

CHAPTER 2022-61

Committee Substitute for Committee Substitute for House Bill No. 1239

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

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

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

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

(18) "Resident care plan" means a written comprehensive person-centered care plan developed in accordance with 42 C.F.R. s. 483.21(b) by an interdisciplinary team within 7 days after completion of a comprehensive

assessment and with participation by the resident or the resident's designee. The resident care plan must be reviewed and revised after each comprehensive assessment which may be a new admission assessment, an annual assessment, or an assessment after a significant change in status and after a quarterly review assessment. A resident care plan includes measurable objectives and timeframes to meet the resident's medical, nursing, mental, and psychosocial needs and preferences and must describe the services to be furnished, maintained, and reviewed not less than quarterly by a registered nurse, with participation from other facility staff and the resident or his or her designee or legal representative, which includes a comprehensive assessment of the needs of an individual resident; the type and frequency of services required to provide the necessary care for the resident to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being; a listing of services provided within or outside the facility to meet those needs; and an explanation of service goals.

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

400.23 Rules; evaluation and deficiencies; licensure status.—

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

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

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

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

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

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

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

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

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

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

4. The agency must ~~shall~~ recognize the use of licensed nurses for compliance with minimum staffing requirements for certified nursing assistants if the nursing home facility otherwise meets the minimum staffing requirements for licensed nurses and the licensed nurses are performing the duties of a certified nursing assistant. Unless otherwise approved by the agency, licensed nurses counted toward the minimum staffing requirements for certified nursing assistants must exclusively perform the duties of a certified nursing assistant for the entire shift and not also be counted toward the minimum staffing requirements for licensed nurses. If the agency approved a facility's request to use a licensed nurse to perform both licensed nursing and certified nursing assistant duties, the facility must allocate the amount of staff time specifically spent on certified nursing assistant duties for the purpose of documenting compliance with minimum staffing requirements for certified and licensed nursing staff. The hours of a licensed nurse with dual job responsibilities may not be counted twice.

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

~~(c)(b)~~ Paid feeding assistants and direct care nonnursing staff, other than certified nursing assistants and licensed nurses, who have successfully

completed the feeding assistant training program under s. 400.141(1)(v) and who provide providing eating assistance to residents shall not count toward compliance with overall direct care minimum staffing hours but not the hours of direct care required for certified nursing assistants or licensed nurses. Time spent by certified nursing assistants or licensed nurses on providing eating assistance to residents shall count toward the hours of direct care required for certified nursing assistants or licensed nurses standards.

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

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

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

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

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

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

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

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

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

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

(c) If an adverse final judgement under subsection (1) is entered, but payment is not yet due and a change of ownership application for the facility at issue is submitted by the licensee, by a person or entity identified as having a controlling interest in the licensee, or by a related party, the

adverse final judgment becomes the responsibility and liability of the transferee if the agency approves the change of ownership application.

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

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

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

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

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

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

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

400.141 Administration and management of nursing home facilities.—

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

(g) If the facility has a standard license, exceeds the minimum required hours of direct care provided by licensed nurses nursing and certified nursing assistants ~~assistant direct care~~ per resident per day, and is part of a continuing care facility licensed under chapter 651 or is a retirement community that offers other services pursuant to part III of this chapter or part I or part III of chapter 429 on a single campus, be allowed to share programming and staff. At the time of inspection, a continuing care facility or retirement community that uses this option must demonstrate through staffing records that minimum staffing requirements for the facility were met. Licensed nurses and certified nursing assistants who work in the facility may be used to provide services elsewhere on campus if the facility

exceeds the minimum number of direct care hours required per resident per day and the total number of residents receiving direct care services from a licensed nurse or a certified nursing assistant does not cause the facility to violate the staffing ratios required under s. 400.23(3)(b) ~~s. 400.23(3)(a)~~. Compliance with the minimum staffing ratios must be based on the total number of residents receiving direct care services, regardless of where they reside on campus. If the facility receives a conditional license, it may not share staff until the conditional license status ends. This paragraph does not restrict the agency's authority under federal or state law to require additional staff if a facility is cited for deficiencies in care which are caused by an insufficient number of certified nursing assistants or licensed nurses. The agency may adopt rules for the documentation necessary to determine compliance with this provision.

(n) Comply with state minimum-staffing requirements:

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

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

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

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

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

Approved by the Governor April 6, 2022.

Filed in Office Secretary of State April 6, 2022.