

By Senator Bullard

39-1850-04

See HB 45

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A bill to be entitled
An act relating to nursing home contracts;
amending s. 400.424, F.S.; requiring each
nursing home facility to use a standard
contract approved by the Department of Elderly
Affairs for use at that facility; providing an
effective date.

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

Section 1. Section 400.424, Florida Statutes, is
amended to read:

400.424 Contracts.--

(1) The presence of each resident in a facility shall
be covered by a contract, executed at the time of admission or
prior thereto, between the licensee and the resident or his or
her designee or legal representative. Each party to the
contract shall be provided with a duplicate original thereof,
and the licensee shall keep on file in the facility all such
contracts. The licensee may not destroy or otherwise dispose
of any such contract until 5 years after its expiration.

(2) Each contract must contain express provisions
specifically setting forth the services and accommodations to
be provided by the facility; the rates or charges; provision
for at least 30 days' written notice of a rate increase; the
rights, duties, and obligations of the residents, other than
those specified in s. 400.428; and other matters that the
parties deem appropriate. Each nursing home facility must use
a standard contract approved for use at that facility by the
department. Whenever money is deposited or advanced by a
resident in a contract as security for performance of the

1 contract agreement or as advance rent for other than the next
2 immediate rental period:

3 (a) Such funds shall be deposited in a banking
4 institution in this state that is located, if possible, in the
5 same community in which the facility is located; shall be kept
6 separate from the funds and property of the facility; may not
7 be represented as part of the assets of the facility on
8 financial statements; and shall be used, or otherwise
9 expended, only for the account of the resident.

10 (b) The licensee shall, within 30 days of receipt of
11 advance rent or a security deposit, notify the resident or
12 residents in writing of the manner in which the licensee is
13 holding the advance rent or security deposit and state the
14 name and address of the depository where the moneys are being
15 held. The licensee shall notify residents of the facility's
16 policy on advance deposits.

17 (3)(a) The contract shall include a refund policy to
18 be implemented at the time of a resident's transfer,
19 discharge, or death. The refund policy shall provide that the
20 resident or responsible party is entitled to a prorated refund
21 based on the daily rate for any unused portion of payment
22 beyond the termination date after all charges, including the
23 cost of damages to the residential unit resulting from
24 circumstances other than normal use, have been paid to the
25 licensee. For the purpose of this paragraph, the termination
26 date shall be the date the unit is vacated by the resident and
27 cleared of all personal belongings. If the amount of
28 belongings does not preclude renting the unit, the facility
29 may clear the unit and charge the resident or his or her
30 estate for moving and storing the items at a rate equal to the
31 actual cost to the facility, not to exceed 20 percent of the

1 regular rate for the unit, provided that 14 days' advance
2 written notification is given. If the resident's possessions
3 are not claimed within 45 days after notification, the
4 facility may dispose of them. The contract shall also specify
5 any other conditions under which claims will be made against
6 the refund due the resident. Except in the case of death or a
7 discharge due to medical reasons, the refunds shall be
8 computed in accordance with the notice of relocation
9 requirements specified in the contract. However, a resident
10 may not be required to provide the licensee with more than 30
11 days' notice of termination. If after a contract is
12 terminated, the facility intends to make a claim against a
13 refund due the resident, the facility shall notify the
14 resident or responsible party in writing of the claim and
15 shall provide said party with a reasonable time period of no
16 less than 14 calendar days to respond. The facility shall
17 provide a refund to the resident or responsible party within
18 45 days after the transfer, discharge, or death of the
19 resident. The agency shall impose a fine upon a facility that
20 fails to comply with the refund provisions of the paragraph,
21 which fine shall be equal to three times the amount due to the
22 resident. One-half of the fine shall be remitted to the
23 resident or his or her estate, and the other half to the
24 Health Care Trust Fund to be used for the purpose specified in
25 s. 400.418.

26 (b) If a licensee agrees to reserve a bed for a
27 resident who is admitted to a medical facility, including, but
28 not limited to, a nursing home, health care facility, or
29 psychiatric facility, the resident or his or her responsible
30 party shall notify the licensee of any change in status that
31 would prevent the resident from returning to the facility.

1 | Until such notice is received, the agreed-upon daily rate may
2 | be charged by the licensee.

3 | (c) The purpose of any advance payment and a refund
4 | policy for such payment, including any advance payment for
5 | housing, meals, or personal services, shall be covered in the
6 | contract.

7 | (4) The contract shall state whether or not the
8 | facility is affiliated with any religious organization and, if
9 | so, which organization and its general responsibility to the
10 | facility.

11 | (5) Neither the contract nor any provision thereof
12 | relieves any licensee of any requirement or obligation imposed
13 | upon it by this part or rules adopted under this part.

14 | (6) In lieu of the provisions of this section,
15 | facilities certified under chapter 651 shall comply with the
16 | requirements of s. 651.055.

17 | (7) Notwithstanding the provisions of this section,
18 | facilities which consist of 60 or more apartments may require
19 | refund policies and termination notices in accordance with the
20 | provisions of part II of chapter 83, provided that the lease
21 | is terminated automatically without financial penalty in the
22 | event of a resident's death or relocation due to psychiatric
23 | hospitalization or to medical reasons which necessitate
24 | services or care beyond which the facility is licensed to
25 | provide. The date of termination in such instances shall be
26 | the date the unit is fully vacated. A lease may be substituted
27 | for the contract if it meets the disclosure requirements of
28 | this section. For the purpose of this section, the term
29 | "apartment" means a room or set of rooms with a kitchen or
30 | kitchenette and lavatory located within one or more buildings
31 | containing other similar or like residential units.

1 (8) The department may by rule clarify terms,
2 establish procedures, clarify refund policies and contract
3 provisions, and specify documentation as necessary to
4 administer this section.
5 Section 2. This act shall take effect January 1, 2005.
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