

1 A bill to be entitled
 2 An act relating to nursing home facility staffing
 3 requirements; amending s. 400.23, F.S.; providing
 4 definitions; specifying functions that do not
 5 constitute direct care staffing hours for purposes of
 6 required nursing home staffing ratios; revising
 7 nursing home staffing requirements; requiring nursing
 8 home facilities to maintain and report staffing
 9 information consistent with federal law; amending ss.
 10 400.141 and 651.118, F.S.; conforming cross-references
 11 and provisions to changes made by the act; providing
 12 an effective date.

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

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 16 Section 1. Subsection (3) of section 400.23, Florida
 17 Statutes, is amended to read:

18 400.23 Rules; evaluation and deficiencies; licensure
 19 status.—

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

21 a. "Average monthly hours of direct care per resident per
 22 day" means the total number of direct care service hours
 23 provided by direct care staff in a month at the facility divided
 24 by the sum of each daily resident census for that month.

25 b. "Direct care staff" means individuals who, through

26 interpersonal contact with residents or resident care
 27 management, provide care and services to allow residents to
 28 attain or maintain the highest practicable physical, mental, and
 29 psychosocial well-being. The term includes, but is not limited
 30 to, disciplines and professions that must be reported in
 31 accordance with 42 C.F.R. s. 483.70 (g) and all of the following:

- 32 (I) Licensed nurses.
- 33 (II) Certified nursing assistants.
- 34 (III) Physical therapy staff.
- 35 (IV) Occupational therapy staff.
- 36 (V) Speech therapy staff.
- 37 (VI) Respiratory therapy staff.
- 38 (VII) Activities staff.
- 39 (VIII) Social services staff.
- 40 (IX) Mental health service workers.

41
 42 The term does not include individuals whose primary duties are
 43 maintaining the physical environment of the facility, including,
 44 but not limited to, food preparation, laundry, and housekeeping.

45 c. "Non-nursing direct care staff" means direct care staff
 46 who are not licensed to practice nursing under part I of chapter
 47 464.

48 2. For purposes of this subsection, direct care staffing
 49 hours do not include time spent on nursing administration, staff
 50 development, staffing coordination, and the administrative

51 portion of the minimum data set and care plan coordination for
52 Medicaid.

53 (b)1. The agency shall adopt rules providing minimum
54 staffing requirements for nursing home facilities. These
55 requirements must include, for each facility:

56 a. A minimum monthly ~~weekly~~ average of 3.8 ~~certified~~
57 ~~nursing assistant and licensed nursing staffing combined of 3.6~~
58 hours of direct care per resident per day, as determined by the
59 facility assessment staffing needs in accordance with 42 C.F.R.
60 s. 483.70(e). ~~As used in this sub-subparagraph, a week is~~
61 ~~defined as Sunday through Saturday.~~

62 b. A minimum ~~certified nursing assistant staffing~~ of 2.5
63 hours of direct care by non-nursing direct care staff per
64 resident per day, with at least 1.8 of those hours provided by a
65 certified nursing assistant. A facility may not staff below a
66 ratio of one certified nursing assistant per 20 residents.

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

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

76 3. Each nursing home facility must document compliance
77 with staffing standards as required under this paragraph and
78 post daily the names of licensed nurses and certified nursing
79 assistants ~~staff~~ on duty for the benefit of facility residents
80 and the public. Facilities must maintain records of staffing in
81 accordance with 42 C.F.R. s. 483.35(g) and must report staffing
82 in accordance with 42 C.F.R. s. 483.70(q).

83 4. The agency must ~~shall~~ recognize the use of licensed
84 nurses for compliance with minimum staffing requirements for
85 non-nursing direct care staff ~~certified nursing assistants~~ if
86 the nursing home facility otherwise meets the minimum staffing
87 requirements for licensed nurses and the licensed nurses are
88 performing the duties of a certified nursing assistant. Unless
89 otherwise approved by the agency, licensed nurses counted toward
90 the minimum staffing requirements for non-nursing direct care
91 staff ~~certified nursing assistants~~ must exclusively perform the
92 duties of a certified nursing assistant for the entire shift and
93 not also be counted toward the minimum staffing requirements for
94 licensed nurses. If the agency approved a facility's request to
95 use a licensed nurse to perform both licensed nursing and
96 certified nursing assistant duties, the facility must allocate
97 the amount of staff time specifically spent on certified nursing
98 assistant duties for the purpose of documenting compliance with
99 minimum staffing requirements for non-nursing direct care staff
100 ~~certified~~ and licensed nursing staff. The hours of a licensed

101 nurse with dual job responsibilities may not be counted twice.

102 ~~(c)-(b)~~ Paid feeding assistants and non-nursing direct care
 103 ~~nonnursing~~ staff who have successfully completed the feeding
 104 assistant training program under s. 400.141(1)(v) and who
 105 provide ~~providing~~ eating assistance to residents ~~shall not~~ count
 106 toward compliance with minimum staffing standards.

107 ~~(d)-(e)~~ Licensed practical nurses licensed under chapter
 108 464 who provide ~~are providing~~ nursing services in nursing home
 109 facilities under this part may supervise the activities of other
 110 licensed practical nurses, certified nursing assistants, and
 111 other unlicensed personnel providing services in such facilities
 112 in accordance with rules adopted by the Board of Nursing.

113 Section 2. Paragraphs (g), (n), and (r) of subsection (1)
 114 of section 400.141, Florida Statutes, are amended to read:

115 400.141 Administration and management of nursing home
 116 facilities.—

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

119 (g) If the facility has a standard license, exceeds the
 120 minimum required hours of direct care provided by licensed
 121 nurses ~~nursing~~ and non-nursing ~~certified nursing assistant~~
 122 direct care staff per resident per day, and is part of a
 123 continuing care facility licensed under chapter 651 or a
 124 retirement community that offers other services pursuant to part
 125 III of this chapter or part I or part III of chapter 429 on a

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126 single campus, be allowed to share programming and staff. At the
127 time of inspection, a continuing care facility or retirement
128 community that uses this option must demonstrate through
129 staffing records that minimum staffing requirements for the
130 facility were met. Licensed nurses and non-nursing direct care
131 staff ~~certified nursing assistants~~ who work in the facility may
132 be used to provide services elsewhere on campus if the facility
133 exceeds the minimum number of direct care hours required per
134 resident per day and the total number of residents receiving
135 direct care services from a licensed nurse or non-nursing direct
136 care staff ~~a certified nursing assistant~~ does not cause the
137 facility to violate the staffing ratios required under s.
138 400.23(3)(b) ~~s. 400.23(3)(a)~~. Compliance with the minimum
139 staffing ratios must be based on the total number of residents
140 receiving direct care services, regardless of where they reside
141 on campus. If the facility receives a conditional license, it
142 may not share staff until the conditional license status ends.
143 This paragraph does not restrict the agency's authority under
144 federal or state law to require additional staff if a facility
145 is cited for deficiencies in care which are caused by an
146 insufficient number of certified nursing assistants or licensed
147 nurses. The agency may adopt rules for the documentation
148 necessary to determine compliance with this provision.

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

150 1. A facility that has failed to comply with state

151 minimum-staffing requirements for 2 consecutive days is
152 ~~prohibited from accepting new admissions until the facility has~~
153 ~~achieved the minimum-staffing requirements for 6 consecutive~~
154 ~~days. For the purposes of this subparagraph, any person who was~~
155 ~~a resident of the facility and was absent from the facility for~~
156 ~~the purpose of receiving medical care at a separate location or~~
157 ~~was on a leave of absence is not considered a new admission.~~
158 ~~Failure by the facility to impose such an admissions moratorium~~
159 ~~is~~ subject to a \$1,000 fine.

160 2. A facility that does not have a conditional license may
161 be cited for failure to comply with the standards in s.
162 400.23(3)(b)1.b. and c. ~~s. 400.23(3)(a)1.b. and c.~~ only if it
163 has failed to meet those standards on 2 consecutive days or if
164 it has failed to meet at least 97 percent of those standards on
165 any one day.

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

169 (r) Maintain in the medical record for each resident a
170 daily chart of direct care ~~certified nursing assistant~~ services
171 provided to the resident. The direct care staff ~~certified~~
172 ~~nursing assistant who is~~ caring for the resident must complete
173 this record by the end of his or her shift. This record must
174 indicate assistance with activities of daily living, assistance
175 with eating, ~~and~~ assistance with drinking, and any other direct

176 | care provided and must record each offering of nutrition and
 177 | hydration for those residents whose plan of care or assessment
 178 | indicates a risk for malnutrition or dehydration.

179 | Section 3. Subsections (6) and (13) of section 651.118,
 180 | Florida Statutes, are amended to read:

181 | 651.118 Agency for Health Care Administration;
 182 | certificates of need; sheltered beds; community beds.—

183 | (6) Unless the provider already has a component that is to
 184 | be a part of the continuing care facility and that is licensed
 185 | under chapter 395, part II of chapter 400, or part I of chapter
 186 | 429 at the time of construction of the continuing care facility,
 187 | the provider must construct the non-nursing ~~nonnursing~~ home
 188 | portion of the facility and the nursing home portion of the
 189 | facility at the same time. If a provider constructs less than
 190 | the number of residential units approved in the certificate of
 191 | authority, the number of licensed sheltered nursing home beds
 192 | shall be reduced by a proportionate share.

193 | ~~(13) Residents, as defined in this chapter, are not~~
 194 | ~~considered new admissions for the purpose of s. 400.141(1)(n)1.~~

195 | Section 4. This act shall take effect July 1, 2022.