

1 A bill to be entitled

2 An act relating to resident care in nursing home
3 facilities; amending s. 400.022, F.S.; requiring a
4 resident's attending health care provider in a nursing
5 home facility to consult with the resident's personal
6 physician, if selected, in the provision of acute care
7 to the resident and before ordering or prescribing
8 medication to the resident; requiring the resident's
9 attending health care provider to document any such
10 consultations in the resident's records; requiring the
11 nursing home facility to provide the resident's
12 records to the resident's personal physician in
13 accordance with specified provisions; providing that
14 residents or their legal representatives have the
15 right to receive a response from a nursing home
16 facility within a specified timeframe of an inquiry or
17 request for information; creating s. 400.0221, F.S.;
18 requiring nursing home facilities to take certain
19 measures before admitting a resident; requiring
20 nursing home facilities to provide residents or their
21 legal representatives with a copy of the resident care
22 plan immediately after it is developed; requiring a
23 physician, registered nurse, or care coordinator to
24 discuss the plan with the resident or the resident's
25 legal representative for a specified purpose;

26 requiring such plan to be reviewed at least quarterly
27 by specified individuals; requiring the plan to be
28 revised under certain circumstances; amending s.
29 400.141, F.S.; requiring nursing home facilities to
30 provide each resident with the opportunity to select a
31 personal physician; requiring the attending health
32 care provider at the facility, if selected, to consult
33 with the resident's personal physician for certain
34 care or before ordering or prescribing medication to
35 the resident; requiring the attending health care
36 provider to document such consultations in the
37 resident's records; requiring the facility to provide
38 the resident's records to his or her personal
39 physician on a monthly basis and within a specified
40 timeframe of any changes in the resident's condition,
41 care, or treatment; requiring the facility to
42 immediately forward the results of any test or
43 examination of the resident to the resident's personal
44 physician; requiring the facility to continue
45 providing such records until notified otherwise by the
46 resident or the resident's legal representative;
47 requiring nursing home facilities to maintain the
48 names and contact information of specified individuals
49 on their websites; requiring nursing home facilities
50 to publicly display in the facility the names of the

51 manager and director of nursing on duty; amending s.
52 400.145, F.S.; revising the timeframe in which nursing
53 home facilities must furnish requested records of a
54 current or former resident; requiring nursing home
55 facilities to provide a resident's records to the
56 resident's selected health care providers outside of
57 the facility on a monthly basis and within a specified
58 timeframe of any change in the resident's condition,
59 care, or treatment; requiring facilities to
60 immediately provide the results of any test or
61 examination conducted on the resident to the
62 applicable health care providers; requiring the
63 facility to continue providing such records until
64 notified otherwise by the resident or the resident's
65 legal representative; authorizing the agency to cite
66 nursing home facilities during the survey process for
67 alleged or actual noncompliance with certain
68 requirements; amending s. 400.23, F.S.; requiring
69 nursing home facilities to post on their websites
70 specified information relating to staffing at their
71 facilities; requiring such information to be in a
72 conspicuous location on their websites and in a
73 specified format; amending ss. 400.172, 400.211,
74 408.822, 409.221, 430.80, 430.81, and 651.118, F.S.;
75 conforming cross-references; providing an effective

76 | date.

77 |

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

79 |

80 | Section 1. Paragraph (q) of subsection (1) of section
 81 | 400.022, Florida Statutes, is amended, and paragraph (w) is
 82 | added to that subsection, to read:

83 | 400.022 Residents' rights.—

84 | (1) All licensees of nursing home facilities shall adopt
 85 | and make public a statement of the rights and responsibilities
 86 | of the residents of such facilities and shall treat such
 87 | residents in accordance with the provisions of that statement.
 88 | The statement shall assure each resident the following:

89 | (q) The right to freedom of choice in selecting a personal
 90 | physician; to obtain pharmaceutical supplies and services from a
 91 | pharmacy of the resident's choice, at the resident's own expense
 92 | or through Title XIX of the Social Security Act; and to obtain
 93 | information about, and to participate in, community-based
 94 | activities programs, unless medically contraindicated as
 95 | documented by a physician in the resident's medical record. If a
 96 | resident selects a personal physician, the resident's attending
 97 | health care provider at the facility must consult with the
 98 | resident's personal physician in providing any acute care to the
 99 | resident and before ordering or prescribing medication for the
 100 | resident to ensure that the medication is not medically

101 contraindicated. The attending health care provider shall
 102 document any consultation with the resident's personal physician
 103 in the resident's records and provide copies of the resident's
 104 records to the resident's personal physician in accordance with
 105 s. 400.141(1)(e). If a resident chooses to use a community
 106 pharmacy and the facility in which the resident resides uses a
 107 unit-dose system, the pharmacy selected by the resident must
 108 ~~shall~~ be one that provides a compatible unit-dose system,
 109 provides service delivery, and stocks the drugs normally used by
 110 long-term care residents. If a resident chooses to use a
 111 community pharmacy and the facility in which the resident
 112 resides does not use a unit-dose system, the pharmacy selected
 113 by the resident must ~~shall~~ be one that provides service delivery
 114 and stocks the drugs normally used by long-term care residents.

115 (w) The right to receive a response from the facility
 116 within 3 days after the resident or the resident's legal
 117 representative makes an inquiry or otherwise requests
 118 information related to the resident or the resident's care or
 119 treatment at the facility.

120 Section 2. Section 400.0221, Florida Statutes, is created
 121 to read:

122 400.0221 Resident admission procedures; resident care
 123 plans.-

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

- 126 (a) Provide the resident or the resident's legal
127 representative with a printed copy of all of the following:
- 128 1. The residents' rights provided in s. 400.022. The
129 resident and the resident's legal representative must also be
130 orally informed of the resident's right under s. 400.022(1)(g)
131 to select a personal physician and of the requirement that the
132 personal physician be provided with the resident's records and
133 consulted in providing any acute care to the resident and before
134 ordering or prescribing any medication for the resident. The
135 facility must document in the resident's care plan whether he or
136 she selects a personal physician.
- 137 2. The most recent version of the Nursing Home Guide
138 published under s. 400.191.
- 139 3. The agency's most recent inspection report of the
140 facility.
- 141 4. The facility's resident grievance procedures developed
142 pursuant to s. 400.1183.
- 143 5. The name and contact information of the medical
144 director, managers, directors of nursing, care coordinators, and
145 billing staff of the facility.
- 146 (b) Give the resident or the resident's legal
147 representative a meaningful opportunity to discuss the
148 information provided under paragraph (a).
- 149 (c) Discuss with the resident or the resident's legal
150 representative any dietary restrictions applicable to the

151 resident. The facility must confirm that it can comply with such
152 restrictions before accepting a resident. The facility shall
153 include the resident's dietary restrictions in his or her
154 resident care plan.

155 (d) Discuss with the resident or the resident's legal
156 representative any physical or cognitive impairments affecting
157 the resident which require accommodations in facilities or
158 services or require that care be provided by individuals
159 appropriately trained to serve residents with such impairments.
160 If the facility cannot make such accommodations or does not have
161 adequately trained staff to provide the care the resident needs,
162 the facility may not accept the resident until such
163 accommodations and care can be provided. If the resident is
164 admitted, the facility must document the required accommodations
165 and care for the resident in his or her resident care plan.

166 (e) Ensure that it has a complete medical history for the
167 resident, including, but not limited to, any prescribed
168 medications, contraindicated medications or treatments, and
169 allergies, which must be included in the resident care plan. The
170 facility must inform the resident's legal representative, if
171 any, and the resident's personal physician, if selected, before
172 prescribing a new medication to the resident.

173 (2) Immediately after a facility develops an initial
174 resident care plan, the facility must provide the resident or
175 the resident's legal representative with a copy of the resident

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176 care plan. A physician, a registered nurse, or the care
177 coordinator responsible for the resident shall discuss the
178 resident care plan with the resident or the resident's legal
179 representative to determine whether any information is missing
180 or incorrect and whether the plan of care delineated in the
181 resident care plan accounts for all of the concerns expressed by
182 the resident, the resident's legal representative, or the
183 resident's personal physician, if applicable, before admission,
184 including, but not limited to, any dietary restrictions or
185 needed accommodations or care specific to the resident.

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

200 Section 3. Present paragraphs (e) through (l) and (m)

201 through (w) of subsection (1) of section 400.141, Florida
 202 Statutes, are redesignated as paragraphs (f) through (m) and (o)
 203 through (y), respectively, and new paragraphs (e) and (n) are
 204 added to that subsection, to read:

205 400.141 Administration and management of nursing home
 206 facilities.—

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

209 (e) Provide each resident with the opportunity to select a
 210 personal physician as specified in s. 400.022(1)(g). The
 211 resident's attending health care provider at the facility shall
 212 consult with the resident's personal physician in providing any
 213 acute care to the resident and before ordering or prescribing
 214 medication for the resident to ensure the medication is not
 215 medically contraindicated for the resident. The attending health
 216 care provider shall document any consultation with the
 217 resident's personal physician in the resident's records. The
 218 facility shall provide the resident's personal physician with
 219 the resident's medical records and any records relating to the
 220 resident's care and treatment at the facility on a monthly
 221 basis; however, in the event of a change in the resident's
 222 condition, care, or treatment, the facility must inform and
 223 provide related records to the resident's personal physician
 224 within 3 days after such change. If the facility conducts any
 225 test or examination on the resident, the facility must

226 immediately forward the results of such test or examination to
 227 the resident's personal physician. The facility shall continue
 228 to provide the resident's records to the resident's personal
 229 physician until the resident or the resident's representative
 230 notifies the facility that the transfer of such records is no
 231 longer requested.

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

238 Section 4. Subsections (1) and (8) of section 400.145,
 239 Florida Statutes, are amended to read:

240 400.145 Copies of records of care and treatment of
 241 resident.—

242 (1)(a) Upon receipt of a written request that complies
 243 with the federal Health Insurance Portability and Accountability
 244 Act of 1996 (HIPAA) and this section, a nursing home facility
 245 shall furnish to a competent resident, or to a representative of
 246 that resident who is authorized to make requests for the
 247 resident's records under HIPAA or subsection (2), copies of the
 248 resident's paper and electronic records that are in possession
 249 of the facility. Such records must include any medical records
 250 and records concerning the care and treatment of the resident

251 performed by the facility, except for progress notes and
252 consultation report sections of a psychiatric nature. The
253 facility shall provide the requested records within 3 calendar
254 ~~14 working~~ days after receipt of a request relating to a current
255 resident or within 14 calendar ~~30 working~~ days after receipt of
256 a request relating to a former resident.

257 (b) If a current resident of the facility or his or her
258 legal representative has selected a personal physician outside
259 of the facility for the resident or has requested that any of
260 the resident's health care providers outside of the facility be
261 kept informed of the resident's care and treatment in the
262 facility, the facility must provide such records on a monthly
263 basis; however, in the event of a change in the resident's
264 condition, care, or treatment, the facility must inform and
265 provide related records to the resident's applicable health care
266 providers within 3 days after such change. If the facility
267 conducts any test or examination on the resident, the facility
268 must immediately forward the results of such test or examination
269 to the resident's applicable health care providers. The facility
270 shall continue to provide the resident's records to the
271 resident's health care providers as applicable until the
272 resident or the resident's legal representative notifies the
273 facility that the transfer of such records is no longer
274 requested.

275 (8) A nursing home facility may not be cited by the agency

276 through the survey process for any alleged or actual
 277 noncompliance with any of the requirements of this section,
 278 except for those under paragraph (1)(b).

279 Section 5. Paragraph (a) of subsection (3) of section
 280 400.23, Florida Statutes, is amended to read:

281 400.23 Rules; evaluation and deficiencies; licensure
 282 status.—

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

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

290 b. A minimum certified nursing assistant staffing of 2.5
 291 hours of direct care per resident per day. A facility may not
 292 staff below one certified nursing assistant per 20 residents.

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

296 2. Nursing assistants employed under s. 400.211(2) may be
 297 included in computing the staffing ratio for certified nursing
 298 assistants if their job responsibilities include only nursing-
 299 assistant-related duties.

300 3. Each nursing home facility shall ~~must~~ document

301 compliance with staffing standards as required under this
302 paragraph and, for the benefit of facility residents and the
303 public, shall post on its website daily the names of staff on
304 duty and their affiliated staffing agency, if any; the average
305 daily resident-to-staff ratio at the facility; the monthly staff
306 turnover rate at the facility; and any fines imposed by the
307 agency for noncompliance with the staffing standards specified
308 in this paragraph. The facility shall post such information in a
309 conspicuous location on its website in an easily accessible
310 format ~~for the benefit of facility residents and the public.~~

311 4. The agency must ~~shall~~ recognize the use of licensed
312 nurses for compliance with minimum staffing requirements for
313 certified nursing assistants if the nursing home facility
314 otherwise meets the minimum staffing requirements for licensed
315 nurses and the licensed nurses are performing the duties of a
316 certified nursing assistant. Unless otherwise approved by the
317 agency, licensed nurses counted toward the minimum staffing
318 requirements for certified nursing assistants must exclusively
319 perform the duties of a certified nursing assistant for the
320 entire shift and not also be counted toward the minimum staffing
321 requirements for licensed nurses. If the agency approved a
322 facility's request to use a licensed nurse to perform both
323 licensed nursing and certified nursing assistant duties, the
324 facility must allocate the amount of staff time specifically
325 spent on certified nursing assistant duties for the purpose of

326 | documenting compliance with minimum staffing requirements for
 327 | certified and licensed nursing staff. The hours of a licensed
 328 | nurse with dual job responsibilities may not be counted twice.

329 | Section 6. Subsection (1) of section 400.172, Florida
 330 | Statutes, is amended to read:

331 | 400.172 Respite care provided in nursing home facilities.—

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

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

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

347 | (c) Ensure that each resident is released to his or her
 348 | caregiver or an individual designated in writing by the
 349 | caregiver.

350 | Section 7. Paragraph (d) of subsection (2) of section

351 400.211, Florida Statutes, is amended to read:

352 400.211 Persons employed as nursing assistants;
 353 certification requirement.—

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

358 (d) Persons who are employed as personal care attendants
 359 and who have completed the personal care attendant training
 360 program developed pursuant to s. 400.141(1)(y) ~~s. 400.141(1)(w)~~.
 361 As used in this paragraph, the term "personal care attendants"
 362 means persons who meet the training requirement in s.
 363 400.141(1)(y) ~~s. 400.141(1)(w)~~ and provide care to and assist
 364 residents with tasks related to the activities of daily living.
 365

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

369 Section 8. Subsection (1) of section 408.822, Florida
 370 Statutes, is amended to read:

371 408.822 Direct care workforce survey.—

372 (1) For purposes of this section, the term "direct care
 373 worker" means a certified nursing assistant, a home health aide,
 374 a personal care assistant, a companion services or homemaker
 375 services provider, a paid feeding assistant trained under s.

376 | 400.141(1)(x) ~~s. 400.141(1)(v)~~, or another individual who
 377 | provides personal care as defined in s. 400.462 to individuals
 378 | who are elderly, developmentally disabled, or chronically ill.

379 | Section 9. Paragraph (e) of subsection (4) of section
 380 | 409.221, Florida Statutes, is amended to read:

381 | 409.221 Consumer-directed care program.—

382 | (4) CONSUMER-DIRECTED CARE.—

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

388 | 1. Personal care.

389 | 2. Homemaking and chores, including housework, meals,
 390 | shopping, and transportation.

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

394 | 4. Assistance in taking self-administered medication.

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

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

401 Section 10. Subsection (3) of section 430.80, Florida
 402 Statutes, is amended to read:

403 430.80 Implementation of a teaching nursing home pilot
 404 project.—

405 (3) To be designated as a teaching nursing home, a nursing
 406 home licensee must, at a minimum:

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

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

415 (c) Have been in business in this state for a minimum of
 416 10 consecutive years;

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

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

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

425 (g) Maintain insurance coverage pursuant to s.

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426 400.141(1)(s) ~~s. 400.141(1)(e)~~ or proof of financial
427 responsibility in a minimum amount of \$750,000. Such proof of
428 financial responsibility may include:

- 429 1. Maintaining an escrow account consisting of cash or
430 assets eligible for deposit in accordance with s. 625.52; or
431 2. Obtaining and maintaining pursuant to chapter 675 an
432 unexpired, irrevocable, nontransferable and nonassignable letter
433 of credit issued by any bank or savings association organized
434 and existing under the laws of this state or any bank or savings
435 association organized under the laws of the United States that
436 has its principal place of business in this state or has a
437 branch office which is authorized to receive deposits in this
438 state. The letter of credit shall be used to satisfy the
439 obligation of the facility to the claimant upon presentment of a
440 final judgment indicating liability and awarding damages to be
441 paid by the facility or upon presentment of a settlement
442 agreement signed by all parties to the agreement when such final
443 judgment or settlement is a result of a liability claim against
444 the facility.

445 Section 11. Paragraph (h) of subsection (2) of section
446 430.81, Florida Statutes, is amended to read:

447 430.81 Implementation of a teaching agency for home and
448 community-based care.—

449 (2) The Department of Elderly Affairs may designate a home
450 health agency as a teaching agency for home and community-based

451 care if the home health agency:

452 (h) Maintains insurance coverage pursuant to s.
 453 400.141(1)(s) ~~s. 400.141(1)(g)~~ or proof of financial
 454 responsibility in a minimum amount of \$750,000. Such proof of
 455 financial responsibility may include:

- 456 1. Maintaining an escrow account consisting of cash or
 457 assets eligible for deposit in accordance with s. 625.52; or
 458 2. Obtaining and maintaining, pursuant to chapter 675, an
 459 unexpired, irrevocable, nontransferable, and nonassignable
 460 letter of credit issued by any bank or savings association
 461 authorized to do business in this state. This letter of credit
 462 shall be used to satisfy the obligation of the agency to the
 463 claimant upon presentation of a final judgment indicating
 464 liability and awarding damages to be paid by the facility or
 465 upon presentment of a settlement agreement signed by all parties
 466 to the agreement when such final judgment or settlement is a
 467 result of a liability claim against the agency.

468 Section 12. Subsection (13) of section 651.118, Florida
 469 Statutes, is amended to read:

470 651.118 Agency for Health Care Administration;
 471 certificates of need; sheltered beds; community beds.—

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

475 Section 13. This act shall take effect July 1, 2022.