
 171 shall count toward the hours of direct care required for  
 172 certified nursing assistants or licensed nurses standards.

173 (d)-(e) Licensed practical nurses licensed under chapter  
 174 464 who provide ~~are providing~~ nursing services in nursing home  
 175 facilities under this part may supervise the activities of

176 other licensed practical nurses, certified nursing assistants,  
 177 and other unlicensed personnel providing services in such  
 178 facilities in accordance with rules adopted by the Board of  
 179 Nursing.

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

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

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

188 (2) Information submitted pursuant to s. 408.061(5) and  
 189 (6) is discoverable and may be admissible in a civil action or  
 190 an administrative action under this part or part II of chapter  
 191 408.

192 Section 4. Subsection (4) of section 400.024, Florida  
 193 Statutes, is amended, and subsection (5) is added to that  
 194 section, to read:

195 400.024 Failure to satisfy a judgment or settlement  
 196 agreement; required notification to claimants.—

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

199 (a) If the license is subject to renewal, the agency may  
 200 deny the license renewal unless compliance with this section is



201 achieved.~~;~~ and

202 (b) If a change of ownership application for the facility  
203 at issue is submitted by the licensee, by a person or entity  
204 identified as having a controlling interest in the licensee, or  
205 by a related party, the agency shall deny the change of  
206 ownership application unless compliance with this section is  
207 achieved.

208 (c) If an adverse final judgement under subsection (1) is  
209 entered, but payment is not yet due and a change of ownership  
210 application for the facility at issue is submitted by the  
211 licensee, by a person or entity identified as having a  
212 controlling interest in the licensee, or by a related party,  
213 the adverse final judgment becomes the responsibility and  
214 liability of the transferee if the agency approves the change  
215 of ownership application.

216 (5) If a change of ownership application for the facility  
217 at issue is submitted by the licensee, by a person or entity  
218 identified as having a controlling interest in the licensee, or  
219 by a related party:

220 (a) The licensee or transferor must provide written notice  
221 of the submission of the application to each pending claimant  
222 or the claimant's attorney of record, if applicable. The  
223 written notice must be provided within 14 days after the date  
224 the application is submitted to the agency. Notice must be  
225 provided by certified mail, return receipt requested, or other

226 method that provides verification of receipt.

227 (b) A claimant has 30 days after the date of receipt of  
228 the written notice to object to the application if the claimant  
229 has reason to believe that the approval of the application  
230 would facilitate a fraudulent transfer or allow the transferor  
231 to avoid financial responsibility for the claimant's pending  
232 claim.

233 (c) The agency must consider any objection brought  
234 pursuant to this subsection in its decision to approve or deny  
235 an application for change of ownership under this part and part  
236 II of chapter 408.

237 (d) If a claim is pending in arbitration at the time that  
238 the application for change of ownership is filed, the claimant  
239 may file a petition to enjoin the transfer in circuit court.

240  
241 As used in this subsection, "claimant" means a resident, the  
242 resident's family, or a personal representative who has  
243 notified the licensee or facility of a potential claim by  
244 written notice of intent or who has initiated an action, claim,  
245 or arbitration proceeding against the licensee or facility.

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

248 400.141 Administration and management of nursing home  
249 facilities.—

250 (1) Every licensed facility shall comply with all

251 applicable standards and rules of the agency and shall:  
252 (g) If the facility has a standard license, exceeds the  
253 minimum required hours of direct care provided by licensed  
254 nurses ~~nursing~~ and certified nursing assistants ~~assistant~~  
255 ~~direct care~~ per resident per day, and is part of a continuing  
256 care facility licensed under chapter 651 or is a retirement  
257 community that offers other services pursuant to part III of  
258 this chapter or part I or part III of chapter 429 on a single  
259 campus, be allowed to share programming and staff. At the time  
260 of inspection, a continuing care facility or retirement  
261 community that uses this option must demonstrate through  
262 staffing records that minimum staffing requirements for the  
263 facility were met. Licensed nurses and certified nursing  
264 assistants who work in the facility may be used to provide  
265 services elsewhere on campus if the facility exceeds the  
266 minimum number of direct care hours required per resident per  
267 day and the total number of residents receiving direct care  
268 services from a licensed nurse or a certified nursing assistant  
269 does not cause the facility to violate the staffing ratios  
270 required under s. 400.23(3)(b) ~~s. 400.23(3)(a)~~. Compliance with  
271 the minimum staffing ratios must be based on the total number  
272 of residents receiving direct care services, regardless of  
273 where they reside on campus. If the facility receives a  
274 conditional license, it may not share staff until the  
275 conditional license status ends. This paragraph does not

276 restrict the agency's authority under federal or state law to  
 277 require additional staff if a facility is cited for  
 278 deficiencies in care which are caused by an insufficient number  
 279 of certified nursing assistants or licensed nurses. The agency  
 280 may adopt rules for the documentation necessary to determine  
 281 compliance with this provision.

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

283 1. A facility that has failed to comply with state  
 284 minimum-staffing requirements for 48 ~~2~~ consecutive hours ~~days~~  
 285 is prohibited from accepting new admissions until the facility  
 286 has achieved the minimum-staffing requirements for 6  
 287 consecutive days. For the purposes of this subparagraph, any  
 288 person who was a resident of the facility and was absent from  
 289 the facility for the purpose of receiving medical care at a  
 290 separate location or was on a leave of absence is not  
 291 considered a new admission. Failure by the facility to impose  
 292 such an admissions moratorium is subject to a \$1,000 fine.

293 2. A facility that does not have a conditional license may  
 294 be cited for failure to comply with the standards in s.  
 295 400.23(3) (b) 1.b. and c. ~~s. 400.23(3) (a) 1.b. and c.~~ only if it  
 296 has failed to meet those standards for 48 ~~en 2~~ consecutive  
 297 hours ~~days~~ or if it has failed to meet at least 97 percent of  
 298 those standards on any one day.

299 3. A facility that has a conditional license must be in  
 300 compliance with the standards in s. 400.23(3) (b) ~~s.~~

301 ~~400.23(3)(a)~~ at all times.

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

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