

1 A bill to be entitled

2 An act relating to nursing home and assisted living  
3 facility resident rights; amending s. 400.102, F.S.;  
4 providing additional grounds for action by the Agency  
5 for Health Care Administration against a licensee;  
6 amending s. 400.141, F.S.; requiring a nursing home  
7 facility to provide current and updated contact  
8 information to the resident and the State Long-Term  
9 Care Ombudsman Program; amending s. 400.145, F.S.;  
10 requiring nursing home facilities to provide access to  
11 or copies of certain resident records under certain  
12 conditions and within a specified timeframe; providing  
13 an exception for psychiatric records under certain  
14 circumstances; amending s. 429.28, F.S.; providing  
15 notice requirements regarding relocation or  
16 termination of residency from an assisted living  
17 facility; requiring the facility to send a copy of the  
18 notice to the State Long-Term Care Ombudsman Program  
19 within a specified timeframe; reenacting s. 400.121(1)  
20 and (2), F.S., relating to imposition of  
21 administrative fines by the agency to incorporate the  
22 amendment made to s. 400.102, F.S.; providing an  
23 effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

Section 1. Subsection (5) is added to section 400.102, Florida Statutes, to read:

400.102 Action by agency against licensee; grounds.—In addition to the grounds listed in part II of chapter 408, any of the following conditions shall be grounds for action by the agency against a licensee:

(5) Failure to provide residents and the State Long-Term Care Ombudsman Program with a facility's current contact information, including a functional telephone number, and notify residents and the State Long-Term Care Ombudsman Program of any change in contact information within 30 days after a change in such information.

Section 2. Paragraph (v) is added to subsection (1) of section 400.141, Florida Statutes, to read:

400.141 Administration and management of nursing home facilities.—

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

(v) Provide residents and the State Long-Term Care Ombudsman Program with a facility's current contact information, including a functional telephone number, and notify residents and the State Long-Term Care Ombudsman Program of any change in contact information within 30 days after a change in such information.

51 Section 3. Subsections (1) and (5) of section 400.145,  
52 Florida Statutes, are amended to read:

53 400.145 Copies of records of care and treatment of  
54 resident.—

55 (1) A resident has the right to access personal and  
56 medical records pertaining to him or herself. Upon receipt of a  
57 written or oral request that complies with the federal Health  
58 Insurance Portability and Accountability Act of 1996 (HIPAA) and  
59 this section, a nursing home facility shall furnish to a  
60 competent resident, or to a representative of that resident who  
61 is authorized to make requests for the resident's records under  
62 HIPAA or subsection (2), copies of the resident's paper and  
63 electronic records that are in possession of the facility. Such  
64 records must include any personal records, medical records, and  
65 records concerning the care and treatment of the resident  
66 ~~performed by the facility,~~ except for progress notes and  
67 consultation report sections of a psychiatric nature. The  
68 facility shall provide access to the requested records within 24  
69 hours, excluding weekends and holidays, ~~14 working days~~ after  
70 receipt of a request relating to a current resident or within 30  
71 working days after receipt of a request relating to a former  
72 resident. The facility shall provide the resident or the  
73 authorized representative of that resident with a copy of the  
74 requested records or any portion thereof within 2 working days  
75 after receipt of such request.

76 (5) If a licensed medical provider ~~nursing home facility~~  
 77 determines that disclosure of psychiatric ~~the~~ records to the  
 78 resident would reasonably be likely to endanger the life or  
 79 physical safety of the resident or another person ~~be detrimental~~  
 80 ~~to the physical or mental health of the resident,~~ the facility  
 81 may refuse to furnish the record directly to the resident;  
 82 however, upon such refusal, the resident's records shall, upon  
 83 written request by the resident, be furnished to any other  
 84 licensed medical provider designated by the resident.

85 Section 4. Paragraph (k) of subsection (1) of section  
 86 429.28, Florida Statutes, is amended to read:

87 429.28 Resident bill of rights.—

88 (1) No resident of a facility shall be deprived of any  
 89 civil or legal rights, benefits, or privileges guaranteed by  
 90 law, the Constitution of the State of Florida, or the  
 91 Constitution of the United States as a resident of a facility.  
 92 Every resident of a facility shall have the right to:

93 (k) At least 45 days' notice of relocation or termination  
 94 of residency from the facility unless, for medical reasons, the  
 95 resident is certified by a physician to require an emergency  
 96 relocation to a facility providing a more skilled level of care  
 97 or the resident engages in a pattern of conduct that is harmful  
 98 or offensive to other residents. In the case of a resident who  
 99 has been adjudicated mentally incapacitated, the guardian shall  
 100 be given at least 45 days' notice of a nonemergency relocation

101 or residency termination. Reasons for relocation shall be set  
102 forth in writing and provided to the resident or the resident's  
103 legal representative. The facility shall send a copy of the  
104 notice to a representative of the State Long-Term Care Ombudsman  
105 Program within 7 calendar days after the notice is provided to  
106 the resident or the resident's legal representative. In order  
107 for a facility to terminate the residency of an individual  
108 without notice as provided herein, the facility shall show good  
109 cause in a court of competent jurisdiction.

110 Section 5. For the purpose of incorporating the amendment  
111 made by this act to section 400.102, Florida Statutes, in a  
112 reference thereto, subsections (1) and (2) of section 400.121,  
113 Florida Statutes, are reenacted to read:

114 400.121 Denial, suspension, revocation of license;  
115 administrative fines; procedure; order to increase staffing.—

116 (1) The agency may deny an application, revoke or suspend  
117 a license, and impose an administrative fine, not to exceed \$500  
118 per violation per day for the violation of any provision of this  
119 part, part II of chapter 408, or applicable rules, against any  
120 applicant or licensee for the following violations by the  
121 applicant, licensee, or other controlling interest:

122 (a) A violation of any provision of this part, part II of  
123 chapter 408, or applicable rules; or

124 (b) An adverse action by a regulatory agency against any  
125 other licensed facility that has a common controlling interest

126 with the licensee or applicant against whom the action under  
127 this section is being brought. If the adverse action involves  
128 solely the management company, the applicant or licensee shall  
129 be given 30 days to remedy before final action is taken. If the  
130 adverse action is based solely upon actions by a controlling  
131 interest, the applicant or licensee may present factors in  
132 mitigation of any proposed penalty based upon a showing that  
133 such penalty is inappropriate under the circumstances.

134

135 All hearings shall be held within the county in which the  
136 licensee or applicant operates or applies for a license to  
137 operate a facility as defined herein.

138 (2) Except as provided in s. 400.23(8), a \$500 fine shall  
139 be imposed for each violation. Each day a violation of this part  
140 or part II of chapter 408 occurs constitutes a separate  
141 violation and is subject to a separate fine, but in no event may  
142 any fine aggregate more than \$5,000. A fine may be levied  
143 pursuant to this section in lieu of and notwithstanding the  
144 provisions of s. 400.23. Fines paid shall be deposited in the  
145 Health Care Trust Fund and expended as provided in s. 400.063.

146 Section 6. This act shall take effect July 1, 2018.