

THE FLORIDA SENATE
2014 SUMMARY OF LEGISLATION PASSED
Committee on Health Policy

CS/CS/SB 670 — Nursing Home Litigation

by Judiciary Committee; Health Policy Committee; and Senator Thrasher

The bill amends statutory provisions relating to civil causes of action against nursing homes, establishes provisions to help ensure timely payment of adverse final judgments, and amends provisions relating to the release of nursing home resident records.

Civil Causes of Action against Nursing Homes

The bill limits the classes of persons who may be sued in the initial pleading for negligence or a violation of a nursing home resident's rights to only the nursing home licensee and its management or consulting company, managing employees, and direct caregivers, whether employees or contracted. The bill defines the terms licensee, management or consulting company, and passive investor. Passive investors are shielded from liability.

In order to sue a party other than one of the classes noted above, the bill requires the court, or an arbitration panel as applicable, to hold a hearing on a motion for leave to amend the initial pleading. The court or panel must determine that there is sufficient evidence in the record or proffered by the claimant to establish a reasonable showing that the individual or entity owed and breached a duty of reasonable care to the resident and that the breach is the legal cause of the loss, injury, death, or damage to the resident before the other parties may be sued.

The bill makes these provisions of law the exclusive remedy against a nursing home licensee, its management or consulting company, managing employees, and direct caregivers for a cause of action alleging direct or vicarious liability for the recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights. The bill also specifies that the claimant must elect either survival damages or wrongful death damages after the verdict but before the judgment is entered, and requires certain proposed amended pleadings to relate back to the original pleading.

The court must also hold an evidentiary hearing to determine if there is sufficient admissible evidence for a punitive damages claim relating to direct liability or vicarious liability. The claimant must show a reasonable basis to believe that the claimant will be able to demonstrate at trial by clear and convincing evidence that punitive damages are warranted before a claim for punitive damages may be brought. A defendant may be held liable for punitive damages if the defendant actively and knowingly participated in intentional misconduct or engaged in conduct that constitutes gross negligence and contributed to the loss, damages, or injury suffered by the claimant. The terms intentional misconduct and gross negligence are defined in current law.

The bill specifies that these provisions only apply to causes of action accruing on or after the bill takes effect.

Failure of a Nursing Home to Satisfy a Judgment

Once a final judgment has been entered by a Florida court against a nursing home for a claim arising under s. 400.023, F.S., the nursing home is required to pay the judgment within 60 days unless a different timeframe is mutually agreed to among the parties. Failure to make such a payment results in additional grounds for the Agency for Health Care Administration (AHCA) to revoke or refuse to renew a nursing home license. The bill specifies when the AHCA is placed on notice of an unsatisfied judgment and that, within 30 days of receiving such notice, the licensee must provide proof of satisfaction of the judgment. If no such proof is provided, the AHCA must issue an emergency order declaring that the facility lacks the financial ability to operate and a notice of intent to revoke or deny the facility's license. The bill also specifies that the AHCA may refuse to renew the facility's license or refuse to approve a change of ownership for a facility that is out of compliance with these provisions.

Nursing Home Resident Records

The bill revises provisions relating to the release of a nursing home resident's records to comply with the federal Health Insurance Portability and Accountability Act (HIPAA) and to provide for release of a deceased resident's medical records. Specifically, the bill requires nursing homes to furnish copies of a resident's paper and electronic records if the request complies with HIPAA and the person requesting is authorized to make the request under HIPAA. The records released must include medical records and records concerning the care and treatment of the resident except for progress notes and consultation reports of a psychiatric nature.

The facility is required to provide the records within 14 working days for a request relating to a current resident or within 30 working days for a request concerning a former resident. Records for deceased residents may be made by a specified person appointed by the court. If no judicial appointment has been made, a person designated by the resident to act on his or her behalf may request such records. If no judicial appointment or resident designation has been made, the surviving spouse, child, or parent may request such records. The bill details the documentation that must be submitted for deceased resident's records.

The bill also details the fees which a facility may charge to furnish records, provides for indemnification of facilities for releasing records in good faith, and specifies that facilities are not required to release records more than once per month except that physician reports must be released as often as necessary to allow effective monitoring of a resident's condition.

The bill specifies that a nursing home may not be cited by AHCA for noncompliance with these requirements and that these requirements do not limit any right to obtain records by subpoena or other court process.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 36-3; House 109-7