

By Senator Diaz de la Portilla

40-00845-13

20131638\_\_

1                   A bill to be entitled  
2           An act relating to assisted living facilities;  
3           amending s. 429.26, F.S.; providing that the owner or  
4           administrator of a facility is responsible for  
5           arranging medical evaluations and reevaluations of  
6           individuals admitted to or residing in the facility to  
7           assess appropriateness of admission or continued  
8           residence; requiring that the medical examination be  
9           conducted by a physician, physician assistant, or  
10          nurse practitioner and that the subsequent report be  
11          submitted within a specified timeframe; requiring the  
12          medical examination report to be recorded on a  
13          specified form provided by the Agency for Health Care  
14          Administration; providing immunity from liability for  
15          owners and administrators under certain circumstances;  
16          amending s. 429.29, F.S.; providing that a cause of  
17          action does not accrue against an employee or agent of  
18          a facility unless the employee or agent has been found  
19          personally guilty of a criminal offense that  
20          constitutes abuse, neglect, or exploitation; providing  
21          an effective date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25           Section 1. Subsections (1) and (4) of section 429.26,  
26 Florida Statutes, are amended to read:

27           429.26 Appropriateness of placements; examinations of  
28 residents.—

29           (1) The owner or administrator of a facility is responsible

40-00845-13

20131638

30 for arranging a medical evaluation to determine ~~determining~~ the  
31 appropriateness of admission of an individual to the facility  
32 and for arranging a medical reevaluation at least annually or  
33 when a significant change in condition is observed and reported  
34 to the administrator regarding ~~determining~~ the continued  
35 appropriateness of residence of an individual in the facility. A  
36 determination shall be based upon an assessment of the  
37 strengths, needs, and preferences of the resident, the care and  
38 services offered or arranged for by the facility in accordance  
39 with facility policy, and any limitations in law or rule related  
40 to admission criteria or continued residency for the type of  
41 license held by the facility under this part. The owner or  
42 administrator shall base his or her determination of the initial  
43 and continuing appropriateness of placement of a resident in a  
44 facility on a medical examination report, conducted within 60  
45 days prior to admission, by any of the following licensed health  
46 care providers: a physician, physician assistant, or nurse  
47 practitioner. A resident may not be moved from one facility to  
48 another without consultation with and agreement from the  
49 resident or, if applicable, the resident's representative or  
50 designee or the resident's family, guardian, surrogate, or  
51 attorney in fact. In the case of a resident who has been placed  
52 by the department or the Department of Children and Family  
53 Services, the administrator must notify the appropriate contact  
54 person in the applicable department.

55 (4) If possible, each resident shall have been examined by  
56 a licensed physician, a licensed physician assistant, or a  
57 licensed nurse practitioner within 60 days before admission to  
58 the facility. The signed and completed medical examination

40-00845-13

20131638\_\_

59 report, which is recorded on AHCA Form 1823, the Resident Health  
60 Assessment for Assisted Living Facilities, as required by Rule  
61 58A-5.0181(2)(b), Florida Administrative Code, shall be  
62 submitted to the owner or administrator of the facility who  
63 shall use the information contained therein to assist in the  
64 determination of the appropriateness of the resident's admission  
65 and continued stay in the facility. The owner or administrator  
66 is required to ensure that the AHCA Form 1823 is completed  
67 thoroughly. An owner or administrator who obtains this medical  
68 evaluation and verifies its completeness is not personally  
69 liable in any administrative, civil, or criminal action for any  
70 error in determining that a resident is appropriate for  
71 admission or continued residency. The medical examination report  
72 shall become a permanent part of the record of the resident at  
73 the facility and shall be made available to the agency during  
74 inspection or upon request. An assessment that has been  
75 completed through the Comprehensive Assessment and Review for  
76 Long-Term Care Services (CARES) Program fulfills the  
77 requirements for a medical examination under this subsection and  
78 s. 429.07(3)(b)6.

79 Section 2. Subsection (1) of section 429.29, Florida  
80 Statutes, is amended to read:

81 429.29 Civil actions to enforce rights.—

82 (1) Any person or resident whose rights as specified in  
83 this part are violated shall have a cause of action that.~~The~~  
84 ~~action~~ may be brought by the resident or the resident's ~~his or~~  
85 ~~her~~ guardian, or by a person or organization acting on behalf of  
86 a resident with the consent of the resident or the resident's  
87 ~~his or her~~ guardian, or by the personal representative of the

40-00845-13

20131638

88 estate of a deceased resident regardless of the cause of death.  
89 If the action alleges a claim for the resident's rights or for  
90 negligence that caused the death of the resident, the claimant  
91 shall be required to elect either survival damages pursuant to  
92 s. 46.021 or wrongful death damages pursuant to s. 768.21 before  
93 the initial pretrial conference. If the action alleges a claim  
94 for the resident's rights or for negligence that did not cause  
95 the death of the resident, the personal representative of the  
96 estate may recover damages for the negligence that caused injury  
97 to the resident. The action may be brought in any court of  
98 competent jurisdiction to enforce such rights and to recover  
99 actual damages, and punitive damages for violation of the rights  
100 of a resident or negligence. Any resident who prevails in  
101 seeking injunctive relief or a claim for an administrative  
102 remedy is entitled to recover the costs of the action and a  
103 reasonable attorney ~~attorney's~~ fee assessed against the  
104 defendant not to exceed \$25,000. Fees shall be awarded solely  
105 for the injunctive or administrative relief and not for any  
106 claim or action for damages whether such claim or action is  
107 brought together with a request for an injunction or  
108 administrative relief or as a separate action, except as  
109 provided under s. 768.79 or the Florida Rules of Civil  
110 Procedure. Sections 429.29-429.298 provide the exclusive remedy  
111 for a cause of action for recovery of damages for the personal  
112 injury or death of a resident arising out of negligence or a  
113 violation of rights specified in s. 429.28 and preclude a cause  
114 of action under s. 415.111 against an employee or agent of a  
115 facility licensed under this part unless the employee or agent  
116 has been found personally guilty of a criminal offense that

40-00845-13

20131638\_\_

117 constitutes abuse, neglect, or exploitation as defined in s.  
118 415.102 as the result of a trial or entry of a plea of guilty or  
119 nolo contendere, regardless of adjudication. This section does  
120 not preclude theories of recovery not arising out of negligence  
121 or s. 429.28 which are available to a resident or to the agency.  
122 The provisions of chapter 766 do not apply to any cause of  
123 action brought under ss. 429.29-429.298.

124 Section 3. This act shall take effect July 1, 2013.