

## Senate Bill No. 1280

An act relating to nursing homes and related health care facilities; amending s. 400.021, F.S.; defining “nursing home bed”; amending s. 400.0225, F.S.; modifying provisions relating to consumer satisfaction surveys; authorizing the Agency for Health Care Administration to adopt rules; amending s. 400.0255, F.S.; providing for medication repackaging; amending s. 400.141, F.S.; requiring a signed order by a physician when the nursing home initiates transfer or discharge of a resident; providing time requirement for notice of discharge or transfer to certain persons; amending s. 400.191, F.S.; modifying requirements for consumer information reporting; authorizing the agency to adopt rules; amending s. 400.23, F.S.; providing an exemption for nursing home residents age 18 to 21 years from certain standards of care based on age, under certain circumstances; amending s. 400.235, F.S.; modifying requirements relating to designation under the nursing home Gold Seal Program; authorizing the agency to adopt rules; amending s. 400.962, F.S.; exempting comprehensive transitional education programs from licensure requirements under pt. XI of ch. 400, F.S.; amending s. 397.405, F.S.; correcting a cross reference; requiring a study relating to use of automated medication dispensing machines in nursing facilities; providing for demonstration projects; requiring a report; creating s. 180.136, F.S.; requiring notice of proposed increases in certain water or sewer utility service rates, charges, or fees; specifying such notice is in addition to other notice and meeting requirements; amending s. 350.0611, F.S.; requiring the Public Counsel to provide legal representation in proceedings before counties under certain circumstances; amending s. 367.171, F.S.; requiring county rate proceedings to follow certain provisions of the Administrative Procedure Act; providing an effective date.

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

Section 1. Subsections (11) through (17) of section 400.021, Florida Statutes, are renumbered as subsections (12) through (18), respectively, and a new subsection (11) is added to said section to read:

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

(11) “Nursing home bed” means an accommodation which is ready for immediate occupancy, or is capable of being made ready for occupancy within 48 hours, excluding provision of staffing; and which conforms to minimum space requirements, including the availability of appropriate equipment and furnishings within the 48 hours, as specified by rule of the agency, for the provision of services specified in this part to a single resident.

Section 2. Section 400.0225, Florida Statutes, is amended to read:

400.0225 Consumer satisfaction surveys.—The agency, or its contractor, in consultation with the nursing home industry and consumer representatives, shall develop an easy-to-use consumer satisfaction survey, shall ensure that every nursing facility licensed pursuant to this part participates in assessing consumer satisfaction, and shall establish procedures to ensure that, at least annually, a representative sample of residents of each facility is selected to participate in the survey. The sample shall be of sufficient size to allow comparisons between and among facilities. Family members, guardians, or other resident designees may assist the resident in completing the survey. Employees and volunteers of the nursing facility or of a corporation or business entity with an ownership interest in the facility are prohibited from assisting a resident with or attempting to influence a resident's responses to the consumer satisfaction survey. The agency, or its contractor, shall survey family members, guardians, or other resident designees ~~when the resident is mentally incapable of responding to the survey.~~ The agency, or its contractor, shall specify the protocol for conducting and reporting the consumer satisfaction surveys. Reports of consumer satisfaction surveys shall protect the identity of individual respondents. The agency shall contract for consumer satisfaction surveys and report the results of those surveys in the consumer information materials prepared and distributed by the agency. The agency may adopt rules as necessary to administer this section.

Section 3. Subsections (3) and (8) of section 400.0255, Florida Statutes, are amended to read:

400.0255 Resident transfer or discharge; requirements and procedures; hearings.—

(3) ~~When a discharge or transfer is initiated by the nursing home resident is to be discharged or transferred,~~ the nursing home administrator employed by the nursing home that is discharging or transferring the resident, or an individual employed by the nursing home who is designated by the nursing home administrator to act on behalf of the administration, must sign the notice of discharge or transfer. Any notice indicating a medical reason for transfer or discharge must either be signed by the resident's attending physician or the medical director of the facility, or include an attached written order for the discharge or transfer. The notice or the order must be signed by the resident's physician, medical director, treating physician, nurse practitioner, or physician assistant.

(8) The notice required by subsection (7) must be in writing and must contain all information required by state and federal law, rules, or regulations applicable to Medicaid or Medicare cases. The agency shall develop a standard document to be used by all facilities licensed under this part for purposes of notifying residents of a discharge or transfer. Such document must include a means for a resident to request the district long-term care ombudsman council to review the notice and request information about or assistance with initiating a fair hearing with the department's Office of Appeals Hearings. In addition to any other pertinent information included, the form shall specify the reason allowed under federal or state law that the resident is being discharged or transferred, with an explanation to support this action. Further, the form shall state the effective date of the discharge

or transfer and the location to which the resident is being discharged or transferred. The form shall clearly describe the resident's appeal rights and the procedures for filing an appeal, including the right to request the district ombudsman council to review the notice of discharge or transfer. A copy of the notice must be placed in the resident's clinical record, and a copy must be transmitted to the resident's legal guardian or representative and to the district ombudsman council within 5 business days after signature by the resident or resident designee.

Section 4. Section 400.141, Florida Statutes, is amended to read:

400.141 Administration and management of nursing home facilities.— Every licensed facility shall comply with all applicable standards and rules of the agency and shall:

(1) Be under the administrative direction and charge of a licensed administrator.

(2) Appoint a medical director licensed pursuant to chapter 458 or chapter 459. The agency may establish by rule more specific criteria for the appointment of a medical director.

(3) Have available the regular, consultative, and emergency services of physicians licensed by the state.

~~(4)~~<sup>(5)</sup> Provide for resident use of a community pharmacy as specified in s. 400.022(1)(q). Any other law to the contrary notwithstanding, a registered pharmacist licensed in Florida, that is under contract with a facility licensed under this chapter, shall may repackage a nursing facility resident's bulk prescription medication which has been packaged by another pharmacist licensed in any state in the United States into a unit dose system compatible with the system used by the nursing facility, if the pharmacist is requested to offer such service. if such To be eligible for repackaging, a resident or the resident's spouse must receive has-bulk prescription medication benefits provided through a former employer as part of his or her retirement benefits covered-under a qualified pension plan as specified in s. 4972 of the Internal Revenue Code, a federal retirement program as specified under 5 C.F.R. s. 831, or a long-term care policy as defined in s. 627.9404(1). A pharmacist who correctly repackages and relabels the medication and the nursing facility which correctly administers such repackaged medication under the provisions of this subsection shall not be held liable in any civil or administrative action arising from the repackaging. In order to be eligible for the repackaging, a nursing facility resident for whom the medication is to be repackaged shall sign an informed consent form provided by the facility which includes an explanation of the repackaging process and which notifies the resident of the immunities from liability provided herein. A pharmacist who repackages and relabels prescription medications, as authorized under this subsection, may charge a reasonable fee for costs resulting from the implementation of this provision.

~~(5)~~<sup>(4)</sup> Provide for the access of the facility residents to dental and other health-related services, recreational services, rehabilitative services, and

social work services appropriate to their needs and conditions and not directly furnished by the licensee. When a geriatric outpatient nurse clinic is conducted in accordance with rules adopted by the agency, outpatients attending such clinic shall not be counted as part of the general resident population of the nursing home facility, nor shall the nursing staff of the geriatric outpatient clinic be counted as part of the nursing staff of the facility, until the outpatient clinic load exceeds 15 a day.

(6) Be allowed and encouraged by the agency to provide other needed services under certain conditions. If the facility has a standard licensure status, and has had no class I or class II deficiencies during the past 2 years or has been awarded a Gold Seal under the program established in s. 400.235, it may be encouraged by the agency to provide services, including, but not limited to, respite and adult day services, which enable individuals to move in and out of the facility. A facility is not subject to any additional licensure requirements for providing these services. Respite care may be offered to persons in need of short-term or temporary nursing home services. Respite care must be provided in accordance with this part and rules adopted by the agency. However, the agency shall, by rule, adopt modified requirements for resident assessment, resident care plans, resident contracts, physician orders, and other provisions, as appropriate, for short-term or temporary nursing home services. The agency shall allow for shared programming and staff in a facility which meets minimum standards and offers services pursuant to this subsection, but, if the facility is cited for deficiencies in patient care, may require additional staff and programs appropriate to the needs of service recipients. A person who receives respite care may not be counted as a resident of the facility for purposes of the facility's licensed capacity unless that person receives 24-hour respite care. A person receiving either respite care for 24 hours or longer or adult day services must be included when calculating minimum staffing for the facility. Any costs and revenues generated by a nursing home facility from nonresidential programs or services shall be excluded from the calculations of Medicaid per diems for nursing home institutional care reimbursement.

(7) If the facility has a standard licensure status or is a Gold Seal facility, exceeds minimum staffing standards, and is part of a retirement community that offers other services pursuant to part III, part IV, or part V, be allowed to share programming and staff. At the time of relicensure, a retirement community that uses this option must demonstrate through staffing records that minimum staffing requirements for the facility were exceeded.

(8) Maintain the facility premises and equipment and conduct its operations in a safe and sanitary manner.

(9) If the licensee furnishes food service, provide a wholesome and nourishing diet sufficient to meet generally accepted standards of proper nutrition for its residents and provide such therapeutic diets as may be prescribed by attending physicians. In making rules to implement this subsection, the agency shall be guided by standards recommended by nationally recognized professional groups and associations with knowledge of dietetics.

(10) Keep full records of resident admissions and discharges; medical and general health status, including medical records, personal and social his-

tory, and identity and address of next of kin or other persons who may have responsibility for the affairs of the residents; and individual resident care plans including, but not limited to, prescribed services, service frequency and duration, and service goals. The records shall be open to inspection by the agency.

(11) Keep such fiscal records of its operations and conditions as may be necessary to provide information pursuant to this part.

(12) Furnish copies of personnel records for employees affiliated with such facility, to any other facility licensed by this state requesting this information pursuant to this part. Such information contained in the records may include, but is not limited to, disciplinary matters and any reason for termination. Any facility releasing such records pursuant to this part shall be considered to be acting in good faith and may not be held liable for information contained in such records, absent a showing that the facility maliciously falsified such records.

(13) Publicly display a poster provided by the agency containing the names, addresses, and telephone numbers for the state's abuse hotline, the State Long-Term Care Ombudsman, the Agency for Health Care Administration consumer hotline, the Advocacy Center for Persons with Disabilities, the Statewide Human Rights Advocacy Committee, and the Medicaid Fraud Control Unit, with a clear description of the assistance to be expected from each.

Facilities that have been awarded a Gold Seal under the program established in s. 400.235 may develop a plan to provide certified nursing assistant training as prescribed by federal regulations and state rules and may apply to the agency for approval of its program.

Section 5. Subsection (2) of section 400.191, Florida Statutes, is amended, and subsection (6) is added to said section, to read:

400.191 Availability, distribution, and posting of reports and records.—

(2) The agency shall provide additional information in consumer-friendly printed and electronic formats to assist consumers and their families in comparing and evaluating nursing home facilities.

(a) The agency shall provide an Internet site which shall include at least the following information either directly or indirectly through a link to another established site or sites of the agency's choosing:

1. A list by name and address of all nursing home facilities in this state.
2. Whether such nursing home facilities are proprietary or nonproprietary.
3. The current owner of the facility's license and the year that that entity became the owner of the license. The licensure status of each facility.
- 4.—~~The ownership history of each facility.~~

~~4.5.~~ The name of the owner or owners of each facility and whether the facility is affiliated with a part of a company or other organization ~~corporation~~ owning or managing ~~operating~~ more than one nursing facility in this state.

~~6.~~ ~~Performance, regulatory, and enforcement information about the corporation, as well as the facility.~~

~~5.7.~~ The total number of beds in each facility.

~~6.8.~~ The number of private and semiprivate rooms in each facility.

~~7.9.~~ The religious affiliation, if any, of each facility.

~~8.10.~~ The languages spoken by the administrator and staff of each facility.

~~9.11.~~ Whether or not each facility accepts Medicare or Medicaid recipients or insurance, health maintenance organization, Veterans Administration, CHAMPUS program, or workers' compensation coverage.

~~10.12.~~ Recreational and other programs available at each facility.

~~13.~~ ~~For nursing homes certified for Medicare or Medicaid, information from the Minimum Data Set system of the federal Health Care Financing Administration about the clinical performance of each facility, including information related to the nursing home quality indicators.~~

~~14.~~ ~~Information about the licensure status and regulatory history of each facility.~~

~~11.15.~~ Special care units or programs offered at each facility.

~~12.16.~~ Whether the facility is a part of a retirement community that offers other services pursuant to part III, part IV, or part V.

~~13.17.~~ The results of consumer and family satisfaction surveys for each facility, as described in s. 400.0225. The results may be converted to a score or scores, which may be presented in either numeric or symbolic form for the intended consumer audience.

~~18.~~ ~~The licensure status and rating history for the past 5 years for each facility.~~

~~14.19.~~ Survey and deficiency information contained on the Online Survey Certification and Reporting (OSCAR) system of the federal Health Care Financing Administration, including annual survey, revisit, and complaint survey information, for each facility for the past 45 months ~~3 years~~. For noncertified nursing homes, state survey and deficiency information, including annual survey, revisit, and complaint survey information for the past 45 months ~~3 years~~ shall be provided.

15. A summary of the Online Survey Certification and Reporting (OSCAR) data for each facility over the past 45 months. Such summary may

include a score, rating, or comparison ranking with respect to other facilities based on the number of citations received by the facility of annual, revisit, and complaint surveys, the severity and scope of the citations, and the number of annual recertification surveys the facility has had during the past 45 months. The score, rating, or comparison ranking may be presented in either numeric or symbolic form for the intended consumer audience.

(b) The agency shall provide the following information in printed form:

1. A list by name and address of all nursing home facilities in this state.  
2. Whether such nursing home facilities are proprietary or nonproprietary ~~and their current ownership.~~

3. The current owner or owners of the facility's license and the year that entity became the owner of the license ~~The licensure status of each facility.~~

4. The total number of beds, and of private and semiprivate rooms, in each facility.

5. The religious affiliation, if any, of each facility.

6. The name of the owner of each facility and whether the facility is affiliated with a company or other organization owning or managing more than one nursing facility in this state.

~~7.6.~~ The languages spoken by the administrator and staff of each facility.

~~7.~~ ~~Whether or not each facility accepts Medicare or Medicaid recipients.~~

~~8.~~ Whether or not each facility accepts Medicare or Medicaid recipients or insurance, health maintenance organization, Veterans Administration, CHAMPUS program, or workers' compensation coverage.

~~9.8.~~ Recreational programs, special care units, and other programs available at each facility.

~~9.~~ ~~A summary of information from the Minimum Data Set system of the federal Health Care Financing Administration about the clinical performance of each facility.~~

~~10.~~ ~~Information about the licensure status and regulatory history of each facility.~~

~~10.11.~~ The results of consumer and family satisfaction surveys for each facility, as described in s. 400.0225. The results may be converted to a score or scores, which may be presented in either numeric or symbolic form for the intended consumer audience.

~~11.12.~~ The Internet address for the site where more detailed information can be seen.

~~12.13.~~ A statement advising consumers that each facility will have its own policies and procedures related to protecting resident property.

13. A summary of the Online Survey Certification and Reporting (OSCAR) data for each facility over the past 45 months. Such summary may include a score, rating, or comparison ranking with respect to other facilities based on the number of citations received by the facility on annual, revisit, and complaint surveys, the severity and scope of the citations, the number of citations, the number of annual recertification surveys the facility has had during the past 45 months. The score, rating, or comparison ranking may be presented in either numeric or symbolic form for the intended consumer audience.

(c) For purposes of this subsection, references to the Online Survey Certification and Reporting (OSCAR) system shall refer to any future system that the Health Care Financing Administration develops to replace the current OSCAR system.

(d) The agency may provide the following additional information on an Internet site or in printed form as the information becomes available:

1. The licensure status history of each facility.
2. The rating history of each facility.
3. The regulatory history of each facility, which may include federal sanctions, state sanctions, federal fines, state fines, and other actions.
4. Whether the facility currently possesses the Gold Seal designation awarded pursuant to s. 400.235.
5. Internet links to the Internet sites of the facilities or their affiliates.

(6) The agency may adopt rules as necessary to administer this section.

Section 6. Subsection (5) of section 400.23, Florida Statutes, is amended to read:

400.23 Rules; evaluation and deficiencies; licensure status.—

(5) The agency, in collaboration with the Division of Children's Medical Services of the Department of Health, must, no later than December 31, 1993, adopt rules for minimum standards of care for persons under 21 years of age who reside in nursing home facilities. The rules must include a methodology for reviewing a nursing home facility under ss. 408.031-408.045 which serves only persons under 21 years of age. A facility may be exempt from these standards for specific persons between 18 and 21 years of age, if the person's physician agrees that minimum standards of care based on age are not necessary.

Section 7. Paragraph (a) of subsection (3), subsection (4), and paragraphs (e) and (h) of subsection (5) of section 400.235, Florida Statutes, are amended, and subsection (9) is added to said section, to read:

400.235 Nursing home quality and licensure status; Gold Seal Program.—

(3)(a) The Gold Seal Program shall be developed and implemented by the Governor's Panel on Excellence in Long-Term Care which shall operate under the authority of the Executive Office of the Governor. The panel shall be composed of three persons appointed by the Governor, to include a consumer advocate for senior citizens and two persons with expertise in the fields of quality management, service delivery excellence, or public sector accountability; three persons appointed by the Secretary of Elderly Affairs, to include an active member of a nursing facility family and resident care council and a member of the University Consortium on Aging; the State Long-Term Care Ombudsman; one person appointed by the Florida Life Care Residents Association; one person appointed by the Secretary of Health; two persons appointed by the Director of Health Care Administration, to include the Deputy Director for State Health Purchasing; one person appointed by the Florida Association of Homes for the Aging; and one person appointed by the Florida Health Care Association. All members of the panel shall be appointed by October 1, 1999, and the panel shall hold its organizational meeting no later than December 10, 1999. Vacancies on the panel shall be filled in the same manner as the original appointments. ~~No member shall serve for more than 4 consecutive years from the date of appointment.~~

(4) The panel shall consider at least the quality of care provided to residents following resident-based quality indicator domains when evaluating a facility for the Gold Seal Program. The panel shall determine the procedure or procedures for measuring the quality of care.:

- ~~(a) Accidents.~~
- ~~(b) Behavioral/emotional patterns.~~
- ~~(c) Clinical management.~~
- ~~(d) Cognitive patterns.~~
- ~~(e) Elimination/continence.~~
- ~~(f) Infection control.~~
- ~~(g) Nutrition and eating.~~
- ~~(h) Physical functioning.~~
- ~~(i) Psychotropic drug use.~~
- ~~(j) Quality of life.~~
- ~~(k) Sensory functioning and communication.~~
- ~~(l) Skin care.~~

(5) Facilities must meet the following additional criteria for recognition as a Gold Seal Program facility:

(e) Have a stable workforce, as evidenced by a relatively low rate of turnover among certified nursing assistants and licensed registered nurses

within the 30 months preceding application for the Gold Seal Program, and demonstrate a continuing effort to maintain a stable workforce and to reduce turnover of licensed nurses and certified nursing assistants.

~~(h) Evidence superior levels of clinical outcomes as measured in the Minimum Data Set system of the federal Health Care Financing Administration. Facilities that are not certified for Medicare or Medicaid are not required to complete the Minimum Data Set in order to qualify for the Gold Seal Program. Such facilities may demonstrate superior levels of performance with an alternate assessment as approved by the panel.~~

A facility assigned a conditional licensure status may not qualify for consideration for the Gold Seal Program until after it has operated for 30 months with no class I or class II deficiencies and has completed a regularly scheduled relicensure survey.

(9) The agency may adopt rules as necessary to administer this section.

Section 8. Subsection (1) of section 400.962, Florida Statutes, is amended to read:

400.962 License required; license application.—

(1) It is unlawful to operate an intermediate care facility for the developmentally disabled ~~or a comprehensive transitional educational program~~ without a license.

Section 9. Subsection (2) of section 397.405, Florida Statutes, is amended to read:

397.405 Exemptions from licensure.—The following are exempt from the licensing provisions of this chapter:

(2) A nursing home facility as defined in s. 400.021(12)(14).

Section 10. The Board of Pharmacy, in cooperation with the Agency for Health Care Administration, shall undertake a study of the feasibility, efficiency, cost-effectiveness, and safety of using automated medication dispensing machines in nursing facilities. The board and the agency may authorize the establishment of demonstration projects in up to five nursing facilities with a class I institutional pharmacy as part of the study. Demonstration projects may be allowed to continue for up to 12 months. A report summarizing the results of the study shall be submitted by the board and the agency to the Speaker of the House of Representatives and the President of the Senate by January 1, 2001. If the study determines that such dispensing machines would benefit residents of nursing facilities and should be allowed, the report shall identify those specific statutory changes necessary to allow nursing facilities to use automated medication dispensing machines.

Section 11. Section 180.136, Florida Statutes, is created to read:

180.136 Water or sewer utilities; notice.—Before a local government water or sewer utility increases any rate, charge, or fee for water or sewer

utility service, the utility shall provide notice of the proposed increase to each customer of the utility through the utility's billing process. The notice shall state the date, time, and place of the meeting of the governing board of the local government at which such increase will be considered. The notice required in this section is in addition to any notice and public meeting requirements for ordinance adoption as provided by general law.

Section 12. Section 350.0611, Florida Statutes, is amended to read:

350.0611 Public Counsel; duties and powers.—It shall be the duty of the Public Counsel to provide legal representation for the people of the state in proceedings before the commission and in proceedings before counties pursuant to s. 367.171(8). The Public Counsel shall have such powers as are necessary to carry out the duties of his or her office, including, but not limited to, the following specific powers:

(1) To recommend to the commission, by petition, the commencement of any proceeding or action or to appear, in the name of the state or its citizens, in any proceeding or action before the commission and urge therein any position which he or she deems to be in the public interest, whether consistent or inconsistent with positions previously adopted by the commission, and utilize therein all forms of discovery available to attorneys in civil actions generally, subject to protective orders of the commission which shall be reviewable by summary procedure in the circuit courts of this state.;

(2) To have access to and use of all files, records, and data of the commission available to any other attorney representing parties in a proceeding before the commission.;

(3) In any proceeding in which he or she has participated as a party, to seek review of any determination, finding, or order of the commission, or of any hearing examiner designated by the commission, in the name of the state or its citizens.;

(4) To prepare and issue reports, recommendations, and proposed orders to the commission, the Governor, and the Legislature on any matter or subject within the jurisdiction of the commission, and to make such recommendations as he or she deems appropriate for legislation relative to commission procedures, rules, jurisdiction, personnel, and functions.;

(5) To appear before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the commission, in the name of the state or its citizens.

Section 13. Subsection (8) of section 367.171, Florida Statutes, is amended to read:

367.171 Effectiveness of this chapter.—

(8) Each county which is excluded from the provisions of this chapter shall regulate the rates of all utilities in that county which would otherwise be subject to regulation by the commission pursuant to s. 367.081(1), (2), (3), and (6). The county shall not regulate the rates or charges of any system or

facility which would otherwise be exempt from commission regulation pursuant to s. 367.022(2). For this purpose the county or its agency shall proceed as though the county or agency is the commission. In all proceedings conducted by a county or its agency under the authority of this chapter, the provisions of ss. 120.569 and 120.57 shall apply.

Section 14. This act shall take effect upon becoming a law.

Approved by the Governor June 21, 2000.

Filed in Office Secretary of State June 21, 2000.