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1
 2 An act relating to nursing homes; amending s. 400.021,
 3 F.S.; revising a definition; amending s. 400.23, F.S.;
 4 providing definitions; specifying functions that do
 5 not constitute direct care staffing hours for purposes
 6 of required nursing home staffing ratios; requiring
 7 nursing home facilities to determine their direct care
 8 staffing needs based on the facility assessment and
 9 the individual needs of a resident based on the
 10 resident's care plan; revising nursing home staffing
 11 requirements; requiring nursing home facilities to
 12 maintain and report staffing information consistent
 13 with federal law; specifying that evidence of a
 14 facility's compliance with the minimum direct care
 15 staffing requirements is not admissible as evidence of
 16 compliance with certain federal requirements;
 17 providing that certain paid feeding assistants and
 18 direct care staff count toward compliance with the
 19 overall direct care minimum staffing requirement;
 20 providing an exception; requiring certain direct care
 21 staff to complete a certain feeding assistant training
 22 program; authorizing the Agency for Health Care
 23 Administration to adopt rules; amending s. 400.0234,
 24 F.S.; providing that certain information submitted to
 25 the agency is discoverable and may be admissible in

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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

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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.

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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

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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

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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

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

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

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176 and other unlicensed personnel providing services in such
 177 facilities in accordance with rules adopted by the Board of
 178 Nursing.

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

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

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

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

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

194 400.024 Failure to satisfy a judgment or settlement
 195 agreement; required notification to claimants.—

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~~

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

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

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

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

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

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

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

239
 240 As used in this subsection, "claimant" means a resident, the
 241 resident's family, or a personal representative who has
 242 notified the licensee or facility of a potential claim by
 243 written notice of intent or who has initiated an action, claim,
 244 or arbitration proceeding against the licensee or facility.

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

247 400.141 Administration and management of nursing home
 248 facilities.—

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

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

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

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

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

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

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

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

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