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LEGISLATIVE ACTION

Senate

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House

Senator Gibson moved the following:

Senate Amendment (with title amendment)

Between lines 296 and 297
insert:

Section 6. Paragraph (q) of subsection (1) of section
400.022, Florida Statutes, is amended, and paragraph (w) is
added to that subsection, to read:

400.022 Residents' rights.—

(1) All licensees of nursing home facilities shall adopt
and make public a statement of the rights and responsibilities
of the residents of such facilities and shall treat such



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residents in accordance with the provisions of that statement.

The statement shall assure each resident the following:

(q) The right to freedom of choice in selecting a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense or through Title XIX of the Social Security Act; and to obtain information about, and to participate in, community-based activities programs, unless medically contraindicated as documented by a physician in the resident's medical record. If a resident selects a personal physician, the resident's attending health care provider at the facility must consult with the resident's personal physician in providing any acute care to the resident and before ordering or prescribing medication for the resident to ensure that the medication is not medically contraindicated. The attending health care provider shall document any consultation with the resident's personal physician in the resident's records and provide copies of the resident's records to the resident's personal physician in accordance with s. 400.141(1)(e). If a resident chooses to use a community pharmacy and the facility in which the resident resides uses a unit-dose system, the pharmacy selected by the resident must ~~shall~~ be one that provides a compatible unit-dose system, provides service delivery, and stocks the drugs normally used by long-term care residents. If a resident chooses to use a community pharmacy and the facility in which the resident resides does not use a unit-dose system, the pharmacy selected by the resident must ~~shall~~ be one that provides service delivery and stocks the drugs normally used by long-term care residents.

(w) The right to receive a response from the facility



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41 within 3 days after the resident or the resident's legal
42 representative makes an inquiry or otherwise requests
43 information related to the resident or the resident's care or
44 treatment at the facility.

45 Section 7. Section 400.0221, Florida Statutes, is created
46 to read:

47 400.0221 Resident admission procedures; resident care
48 plans.—

49 (1) Before admitting a resident, a nursing home facility
50 must do all of the following:

51 (a) Provide the resident or the resident's legal
52 representative with a printed copy of all of the following:

53 1. The residents' rights provided in s. 400.022. The
54 resident and the resident's legal representative must also be
55 orally informed of the resident's right under s. 400.022(1)(q)
56 to select a personal physician and of the requirement that the
57 personal physician be provided with the resident's records and
58 consulted in providing any acute care to the resident and before
59 ordering or prescribing any medication for the resident. The
60 facility must document in the resident's care plan whether he or
61 she selects a personal physician.

62 2. The most recent version of the Nursing Home Guide
63 published under s. 400.191.

64 3. The agency's most recent inspection report of the
65 facility.

66 4. The facility's resident grievance procedures developed
67 pursuant to s. 400.1183.

68 5. The name and contact information of the medical
69 director, managers, directors of nursing, care coordinators, and



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70 billing staff of the facility.

71 (b) Give the resident or the resident's legal
72 representative a meaningful opportunity to discuss the
73 information provided under paragraph (a).

74 (c) Discuss with the resident or the resident's legal
75 representative any dietary restrictions applicable to the
76 resident. The facility must confirm that it can comply with such
77 restrictions before accepting a resident. The facility shall
78 include the resident's dietary restrictions in his or her
79 resident care plan.

80 (d) Discuss with the resident or the resident's legal
81 representative any physical or cognitive impairments affecting
82 the resident which require accommodations in facilities or
83 services or require that care be provided by individuals
84 appropriately trained to serve residents with such impairments.
85 If the facility cannot make such accommodations or does not have
86 adequately trained staff to provide the care the resident needs,
87 the facility may not accept the resident until such
88 accommodations and care can be provided. If the resident is
89 admitted, the facility must document the required accommodations
90 and care for the resident in his or her resident care plan.

91 (e) Ensure that it has a complete medical history for the
92 resident, including, but not limited to, any prescribed
93 medications, contraindicated medications or treatments, and
94 allergies, which must be included in the resident care plan. The
95 facility must inform the resident's legal representative, if
96 any, and the resident's personal physician, if selected, before
97 prescribing a new medication to the resident.

98 (2) Immediately after a facility develops an initial



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resident care plan, the facility must provide the resident or the resident's legal representative with a copy of the resident care plan. A physician, a registered nurse, or the care coordinator responsible for the resident shall discuss the resident care plan with the resident or the resident's legal representative to determine whether any information is missing or incorrect and whether the plan of care delineated in the resident care plan accounts for all of the concerns expressed by the resident, the resident's legal representative, or the resident's personal physician, if applicable, before admission, including, but not limited to, any dietary restrictions or needed accommodations or care specific to the resident.

(3) At least quarterly, a physician or registered nurse, with participation from other facility staff and the resident or the resident's legal representative, shall review the resident care plan to assess the resident's needs; the type and frequency of services required to provide the necessary care for the resident to attain or maintain the highest practical physical, mental, and psychosocial well-being; the services that are provided to the resident, both within and outside of the facility, and whether such services are sufficient to meet the resident's needs; and the resident's service goals. If it is determined that any of the resident's needs are not being met, the resident care plan must be revised to promote the highest practical physical, mental, and psychosocial well-being of the resident.

Section 8. Present paragraphs (e) through (l) and (m) through (w) of subsection (1) of section 400.141, Florida Statutes, are redesignated as paragraphs (f) through (m) and (o)



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through (y), respectively, and new paragraphs (e) and (n) are added to that subsection, 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:

(e) Provide each resident with the opportunity to select a personal physician as specified in s. 400.022(1)(q). The resident's attending health care provider at the facility shall consult with the resident's personal physician in providing any acute care to the resident and before ordering or prescribing medication for the resident to ensure the medication is not medically contraindicated for the resident. The attending health care provider shall document any consultation with the resident's personal physician in the resident's records. The facility shall provide the resident's personal physician with the resident's medical records and any records relating to the resident's care and treatment at the facility on a monthly basis; however, in the event of a change in the resident's condition, care, or treatment, the facility must inform and provide related records to the resident's personal physician within 3 days after such change. If the facility conducts any test or examination on the resident, the facility must immediately forward the results of such test or examination to the resident's personal physician. The facility shall continue to provide the resident's records to the resident's personal physician until the resident or the resident's representative notifies the facility that the transfer of such records is no longer requested.



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(n) Maintain on its website the name and contact information for the medical director, managers, directors of nursing, care coordinators, administrator, and billing staff of the facility. The facility shall also publicly display in the facility the names of the manager and director of nursing on duty each day or, if different, each shift.

Section 9. Subsections (1) and (8) of section 400.145, Florida Statutes, are amended to read:

400.145 Copies of records of care and treatment of resident.—

(1)(a) Upon receipt of a written request that complies with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and this section, a nursing home facility shall furnish to a competent resident, or to a representative of that resident who is authorized to make requests for the resident's records under HIPAA or subsection (2), copies of the resident's paper and electronic records that are in possession of the facility. Such records must include any medical records and records concerning the care and treatment of the resident performed by the facility, except for progress notes and consultation report sections of a psychiatric nature. The facility shall provide the requested records within 3 calendar ~~14 working~~ days after receipt of a request relating to a current resident or within 14 calendar ~~30 working~~ days after receipt of a request relating to a former resident.

(b) If a current resident of the facility or his or her legal representative has selected a personal physician outside of the facility for the resident or has requested that any of the resident's health care providers outside of the facility be



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186 kept informed of the resident's care and treatment in the
187 facility, the facility must provide such records on a monthly
188 basis; however, in the event of a change in the resident's
189 condition, care, or treatment, the facility must inform and
190 provide related records to the resident's applicable health care
191 providers within 3 days after such change. If the facility
192 conducts any test or examination on the resident, the facility
193 must immediately forward the results of such test or examination
194 to the resident's applicable health care providers. The facility
195 shall continue to provide the resident's records to the
196 resident's health care providers as applicable until the
197 resident or the resident's legal representative notifies the
198 facility that the transfer of such records is no longer
199 requested.

200 (8) A nursing home facility may not be cited by the agency
201 through the survey process for any alleged or actual
202 noncompliance with any of the requirements of this section,
203 except for those under paragraph (1)(b).

204 Section 10. Paragraph (a) of subsection (3) of section
205 400.23, Florida Statutes, is amended to read:

206 400.23 Rules; evaluation and deficiencies; licensure
207 status.—

208 (3)(a)1. The agency shall adopt rules providing minimum
209 staffing requirements for nursing home facilities. These
210 requirements must include, for each facility:

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



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b. A minimum certified nursing assistant staffing of 2.5 hours of direct care 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 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 staffing ratio for certified nursing assistants if their job responsibilities include only nursing-assistant-related duties.

3. Each nursing home facility shall ~~must~~ document compliance with staffing standards as required under this paragraph and, for the benefit of facility residents and the public, shall post on its website daily the names of staff on duty and their affiliated staffing agency, if any; the average daily resident-to-staff ratio at the facility; the monthly staff turnover rate at the facility; and any fines imposed by the agency for noncompliance with the staffing standards specified in this paragraph. The facility shall post such information in a conspicuous location on its website in an easily accessible format ~~for the benefit of facility residents and the public.~~

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



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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.

Section 11. Subsection (1) of section 400.172, Florida Statutes, is amended to read:

400.172 Respite care provided in nursing home facilities.—

(1) For each person admitted for respite care as authorized under s. 400.141(1)(g) ~~s. 400.141(1)(f)~~, a nursing home facility operated by a licensee must:

(a) Have a written abbreviated plan of care that, at a minimum, includes nutritional requirements, medication orders, physician orders, nursing assessments, and dietary preferences. The nursing or physician assessments may take the place of all other assessments required for full-time residents.

(b) Have a contract that, at a minimum, specifies the services to be provided to a resident receiving respite care, including charges for services, activities, equipment, emergency medical services, and the administration of medications. If multiple admissions for a single person for respite care are anticipated, the original contract is valid for 1 year after the date the contract is executed.

(c) Ensure that each resident is released to his or her



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caregiver or an individual designated in writing by the caregiver.

Section 12. Paragraph (d) of subsection (2) of section 400.211, Florida Statutes, is amended to read:

400.211 Persons employed as nursing assistants; certification requirement.—

(2) The following categories of persons who are not certified as nursing assistants under part II of chapter 464 may be employed by a nursing facility for a single consecutive period of 4 months:

(d) Persons who are employed as personal care attendants and who have completed the personal care attendant training program developed pursuant to s. 400.141(1)(y) ~~s. 400.141(1)(w)~~. As used in this paragraph, the term “personal care attendants” means persons who meet the training requirement in s. 400.141(1)(y) ~~s. 400.141(1)(w)~~ and provide care to and assist residents with tasks related to the activities of daily living.

The certification requirement must be met within 4 months after initial employment as a nursing assistant in a licensed nursing facility.

Section 13. Subsection (1) of section 408.822, Florida Statutes, is amended to read:

408.822 Direct care workforce survey.—

(1) For purposes of this section, the term “direct care worker” means a certified nursing assistant, a home health aide, a personal care assistant, a companion services or homemaker services provider, a paid feeding assistant trained under s. 400.141(1)(x) ~~s. 400.141(1)(v)~~, or another individual who



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provides personal care as defined in s. 400.462 to individuals who are elderly, developmentally disabled, or chronically ill.

Section 14. Paragraph (e) of subsection (4) of section 409.221, Florida Statutes, is amended to read:

409.221 Consumer-directed care program.—

(4) CONSUMER-DIRECTED CARE.—

(e) *Services*.—Consumers shall use the budget allowance only to pay for home and community-based services that meet the consumer's long-term care needs and are a cost-efficient use of funds. Such services may include, but are not limited to, the following:

1. Personal care.

2. Homemaking and chores, including housework, meals, shopping, and transportation.

3. Home modifications and assistive devices which may increase the consumer's independence or make it possible to avoid institutional placement.

4. Assistance in taking self-administered medication.

5. Day care and respite care services, including those provided by nursing home facilities pursuant to s. 400.141(1)(g) ~~s. 400.141(1)(f)~~ or by adult day care facilities licensed pursuant to s. 429.907.

6. Personal care and support services provided in an assisted living facility.

Section 15. Subsection (3) of section 430.80, Florida Statutes, is amended to read:

430.80 Implementation of a teaching nursing home pilot project.—

(3) To be designated as a teaching nursing home, a nursing



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home licensee must, at a minimum:

(a) Provide a comprehensive program of integrated senior services that include institutional services and community-based services;

(b) Participate in a nationally recognized accrediting program and hold a valid accreditation, such as the accreditation awarded by the Joint Commission, or, at the time of initial designation, possess a Gold Seal Award as conferred by the state on its licensed nursing home;

(c) Have been in business in this state for a minimum of 10 consecutive years;

(d) Demonstrate an active program in multidisciplinary education and research that relates to gerontology;

(e) Have a formalized contractual relationship with at least one accredited health profession education program located in this state;

(f) Have senior staff members who hold formal faculty appointments at universities, which must include at least one accredited health profession education program; and

(g) Maintain insurance coverage pursuant to s. 400.141(1)(s) ~~s. 400.141(1)(q)~~ or proof of financial responsibility in a minimum amount of \$750,000. Such proof of financial responsibility may include:

1. Maintaining an escrow account consisting of cash or assets eligible for deposit in accordance with s. 625.52; or

2. Obtaining and maintaining pursuant to chapter 675 an unexpired, irrevocable, nontransferable and nonassignable letter of credit issued by any bank or savings association organized and existing under the laws of this state or any bank or savings



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association organized under the laws of the United States that has its principal place of business in this state or has a branch office which is authorized to receive deposits in this state. The letter of credit shall be used to satisfy the obligation of the facility to the claimant upon presentment of a final judgment indicating liability and awarding damages to be paid by the facility or upon presentment of a settlement agreement signed by all parties to the agreement when such final judgment or settlement is a result of a liability claim against the facility.

Section 16. Paragraph (h) of subsection (2) of section 430.81, Florida Statutes, is amended to read:

430.81 Implementation of a teaching agency for home and community-based care.—

(2) The Department of Elderly Affairs may designate a home health agency as a teaching agency for home and community-based care if the home health agency:

(h) Maintains insurance coverage pursuant to s. 400.141(1)(s) ~~s. 400.141(1)(g)~~ or proof of financial responsibility in a minimum amount of \$750,000. Such proof of financial responsibility may include:

1. Maintaining an escrow account consisting of cash or assets eligible for deposit in accordance with s. 625.52; or

2. Obtaining and maintaining, pursuant to chapter 675, an unexpired, irrevocable, nontransferable, and nonassignable letter of credit issued by any bank or savings association authorized to do business in this state. This letter of credit shall be used to satisfy the obligation of the agency to the claimant upon presentation of a final judgment indicating



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liability and awarding damages to be paid by the facility or upon presentment of a settlement agreement signed by all parties to the agreement when such final judgment or settlement is a result of a liability claim against the agency.

Section 17. Subsection (13) of section 651.118, Florida Statutes, is amended to read:

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

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

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 41

and insert:

with minimum staffing requirements; amending s. 400.022, F.S.; requiring a resident's attending health care provider in a nursing home facility to consult with the resident's personal physician, if selected, in the provision of acute care to the resident and before ordering or prescribing medication to the resident; requiring the resident's attending health care provider to document any such consultations in the resident's records; requiring the nursing home facility to provide the resident's records to the resident's personal physician in accordance with specified provisions; providing that residents or their legal representatives have the right to receive



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a response from a nursing home facility within a specified timeframe of an inquiry or request for information; creating s. 400.0221, F.S.; requiring nursing home facilities to take certain measures before admitting a resident; requiring nursing home facilities to provide residents or their legal representatives with a copy of the resident care plan immediately after it is developed; requiring a physician, registered nurse, or care coordinator to discuss the plan with the resident or the resident's legal representative for a specified purpose; requiring such plan to be reviewed at least quarterly by specified individuals; requiring the plan to be revised under certain circumstances; amending s. 400.141, F.S.; requiring nursing home facilities to provide each resident with the opportunity to select a personal physician; requiring the attending health care provider at the facility, if selected, to consult with the resident's personal physician for certain care or before ordering or prescribing medication to the resident; requiring the attending health care provider to document such consultations in the resident's records; requiring the facility to provide the resident's records to his or her personal physician on a monthly basis and within a specified timeframe of any changes in the resident's condition, care, or treatment; requiring the facility to immediately forward the results of any test or examination of the resident to the resident's personal



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physician; requiring the facility to continue providing such records until notified otherwise by the resident or the resident's legal representative; requiring nursing home facilities to maintain the names and contact information of specified individuals on their websites; requiring nursing home facilities to publicly display in the facility the names of the manager and director of nursing on duty; amending s. 400.145, F.S.; revising the timeframe in which nursing home facilities must furnish requested records of a current or former resident; requiring nursing home facilities to provide a resident's records to the resident's selected health care providers outside of the facility on a monthly basis and within a specified timeframe of any change in the resident's condition, care, or treatment; requiring facilities to immediately provide the results of any test or examination conducted on the resident to the applicable health care providers; requiring the facility to continue providing such records until notified otherwise by the resident or the resident's legal representative; authorizing the agency to cite nursing home facilities during the survey process for alleged or actual noncompliance with certain requirements; amending s. 400.23, F.S.; requiring nursing home facilities to post on their websites specified information relating to staffing at their facilities; requiring such information to be in a conspicuous location on their websites and in a



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476 specified format; amending ss. 400.172, 400.211,
477 408.822, 409.221, 430.80, 430.81, and 651.118, F.S.;
478 conforming cross-references; providing an