

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

33 | 395.1062 Immunity from liability; certain health care
 34 | workers.—

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

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

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

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

50 | (3) This section does not apply if it is shown by a

51 preponderance of the evidence that the health care worker did
52 not, in good faith, comply with the minimum standards of
53 acceptable and prevailing practice, including, but not limited
54 to, engaging in acts for which the health care worker is not
55 qualified by training or experience.

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

58 400.0232 Immunity from liability; certain health care
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
71 a 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
 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

117 | facility before becoming a certified nursing assistant.

118 |

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
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
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
180 General Appropriations Act, the agency shall establish and
181 implement a state Title XIX Long-Term Care Reimbursement Plan
182 for nursing home care in order to provide care and services in
183 conformance with the applicable state and federal laws, rules,
184 regulations, and quality and safety standards and to ensure that
185 individuals eligible for medical assistance have reasonable
186 geographic 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
 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
 220 Personal Property
 221 Taxes and Property Insurance.

222 e. Quality Incentive Program Payment

223 Pool 6 percent of September
 224 2016 non-property related
 225 payments of included facilities.

226 f. Quality Score Threshold to Quality for Quality
 227 Incentive
 228 Payment 20th percentile of included facilities.

229 g. Fair Rental Value System Payment Parameters:

230 (I) Building Value per Square Foot based on 2018 RS Means.
 231 (II) Land Valuation 10 percent of Gross Building value.
 232 (III) Facility Square Footage ..Actual Square Footage.
 233 (IV) Moveable Equipment Allowance \$8,000 per bed.
 234 (V) Obsolescence Factor 1.5 percent.
 235 (VI) Fair Rental Rate of Return 8 percent.
 236 (VII) Minimum Occupancy 90 percent.
 237 (VIII) Maximum Facility Age 40 years.
 238 (IX) Minimum Square Footage per Bed..... 350.
 239 (X) Maximum Square Footage for Bed..... 500.
 240 (XI) Minimum Cost of a renovation/replacements \$500 per
 241 bed.

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

244 2. The direct care subcomponent shall include salaries and
 245 benefits of direct care staff providing nursing services
 246 including registered nurses, licensed practical nurses, and
 247 certified nursing assistants who deliver care directly to
 248 residents in the nursing home facility, allowable therapy costs,
 249 and dietary costs. This excludes nursing administration, staff
 250 development, the staffing coordinator, and the administrative

251 | portion of the minimum data set and care plan coordinators. The
 252 | direct care subcomponent also includes medically necessary
 253 | dental care, vision care, hearing care, and podiatric care.

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

260 | 4. On July 1 of each year, the agency shall report to the
 261 | Legislature direct and indirect care costs, including average
 262 | direct and indirect care costs per resident per facility and
 263 | direct care and indirect care salaries and benefits per category
 264 | of staff member per facility.

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

269 | 6. A direct care supplemental payment may be made to
 270 | providers whose direct care hours per patient day are above the
 271 | 80th percentile and who provide Medicaid services to a larger
 272 | percentage of Medicaid patients than the state average.

273 | 7. For the period beginning on October 1, 2018, and ending
 274 | on September 30, 2021, the agency shall reimburse providers the
 275 | greater of their September 2016 cost-based rate or their

276 prospective payment rate. Effective October 1, 2021, the agency
277 shall reimburse providers the greater of 95 percent of their
278 cost-based rate or their rebased prospective payment rate, using
279 the most recently audited cost report for each facility. This
280 subparagraph shall expire September 30, 2023.

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

289 9. The agency shall add a quality metric to the Quality
290 Incentive Program to measure direct care staff turnover and the
291 long-term retention of direct care staff for purposes of
292 recognizing that a stable workforce increases the quality of
293 nursing home resident care, as described in s. 400.235.

294
295 It is the intent of the Legislature that the reimbursement plan
296 achieve the goal of providing access to health care for nursing
297 home residents who require large amounts of care while
298 encouraging diversion services as an alternative to nursing home
299 care for residents who can be served within the community. The
300 agency shall base the establishment of any maximum rate of

HB 1365

2023

301 payment, whether overall or component, on the available moneys
302 as provided for in the General Appropriations Act. The agency
303 may base the maximum rate of payment on the results of
304 scientifically valid analysis and conclusions derived from
305 objective statistical data pertinent to the particular maximum
306 rate of payment. The agency shall base the rates of payments in
307 accordance with the minimum wage requirements as provided in the
308 General Appropriations Act.

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