

By Representative Wasserman Schultz

1                                   A bill to be entitled  
2           An act relating to nursing home facilities;  
3           amending s. 400.022, F.S.; revising language  
4           with respect to residents' rights; providing  
5           additional rights; amending s. 400.0255, F.S.;  
6           redefining the terms "transfer" and  
7           "discharge"; amending s. 400.141, F.S.;  
8           requiring licensed facilities to perform  
9           additional duties; creating s. 400.147, F.S.;  
10          requiring facilities to assist residents in  
11          contacting physicians; amending s. 400.19,  
12          F.S.; providing additional responsibilities of  
13          the Agency for Health Care Administration;  
14          amending s. 400.23, F.S.; providing a minimum  
15          personnel requirement; amending s. 400.0075,  
16          F.S.; correcting a cross reference; providing  
17          an effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21           Section 1. Paragraphs (f), (p), and (u) of subsection  
22           (1) of section 400.022, Florida Statutes, 1996 Supplement, are  
23           amended and paragraph (w) is added to said subsection, to  
24           read:

25           400.022 Residents' rights.--

26           (1) All licensees of nursing home facilities shall  
27           adopt and make public a statement of the rights and  
28           responsibilities of the residents of such facilities and shall  
29           treat such residents in accordance with the provisions of that  
30           statement. The statement shall assure each resident the  
31           following:

1 (f) The right to participate in social, religious, and  
2 community activities that do not interfere with the rights of  
3 other residents, both inside and outside of the nursing  
4 facility.

5 (p) The right to be transferred or discharged only for  
6 medical reasons or for the welfare of other residents. The  
7 resident and his or her representative shall have, ~~and~~ the  
8 right to be given reasonable advance notice of no less than 30  
9 days of any involuntary transfer or discharge, except:

10 1. In the case of an emergency as determined by a  
11 licensed professional on the staff of the nursing home, ~~or~~ by  
12 the resident's personal physician.

13 2. In the case of conflicting rules and regulations  
14 which govern Title XVIII or Title XIX of the Social Security  
15 Act.

16 3. When the health or safety of individuals in the  
17 facility would be endangered by the 30-day delay.

18 4. When the resident's health improves sufficiently to  
19 allow a more immediate transfer or discharge.

20 5. When an immediate transfer or discharge is  
21 necessary because of the resident's urgent medical needs.

22 6. When the resident has not resided in the facility  
23 for 30 days.

24  
25 In these circumstances, a facility must provide written notice  
26 as required by s. 400.0255, which shall include a statement  
27 that the resident has the right to appeal the facility's  
28 decision pursuant to s. 400.0255. For nonpayment of a bill for  
29 care received, the resident shall be given 30 days' advance  
30 notice. A licensee certified to provide services under Title  
31 XIX of the Social Security Act may not transfer or discharge a

1 resident solely because the source of payment for care  
2 changes. Admission to a nursing home facility operated by a  
3 licensee certified to provide services under Title XIX of the  
4 Social Security Act may not be conditioned upon a waiver of  
5 such right, and any document or provision in a document which  
6 purports to waive or preclude such right is void and  
7 unenforceable. Any licensee certified to provide services  
8 under Title XIX of the Social Security Act that obtains or  
9 attempts to obtain such a waiver from a resident or potential  
10 resident shall be construed to have violated the resident's  
11 rights as established herein and is subject to disciplinary  
12 action as provided in subsection (3). The resident and the  
13 family or representative of the resident shall be consulted in  
14 choosing another facility.

15 (u) The right to be informed orally or in writing of  
16 the bed reservation policy for a hospitalization or  
17 therapeutic leave, including a home visit.

18 1. The nursing facility ~~home~~ shall inform a  
19 private-pay resident and his or her responsible party that his  
20 or her bed will be reserved for any single hospitalization for  
21 a period up to 30 days provided the nursing home receives  
22 reimbursement.

23 2. Any resident who is a recipient of assistance under  
24 Title XIX of the Social Security Act, or the resident's  
25 designee or legal representative, shall be informed by the  
26 licensee that his or her bed will be reserved for any single  
27 hospitalization for the length of time for which Title XIX  
28 reimbursement is available, up to 15 days for a single  
29 hospitalization and up to 30 days for therapeutic leave.

30 3. The licensee shall inform each resident who is  
31 eligible for assistance under Title XIX ~~but~~ that the bed will

1 not be reserved if it is medically determined by the agency  
2 that the resident will not need it or will not be able to  
3 return to the nursing home, or if the agency determines that  
4 the nursing facility ~~home's~~ occupancy rate ensures the  
5 availability of a bed for the resident. Notice shall be  
6 provided within 24 hours of the hospitalization.

7 4. Each nursing facility shall ensure that a  
8 Medicaid-eligible resident whose hospitalization or  
9 therapeutic leave exceeds the bed-hold period, but who  
10 continues to need the facility's services, is readmitted  
11 immediately at the first availability of a bed in a  
12 semiprivate room.

13 (w) For a resident who is eligible for Medicaid  
14 nursing home services, or Medicare-reimbursed nursing home  
15 services after admission to a facility, the right to be  
16 charged only for allowable charges under Medicaid or Medicare,  
17 except for applicable deductible and coinsurance amounts.  
18 However, when permitted by federal law or regulation, the  
19 facility may charge the resident for requested services that  
20 are more expensive or in excess of Medicaid or Medicare  
21 covered services.

22 Section 2. Subsection (1) of section 400.0255, Florida  
23 Statutes, 1996 Supplement, is amended to read:

24 400.0255 Resident hearings of facility decisions to  
25 transfer or discharge.--

26 (1) As used in this section, the term "discharge" or  
27 "transfer" means the movement of a resident to a bed outside  
28 the certified facility, where the certified facility ceases to  
29 be responsible for the resident's care. "Discharge" or  
30 "transfer" does not refer to the movement of a resident to a  
31 bed within the same certified facility. "Discharge" includes

1 the movement of a resident to a bed outside the certified  
2 facility but within the same physical plant, or to a  
3 noninstitutional setting. "Transfer" includes the movement of  
4 a resident to another institution which is legally responsible  
5 for the resident's care.

6 Section 3. Subsections (11), (12), (13), (14), (15),  
7 (16), and (17) are added to section 400.141, Florida Statutes,  
8 to read:

9 400.141 Administration and management of nursing home  
10 facilities.--Every licensed facility shall comply with all  
11 applicable standards and rules of the agency and shall:

12 (11) Protect and promote the rights of each resident.  
13 The facility must care for its residents in a manner and in an  
14 environment that promotes maintenance of each resident's  
15 quality of life. Each resident has the right to make choices  
16 about the aspects of his or her life that are significant to  
17 the resident.

18 (12) Provide to each resident the care and services  
19 necessary to attain or maintain the highest practicable  
20 physical, mental, and psychosocial well-being in accordance  
21 with the resident assessment and plan of care. The resident  
22 must receive sufficient appropriate services to prevent the  
23 diminution of the ability to perform activities of daily  
24 living and instrumental activities of daily living. Clinical  
25 decline which is unavoidable is excepted. However, the  
26 individual clinical record must document that the clinical  
27 decline was unavoidable.

28 (13) Provide the resident with an environment that  
29 remains as free of accident hazards as is possible, and ensure  
30 that the resident receives adequate supervision and assistance  
31 devices to prevent accidents.

1       (14) Maintain a quality assurance process which  
2 utilizes a quality assurance committee. The committee shall  
3 include, at a minimum, the medical director, the director of  
4 nursing, and three other employees.

5       (15) If the facility has more than 120 beds, employ a  
6 qualified social worker on a full-time basis. For purposes of  
7 this subsection, a qualified social worker is an individual  
8 who has a bachelor's degree in social work or in a human  
9 services field, including, but not limited to, sociology,  
10 special education, rehabilitation counseling, and psychology,  
11 and has 1 year of supervised social work experience in a  
12 health care setting working directly with individuals.

13       (16) Ensure that, during the first 90 days in the  
14 facility, the resident will be seen by a physician no less  
15 than once every 30 days. After the first 90 days, the  
16 resident shall be seen by a physician, nurse practitioner, or  
17 physician assistant no less than once every 60 days.

18       (17) Provide reasonable accommodations of individual  
19 needs and preferences, except when to do so would endanger the  
20 health or safety of other residents or infringe on the rights  
21 of another resident.

22       Section 4. Section 400.147, Florida Statutes, is  
23 created to read:

24       400.147 Physician access.--The facility shall assist  
25 the resident in contacting his or her personal physician.

26       Section 5. Subsection (4) of section 400.19, Florida  
27 Statutes, is renumbered as subsection (5), and new subsections  
28 (4) and (6) are added to said section to read:

29       400.19 Right of entry and inspection.--

30       (4) The agency shall evaluate the environment of the  
31 facility; conduct closed record reviews; review dietary

1 services; evaluate medication usage and storage; review the  
2 protection of residents' rights; assess the use of involuntary  
3 commitment for mental health treatment under s. 394.463 or s.  
4 394.467, using criteria established by the agency, and  
5 coordinate facility licensing activities and responsibilities  
6 pursuant to subsection (2).

7 (6) The agency shall notify the State Long-Term Care  
8 Ombudsman Council of findings of noncompliance and of  
9 enforcement actions within 5 days after the agency finalizes  
10 the statement of deficiencies for a facility.

11 Section 6. Paragraph (b) of subsection (2) of section  
12 400.23, Florida Statutes, is amended to read:

13 400.23 Rules; criteria; Nursing Home Advisory  
14 Committee; evaluation and rating system; fee for review of  
15 plans.--

16 (2) Pursuant to the intention of the Legislature, the  
17 agency, in consultation with the Department of Health and  
18 Rehabilitative Services and the Department of Elderly Affairs,  
19 shall adopt and enforce rules to implement this part, which  
20 shall include reasonable and fair criteria in relation to:

21 (b) The number and qualifications of all personnel,  
22 including management, medical, nursing, and other professional  
23 personnel, and nursing assistants, orderlies, and support  
24 personnel, having responsibility for any part of the care  
25 given residents. At minimum, the rules must require each  
26 facility to employ a registered nurse for at least 8  
27 consecutive hours a day, 7 days a week.

28 Section 7. Paragraph (b) of subsection (2) of section  
29 400.0075, Florida Statutes, is amended to read:

30 400.0075 Complaint resolution procedures.--

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1           (2) Upon referral from the district ombudsman council,  
2 the state ombudsman council shall assume the responsibility  
3 for the disposition of the complaint. If a long-term care  
4 facility fails to take action on a complaint found valid by  
5 the state ombudsman council, the state council may:

6           (b) Recommend to the agency a series of facility  
7 reviews pursuant to s. 400.19(5)~~(4)~~ to assure correction and  
8 nonrecurrence of conditions that give rise to complaints  
9 against a long-term care facility.

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11 If the health, safety, welfare, or rights of the resident are  
12 in imminent danger, the State Long-Term Care Ombudsman Council  
13 shall seek immediate legal or administrative remedies to  
14 protect the resident.

15           Section 8. This act shall take effect October 1, 1997.

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18           HOUSE SUMMARY

19           Revises certain rights of residents in nursing home  
20 facilities. Clarifies the definition of "discharge" and  
21 "transfer" with respect to such residents. Provides  
22 additional standards for administration and management of  
23 facilities. Requires facilities to assist residents in  
24 contacting their personal physicians. Expands oversight  
25 duties of the Agency for Health Care Administration.  
26 Requires the agency to notify the State Long-Term Care  
27 Ombudsman Council of facilities' noncompliance and agency  
28 enforcement actions. Requires nursing home facilities to  
29 employ a registered nurse for at least 8 consecutive  
30 hours a day. See bill for details.  
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