

By Senator Book

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1 A bill to be entitled
2 An act relating to health care provider
3 accountability; creating ss. 395.1062 and 400.0232,
4 F.S.; defining the terms "health care practitioner"
5 and "health care worker"; providing criminal and civil
6 immunity to health care workers of hospitals and
7 nursing home facilities, respectively, who carry out
8 directives of a supervising health care practitioner
9 or entity; providing an exception; amending s.
10 400.141, F.S.; requiring the Agency for Health Care
11 Administration to provide a report on the success of
12 the personal care attendant program to the Governor
13 and the Legislature by a specified date each year;
14 providing requirements for the report; requiring
15 nursing home facilities to report to the agency common
16 ownership relationships they or their parent companies
17 share with certain entities; requiring the agency to
18 work with stakeholders to determine how such reporting
19 shall be conducted; requiring the agency to submit a
20 report of such reported common ownership relationships
21 to the Governor and the Legislature by a specified
22 date each year; requiring the agency to adopt rules;
23 amending s. 409.908, F.S.; revising the rate
24 methodology for the agency's long-term care
25 reimbursement plan; requiring the agency to add a
26 quality metric to its Quality Incentive Program for a
27 specified purpose; providing an effective date.

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

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Section 1. Section 395.1062, Florida Statutes, is created to read:

395.1062 Immunity from liability; certain health care workers.-

(1) As used in this section, the term:

(a) "Health care practitioner" has the same meaning as provided in s. 456.001.

(b) "Health care worker" means a health care practitioner or a person otherwise licensed, registered, or certified to provide health care services in this state. The term also includes unlicensed persons authorized by law to perform tasks delegated by, or provide health care services under the supervision of, a licensed, registered, or certified person or entity.

(2) A health care worker of a hospital who carries out the directive of a supervising health care practitioner or hospital is not subject to criminal prosecution or civil liability, and is deemed not to have engaged in unprofessional conduct, as a result of carrying out the health care directive.

(3) This section does not apply if it is shown by a preponderance of the evidence that the health care worker did not, in good faith, comply with the minimum standards of acceptable and prevailing practice, including, but not limited to, engaging in acts for which the health care worker is not qualified by training or experience.

Section 2. Section 400.0232, Florida Statutes, is created to read:

400.0232 Immunity from liability; certain health care

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59 workers.-

60 (1) As used in this section, the term:

61 (a) "Health care practitioner" has the same meaning as
62 provided in s. 456.001.

63 (b) "Health care worker" means a health care practitioner
64 or a person otherwise licensed, registered, or certified to
65 provide health care services in this state. The term also
66 includes unlicensed persons authorized by law to perform tasks
67 delegated by, or provide health care services under the
68 supervision of, a licensed, registered, or certified person or
69 entity.

70 (2) A health care worker who carries out the directive of a
71 supervising health care practitioner, a nursing home
72 administrator, or a nursing home facility is not subject to
73 criminal prosecution or civil liability, and is deemed not to
74 have engaged in unprofessional conduct, as a result of carrying
75 out the health care directive.

76 (3) This section does not apply if it is shown by a
77 preponderance of the evidence that the health care worker did
78 not, in good faith, comply with the minimum standards of
79 acceptable and prevailing practice, including, but not limited
80 to, engaging in acts for which the health care worker is not
81 qualified by training or experience.

82 Section 3. Paragraph (w) of subsection (1) of section
83 400.141, Florida Statutes, is amended, and paragraph (x) is
84 added to that subsection, to read:

85 400.141 Administration and management of nursing home
86 facilities.-

87 (1) Every licensed facility shall comply with all

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88 applicable standards and rules of the agency and shall:

89 (w) Be allowed to employ personal care attendants as
90 defined in s. 400.211(2)(d), if such personal care attendants
91 are participating in the personal care attendant training
92 program developed by the agency, in accordance with 42 C.F.R.
93 ss. 483.151-483.154, in consultation with the Board of Nursing.

94 1. The personal care attendant program must consist of a
95 minimum of 16 hours of education and must include all of the
96 topics and lessons specified in the program curriculum.

97 2. The program curriculum must include, but need not be
98 limited to, training in all of the following content areas:

99 a. Residents' rights.

100 b. Confidentiality of residents' personal information and
101 medical records.

102 c. Control of contagious and infectious diseases.

103 d. Emergency response measures.

104 e. Assistance with activities of daily living.

105 f. Measuring vital signs.

106 g. Skin care and pressure sores prevention.

107 h. Portable oxygen use and safety.

108 i. Nutrition and hydration.

109 j. Dementia care.

110 3. A personal care attendant must complete the 16 hours of
111 required education before having any direct contact with a
112 resident.

113 4. A personal care attendant may not perform any task that
114 requires clinical assessment, interpretation, or judgment.

115 5. An individual employed as a personal care attendant
116 under s. 400.211(2)(d) must work exclusively for one nursing

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117 facility before becoming a certified nursing assistant.

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119 The agency shall adopt rules necessary to implement this
120 paragraph. If the state of emergency declared by the Governor
121 pursuant to Executive Order No. 20-52 is terminated before the
122 agency adopts rules to implement this paragraph, the agency
123 shall authorize the continuation of the personal care attendant
124 program until the agency adopts such rules. On January 1 of each
125 year, the agency shall provide a report to the Governor, the
126 President of the Senate, and the Speaker of the House of
127 Representatives regarding the success of the program, including,
128 but not limited to, the number of personal care attendants who
129 took and passed the certified nursing assistant exam after 4
130 months of initial employment with a single nursing facility as
131 provided in s. 400.211(2); any adverse actions related to
132 patient care involving personal care attendants; the number of
133 certified nursing assistants who are employed and remain
134 employed each year after completing the personal care attendant
135 program; and the turnover rate of personal care attendants in
136 nursing home facilities.

137 (x) Report to the agency any common ownership the facility
138 or its parent company shares with a staffing or management
139 company, a vocational or physical rehabilitation company, or any
140 other company that conducts business within the nursing home
141 facility. The agency shall work with stakeholders to determine
142 how this reporting shall be conducted. By January 15 of each
143 year, the agency shall submit a report to the Governor, the
144 President of the Senate, and the Speaker of the House of
145 Representatives on all common ownership relationships reported

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146 to the agency in the preceding calendar year. The agency shall
147 adopt rules to implement this paragraph.

148 Section 4. Paragraph (b) of subsection (2) of section
149 409.908, Florida Statutes, is amended to read:

150 409.908 Reimbursement of Medicaid providers.—Subject to
151 specific appropriations, the agency shall reimburse Medicaid
152 providers, in accordance with state and federal law, according
153 to methodologies set forth in the rules of the agency and in
154 policy manuals and handbooks incorporated by reference therein.
155 These methodologies may include fee schedules, reimbursement
156 methods based on cost reporting, negotiated fees, competitive
157 bidding pursuant to s. 287.057, and other mechanisms the agency
158 considers efficient and effective for purchasing services or
159 goods on behalf of recipients. If a provider is reimbursed based
160 on cost reporting and submits a cost report late and that cost
161 report would have been used to set a lower reimbursement rate
162 for a rate semester, then the provider's rate for that semester
163 shall be retroactively calculated using the new cost report, and
164 full payment at the recalculated rate shall be effected
165 retroactively. Medicare-granted extensions for filing cost
166 reports, if applicable, shall also apply to Medicaid cost
167 reports. Payment for Medicaid compensable services made on
168 behalf of Medicaid-eligible persons is subject to the
169 availability of moneys and any limitations or directions
170 provided for in the General Appropriations Act or chapter 216.
171 Further, nothing in this section shall be construed to prevent
172 or limit the agency from adjusting fees, reimbursement rates,
173 lengths of stay, number of visits, or number of services, or
174 making any other adjustments necessary to comply with the

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175 availability of moneys and any limitations or directions
176 provided for in the General Appropriations Act, provided the
177 adjustment is consistent with legislative intent.

178 (2)

179 (b) Subject to any limitations or directions in the General
180 Appropriations Act, the agency shall establish and implement a
181 state Title XIX Long-Term Care Reimbursement Plan for nursing
182 home care in order to provide care and services in conformance
183 with the applicable state and federal laws, rules, regulations,
184 and quality and safety standards and to ensure that individuals
185 eligible for medical assistance have reasonable geographic
186 access to such care.

187 1. The agency shall amend the long-term care reimbursement
188 plan and cost reporting system to create direct care and
189 indirect care subcomponents of the patient care component of the
190 per diem rate. These two subcomponents together shall equal the
191 patient care component of the per diem rate. Separate prices
192 shall be calculated for each patient care subcomponent,
193 initially based on the September 2016 rate setting cost reports
194 and subsequently based on the most recently audited cost report
195 used during a rebasing year. The direct care subcomponent of the
196 per diem rate for any providers still being reimbursed on a cost
197 basis shall be limited by the cost-based class ceiling, and the
198 indirect care subcomponent may be limited by the lower of the
199 cost-based class ceiling, the target rate class ceiling, or the
200 individual provider target. The ceilings and targets apply only
201 to providers being reimbursed on a cost-based system. Effective
202 October 1, 2018, a prospective payment methodology shall be
203 implemented for rate setting purposes with the following

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204 parameters:

205 a. Peer Groups, including:

206 (I) North-SMMC Regions 1-9, less Palm Beach and Okeechobee

207 Counties; and

208 (II) South-SMMC Regions 10-11, plus Palm Beach and

209 Okeechobee Counties.

210 b. Percentage of Median Costs based on the cost reports

211 used for September 2016 rate setting:

212 (I) Direct Care Costs.....100 percent.

213 (II) Indirect Care Costs.....92 percent.

214 (III) Operating Costs.....86 percent.

215 c. Floors:

216 (I) Direct Care Component.....100 ~~95~~ percent.

217 (II) Indirect Care Component.....92.5 percent.

218 (III) Operating Component.....None.

219 d. Pass-through Payments.....Real Estate and

220Personal Property

221Taxes and Property Insurance.

222 e. Quality Incentive Program Payment

223 Pool.....6 percent of September

2242016 non-property related

225payments of included facilities.

226 f. Quality Score Threshold to Quality for Quality Incentive

227 Payment.....20th percentile of included facilities.

228 g. Fair Rental Value System Payment Parameters:

229 (I) Building Value per Square Foot based on 2018 RS Means.

230 (II) Land Valuation.....10 percent of Gross Building value.

231 (III) Facility Square Footage.....Actual Square Footage.

232 (IV) Moveable Equipment Allowance.....\$8,000 per bed.

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- 233 (V) Obsolescence Factor.....1.5 percent.
- 234 (VI) Fair Rental Rate of Return.....8 percent.
- 235 (VII) Minimum Occupancy.....90 percent.
- 236 (VIII) Maximum Facility Age.....40 years.
- 237 (IX) Minimum Square Footage per Bed.....350.
- 238 (X) Maximum Square Footage for Bed.....500.
- 239 (XI) Minimum Cost of a renovation/replacements.\$500 per bed.

240 h. Ventilator Supplemental payment of \$200 per Medicaid day
 241 of 40,000 ventilator Medicaid days per fiscal year.

242 2. The direct care subcomponent shall include salaries and
 243 benefits of direct care staff providing nursing services
 244 including registered nurses, licensed practical nurses, and
 245 certified nursing assistants who deliver care directly to
 246 residents in the nursing home facility, allowable therapy costs,
 247 and dietary costs. This excludes nursing administration, staff
 248 development, the staffing coordinator, and the administrative
 249 portion of the minimum data set and care plan coordinators. The
 250 direct care subcomponent also includes medically necessary
 251 dental care, vision care, hearing care, and podiatric care.

252 3. All other patient care costs shall be included in the
 253 indirect care cost subcomponent of the patient care per diem
 254 rate, including complex medical equipment, medical supplies, and
 255 other allowable ancillary costs. Costs may not be allocated
 256 directly or indirectly to the direct care subcomponent from a
 257 home office or management company.

258 4. On July 1 of each year, the agency shall report to the
 259 Legislature direct and indirect care costs, including average
 260 direct and indirect care costs per resident per facility and
 261 direct care and indirect care salaries and benefits per category

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262 of staff member per facility.

263 5. Every fourth year, the agency shall rebase nursing home
264 prospective payment rates to reflect changes in cost based on
265 the most recently audited cost report for each participating
266 provider.

267 6. A direct care supplemental payment may be made to
268 providers whose direct care hours per patient day are above the
269 80th percentile and who provide Medicaid services to a larger
270 percentage of Medicaid patients than the state average.

271 7. For the period beginning on October 1, 2018, and ending
272 on September 30, 2021, the agency shall reimburse providers the
273 greater of their September 2016 cost-based rate or their
274 prospective payment rate. Effective October 1, 2021, the agency
275 shall reimburse providers the greater of 95 percent of their
276 cost-based rate or their rebased prospective payment rate, using
277 the most recently audited cost report for each facility. This
278 subparagraph shall expire September 30, 2023.

279 8. Pediatric, Florida Department of Veterans Affairs, and
280 government-owned facilities are exempt from the pricing model
281 established in this subsection and shall remain on a cost-based
282 prospective payment system. Effective October 1, 2018, the
283 agency shall set rates for all facilities remaining on a cost-
284 based prospective payment system using each facility's most
285 recently audited cost report, eliminating retroactive
286 settlements.

287 9. The agency shall add a quality metric to the Quality
288 Incentive Program to measure direct care staff turnover and the
289 long-term retention of direct care staff for purposes of
290 recognizing that a stable workforce increases the quality of

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291 nursing home resident care, as described in s. 400.235.

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293 It is the intent of the Legislature that the reimbursement plan
294 achieve the goal of providing access to health care for nursing
295 home residents who require large amounts of care while
296 encouraging diversion services as an alternative to nursing home
297 care for residents who can be served within the community. The
298 agency shall base the establishment of any maximum rate of
299 payment, whether overall or component, on the available moneys
300 as provided for in the General Appropriations Act. The agency
301 may base the maximum rate of payment on the results of
302 scientifically valid analysis and conclusions derived from
303 objective statistical data pertinent to the particular maximum
304 rate of payment. The agency shall base the rates of payments in
305 accordance with the minimum wage requirements as provided in the
306 General Appropriations Act.

307 Section 5. This act shall take effect July 1, 2023.