

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 897 Nursing Home Facility Staffing Requirements

**SPONSOR(S):** Roth

**TIED BILLS:** IDEN./SIM. BILLS: SB 1088

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Market Reform Subcommittee		Royal	Crosier
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Part II of ch. 400, F.S., establishes and enforces basic standards for the health, care, and treatment of persons in nursing homes and for the maintenance and operation of such facilities to ensure safe, adequate, and appropriate care, treatment, and health of persons admitted to such facilities. Section 400.23(3), F.S., provides the following minimum staffing requirements for nursing home facilities:

- A minimum weekly average of 3.6 hours of direct care per resident per day provided by a combination of certified nursing assistants and licensed nursing staff.
- A minimum of 2.5 hours of direct care per resident per day provided by certified nursing assistant staff. A facility may not staff at a ratio of less than one certified nursing assistant per 20 residents.
- A minimum of 1.0 hour of direct care per resident per day provided by licensed nursing staff. A facility may not staff at a ratio of less than one licensed nurse per 40 residents.

Federal law defines "direct care staff" as individuals who, through interpersonal contact with residents or resident care management, provide care and services that allow residents to attain or maintain their highest practicable physical, mental, and psychosocial states of well-being. Direct care staff can include, but is not limited to, a registered nurse, licensed practical nurse, licensed vocational nurse, certified nursing assistant, therapist, or other type of medical personnel but does not include individuals whose primary duty is maintaining the physical environment of the long term care facility, such as a maid or an orderly. In Florida, only licensed nurses and certified nursing assistants may be used to satisfy direct care staffing requirements for nursing home facilities.

HB 897 codifies the federal definition of "direct care staff" and excludes time spent on nursing administration, staff development, staffing coordination, or other administrative duties from the staffing calculations.

The bill revises the nursing home staffing requirements in various ways to allow for direct care staff as defined under the bill to serve the same role only CNAs currently fill for direct care staffing and staffing ratios. Specifically, the bill:

- Allows direct care staff, instead of only CNAs and licensed nurses, to meet the minimum weekly average staffing ratio requirements and increases the minimum hours from 3.6 hours to 9 hours per resident per day, as determined by the facility assessment staffing needs in accordance with federal requirements for participation.
- Allows direct care staff, instead of only CNAs, to meet the minimum daily staffing requirements.
- Removes the ability for facilities to use uncertified nursing assistants to meet staffing ratio requirements.

The bill maintains the requirement that nursing homes staff at least one licensed nurse per 40 residents at all times and that residents receive at least 1 hour of direct care from a licensed nurse each day.

The bill has no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2019.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0897.HMR

**DATE:** 3/25/2019

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Direct Care Staff

Direct care workers are individuals who assist elderly and disabled individuals with everyday activities such as preparing meals or helping with medications, bathing, dressing, mobility, and transportation.<sup>1</sup> Direct care workers account for 70 to 80 percent of all paid hands-on long-term care and personal assistance for the elderly or disabled and include nursing assistants or nursing aides, home health aides, and personal care aides.<sup>2</sup> They can provide direct care in various settings ranging from the home to long-term care facilities.<sup>3</sup>

- **Nursing Assistants or Nursing Aides.** Generally work in nursing homes, although some work in assisted living facilities, other community-based settings, or hospitals. They assist residents with activities of daily living (ADLs) such as eating, dressing, bathing, and toileting. They also perform clinical tasks such as range-of motion exercises and blood pressure readings.
- **Home Health Aides.** Provide essentially the same care and services as nursing assistants, but they assist people in their homes or in community settings under the supervision of a nurse or therapist. They may also perform light housekeeping tasks such as preparing food or changing linens.
- **Personal Care Aides.** Work in either private or group homes. They have many titles, including personal care attendant, home care worker, homemaker, and direct support professional. (The latter work with people with intellectual and developmental disabilities). In addition to providing assistance with ADLs, these aides often help with housekeeping chores, meal preparation, and medication management. They also help individuals go to work and remain engaged in their communities. A growing number of these workers are employed and supervised directly by consumers.

Under Medicare and Medicaid requirements, direct care staff in long-term care facilities are individuals 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.<sup>4</sup> Direct care staff can include, but is not limited to, a registered nurse, licensed practical nurse, licensed vocational nurse, certified nursing assistant, therapist, or other type of medical personnel but does not include individuals whose primary duty is maintaining the physical environment of the long term care facility, such as a maid or an orderly.<sup>5</sup>

The federal government requires training only for nursing assistants and home health aides who work in Medicare-certified and Medicaid-certified nursing homes and home health agencies. Such training includes training on residents' rights; abuse, neglect, and exploitation; quality assurance; infection control; and compliance and ethics; and specifies that direct care staff must be trained in effective communications.<sup>6</sup> AHCA requires home health aides in Florida to complete at least 75 hours of training

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<sup>1</sup> U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, *Understanding Direct Care Workers: A Snapshot of Two of America's Most Important Jobs, Certified Nursing Assistants and Home Health Aides*, (Mar. 2011), available at: <https://aspe.hhs.gov/system/files/pdf/76186/CNAchart.pdf> (last visited Mar. 21, 2019).

<sup>2</sup> PARAPROFESSIONAL HEALTHCARE INSTITUTE, *Direct Care Workforce 2018 Year in Review*, <https://phinational.org/resource/the-direct-care-workforce-year-in-review-2018/> (last visited Mar. 21, 2019).

<sup>3</sup> PARAPROFESSIONAL HEALTHCARE INSTITUTE, *Who Are Direct-Care Workers?* <https://phinational.org/wp-content/uploads/legacy/clearinghouse/NCDCW%20Fact%20Sheet-1.pdf> (last visited on Mar. 7, 2019)

<sup>4</sup> 42 C.F.R. § 483.70(q)(1).

<sup>5</sup> 42 C.F.R. § 483.70(q)(2).

<sup>6</sup> 42 C.F.R. § 483.95.

and/or successfully pass a competency evaluation by the home health agency to work for a home health agency.<sup>7</sup>

### Nurse Licensure in Florida

The Nurse Practice Act, ch. 464, F.S., governs the licensure and regulation of nurses in Florida. The Department of Health (DOH) is the licensing agency and the Board of Nursing (board) is the regulatory authority. Applicants may apply to the DOH to be licensed as a registered nurse (RN), licensed practical nurse (LPN), or certified nursing assistant (CNA).

An RN is licensed to practice “professional nursing,” which is the performance of those acts requiring substantial specialized knowledge, judgment, and nursing skill based upon applied principles of psychological, biological, physical, and social sciences.<sup>8</sup> To be licensed as an RN, among other things, an individual must complete an associate’s degree consisting of 50 percent clinical training or a bachelor’s degree consisting of 40 percent clinical training from a board-approved education program.<sup>9</sup>

An LPN is licensed to practice “practical nursing,” which is the performance of selected acts, including the administration of treatments and medications, under the direction of a registered nurse, licensed physician, or a licensed dentist, and responsibility for making decisions based on the individual’s educational preparation and experience in nursing.<sup>10</sup> To be licensed as an LPN, among other things, an individual must complete a board-approved education program consisting of 50 percent clinical training.<sup>11</sup>

A CNA is certified by the Board to care for and assist people with tasks related to the activities of daily living, such as personal care, mobility, nutrition, hygiene, socialization, end-of-life care, cardiopulmonary resuscitation and emergency care, or any other task in which the CNA has been trained by and receiving competency validation from an RN.<sup>12</sup> To be certified as a CNA, among other things, an individual must have a high school diploma or equivalent, complete a 120-hour board-approved training program, and pass a nursing assistant competency exam, which includes written and practical portions.<sup>13</sup>

### Nursing Home Staffing

The Agency for Health Care Administration (AHCA) regulates nursing home facilities through licensure under Part II of ch. 400, F.S., which establishes and enforces basic standards for the health, care, and treatment of persons in nursing homes and for the maintenance and operation of such facilities to ensure safe, adequate, and appropriate care, treatment, and health of persons admitted to such facilities.<sup>14</sup>

Section 400.23(3), F.S., provides the following minimum staffing requirements for nursing home facilities:

- A minimum weekly<sup>15</sup> average of 3.6 hours of direct care per resident per day provided by a combination of certified nursing assistants and licensed nursing staff.

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<sup>7</sup> AGENCY FOR HEALTH CARE ADMINISTRATION, *Home Health Aides*,

[https://ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Lab\\_HomeServ/HHA/Home\\_health\\_aides.shtml](https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Lab_HomeServ/HHA/Home_health_aides.shtml) (last visited Mar. 21, 2019).

<sup>8</sup> S. 464.003(20), F.S.

<sup>9</sup> S. 464.019(1)(b), F.S., and Rule 64B9-2.021, F.A.C.

<sup>10</sup> S. 464.003(19), F.S.

<sup>11</sup> S. 464.019(1)(b), F.S., and Rule 64B9-2.021, F.A.C.

<sup>12</sup> Ss. 464.201(3) and (5), F.S.

<sup>13</sup> S. 464.203, F.S.; Rule 64B9-15.006, F.A.C., 80 hours minimum must be classroom instruction and 40 hours minimum must be clinical instruction, 20 of which must be in long term care clinical instruction in a licensed nursing home.

<sup>14</sup> S. 400.011, F.S.

<sup>15</sup> A week is defined as Sunday through Saturday.

- A minimum of 2.5 hours of direct care per resident per day provided by certified nursing assistant staff. A facility may not staff at a ratio of less than one certified nursing assistant per 20 residents.
- A minimum of 1.0 hour of direct care per resident per day provided by licensed nursing staff. A facility may not staff at a ratio of less than one licensed nurse per 40 residents.

When computing the staffing ratio for certified nursing assistants, nursing home facilities are allowed to use uncertified nursing assistants under certain conditions to satisfy the staffing ratio requirements so long as their job duties only include nursing-assistant-related duties.<sup>16</sup> If approved by AHCA, licensed nurses may also be used to meet staffing requirements for CNAs if the licensed nurses are performing the duties of a CNA and the facility otherwise meets minimum staffing requirements for licensed nurses.<sup>17</sup> The hours of a licensed nurse with dual job responsibilities may not be counted twice. Additionally, non-nursing staff providing eating assistance to residents do not count toward compliance with minimum staffing requirements.<sup>18</sup>

### **Effect of the Bill:**

The bill codifies the federal definition of “direct care staff” in statute as individuals who, through interpersonal contact with residents or resident care management, provide care and services that allow residents to attain or maintain their highest practicable physical, mental, and psychosocial states of well-being. Direct care staff does not include individuals whose primary duty is maintaining the physical environment of the facility. Direct care staffing hours do not include time spent on nursing administration, staff development, staffing coordination, or the administrative portion of the minimum data set and care plan coordination.

The bill revises the nursing home staffing requirements in various ways to allow for direct care staff as defined under the bill to serve the same role only CNAs currently fill for direct care staffing and staffing ratios. Specifically, the bill:

- Allows direct care staff, instead of only CNAs and licensed nurses, to meet the minimum weekly average staffing ratio requirements and increases the minimum hours from 3.6 hours to 9 hours per resident per day, as determined by the facility assessment staffing needs in accordance with federal requirements for participation.
- Allows direct care staff, instead of only CNAs, to meet the minimum daily staffing requirements.<sup>19</sup>
- Removes the ability for facilities to use uncertified nursing assistants to meet staffing ratio requirements.

The bill maintains the requirement that nursing homes staff at least one licensed nurse per 40 residents at all times and that residents receive at least 1 hour of direct care from a licensed nurse each day.

The bill makes various conforming changes.

The bill provides an effective date of July 1, 2019.

### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 400.141, F.S., relating to administration and management of nursing home facilities.

**Section 2:** Amends s. 400.23, F.S., relating to rules; evaluation and deficiencies; licensure status.

<sup>16</sup> Ss. 400.23(3)(a)2. and 400.211(2), F.S. Nursing facilities may employ uncertified nursing assistants for up to 4 months if they are enrolled in, or have completed, a state-approving nursing assistant program, have been positively verified as actively certified and on the registry in another state with no findings of abuse, neglect, or exploitation in that state, or have preliminarily passed the state’s certification exam.

<sup>17</sup> S. 400.23(3)(a)4., F.S. and Rule 59A-4.108(7), F.A.C.

<sup>18</sup> Ss. 400.23(3)(b), F.S..

<sup>19</sup> This minimum daily staffing can include non-nursing services under the bill.

**Section 3:** Provides an effective date of July 1, 2019.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The fiscal impact of the bill is indeterminate. To the extent that nursing homes employ non-nursing staff at lower wages to meet staffing ratio requirements, they may experience a cost saving. However, the bill also increases the minimum average weekly staffing hours required, which may increase costs for nursing homes. Direct care staff may also have increased employment opportunities as a result of the changes in the bill.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

### **B. RULE-MAKING AUTHORITY:**

AHCA has sufficient rulemaking authority to implement the changes in the bill.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

## **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**