

1 A bill to be entitled
2 An act relating to adult protection and care; amending s.
3 429.28, F.S.; specifying certain conditions for transfer
4 or discharge of a resident in an assisted living facility
5 in the facility's resident bill of rights; creating s.
6 429.285, F.S.; providing definitions; prohibiting resident
7 transfer or discharge in the absence of certain specified
8 conditions; requiring the facility to provide notice to
9 the Agency for Health Care Administration when
10 transferring or discharging a resident; providing for
11 onsite inspection of the facility upon receipt of such
12 notice; authorizing residents to challenge transfer or
13 discharge decisions; providing for reimbursement of bed
14 reservation payments; specifying timeframes for resident
15 notice upon transfer or discharge; providing circumstances
16 for acceleration of timeframes; clarifying certain notice
17 requirements; permitting residents to seek the assistance
18 of the local long-term care ombudsmen council in reviewing
19 a notice of transfer or discharge and in initiating the
20 fair hearing process; providing timeframes for requesting
21 and holding a fair hearing to challenge a facility's
22 proposed transfer or discharge; providing for emergency
23 transfers and discharges; permitting the local long-term
24 care ombudsmen council to request private informal contact
25 with a resident upon receipt of a notice to transfer or
26 discharge; providing that the Department of Children and
27 Family Services' Office of Appeals Hearings shall conduct
28 certain hearings; requiring certain persons to be present

29 at the hearing; providing hearing requirements;
 30 authorizing the agency to adopt rules; amending ss. 429.07
 31 and 429.31, F.S.; conforming cross-references; providing
 32 an effective date.

33
 34 Be It Enacted by the Legislature of the State of Florida:

35
 36 Section 1. Paragraph (k) of subsection (1) of section
 37 429.28, Florida Statutes, is amended to read:

38 429.28 Resident bill of rights.--

39 (1) No resident of a facility shall be deprived of any
 40 civil or legal rights, benefits, or privileges guaranteed by
 41 law, the Constitution of the State of Florida, or the
 42 Constitution of the United States as a resident of a facility.
 43 Every resident of a facility shall have the right to:

44 (k) Be transferred or discharged only for the reasons
 45 specified under s. 429.285 and only after following procedures
 46 required by that section. A facility licensed under this part
 47 may not transfer or discharge a resident solely because the
 48 source of payment for care changes. Admission to a facility
 49 licensed under this part may not be conditioned upon a waiver of
 50 such right, and any document or provision in a document which
 51 purports to waive or preclude such right is void and
 52 unenforceable. The resident and the family or representative of
 53 the resident shall be consulted in choosing another facility. ~~At~~
 54 ~~least 45 days' notice of relocation or termination of residency~~
 55 ~~from the facility unless, for medical reasons, the resident is~~
 56 ~~certified by a physician to require an emergency relocation to a~~

57 ~~facility providing a more skilled level of care or the resident~~
 58 ~~engages in a pattern of conduct that is harmful or offensive to~~
 59 ~~other residents. In the case of a resident who has been~~
 60 ~~adjudicated mentally incapacitated, the guardian shall be given~~
 61 ~~at least 45 days' notice of a nonemergency relocation or~~
 62 ~~residency termination. Reasons for relocation shall be set forth~~
 63 ~~in writing. In order for a facility to terminate the residency~~
 64 ~~of an individual without notice as provided herein, the facility~~
 65 ~~shall show good cause in a court of competent jurisdiction.~~

66 Section 2. Section 429.285, Florida Statutes, is created
 67 to read:

68 429.285 Resident transfer or discharge; requirements and
 69 procedures; hearings.--

70 (1) As used in this section, the term:

71 (a) "Discharge" means to move a resident to a
 72 noninstitutional setting when the releasing facility ceases to
 73 be responsible for the resident's care.

74 (b) "Transfer" means to move a resident from the facility
 75 to another legally responsible institutional setting.

76 (2) A facility licensed under this part must permit a
 77 resident to remain in the facility. A resident may not be
 78 transferred or discharged from the facility unless:

79 (a) The transfer or discharge is necessary for the
 80 resident's welfare and the resident's needs cannot be met in the
 81 facility;

82 (b) The transfer or discharge is appropriate because the
 83 resident's health has improved sufficiently so the resident no
 84 longer needs the services provided by the facility;

85 (c) The health and safety of other residents or facility
86 employees would be endangered;

87 (d) The resident has failed, after reasonable and
88 appropriate notice, to provide payment for his or her stay in
89 the facility; or

90 (e) The facility ceases to operate.

91 (3) When a transfer or discharge is initiated by the
92 assisted living facility, the administrator of the facility that
93 is transferring or discharging the resident, or an individual
94 employed by the facility who is designated by the administrator
95 of the facility to act on behalf of the administration, must
96 sign the notice of transfer or discharge. Any notice indicating
97 a medical reason for transfer or discharge must be signed by the
98 resident's attending physician or include an attached written
99 order for the transfer or discharge. The notice or the order
100 must be signed by the resident's physician, treating physician,
101 nurse practitioner, or physician assistant.

102 (4) (a) Each facility must notify the agency of any
103 proposed transfer or discharge of a resident when such transfer
104 or discharge is necessitated by changes in the physical plant of
105 the facility that make the facility unsafe for the resident.

106 (b) Upon receipt of such a notice, the agency shall
107 conduct an onsite inspection of the facility to verify the
108 necessity of the transfer or discharge.

109 (5) A resident of a facility may challenge a decision by
110 the facility to transfer or discharge the resident.

111 (6) A facility that has been reimbursed for reserving a
112 bed and, for reasons other than those permitted under this

HB 1401

2008

113 section, refuses to readmit a resident within the prescribed
114 timeframe shall refund the bed reservation payment.

115 (7) At least 30 days prior to any proposed transfer or
116 discharge, a facility must provide advance notice of the
117 proposed transfer or discharge to the resident and, if known, to
118 a family member or the resident's legal guardian or
119 representative, except that in the following circumstances the
120 facility shall give notice as soon as practicable before the
121 transfer or discharge:

122 (a) The transfer or discharge is necessary for the
123 resident's welfare and the resident's needs cannot be met in the
124 facility, and the circumstances are documented in the resident's
125 medical records by the resident's physician; or

126 (b) The health or safety of other residents or facility
127 employees would be endangered, and the circumstances are
128 documented in the resident's medical records by the resident's
129 physician or the medical director if the resident's physician is
130 not available.

131 (8) The notice required by subsection (7) must be in
132 writing and must contain all information required by state and
133 federal law, rules, or regulations applicable to Medicaid or
134 Medicare cases. The agency shall develop a standard document to
135 be used by all facilities licensed under this part for purposes
136 of notifying residents of a transfer or discharge. Such document
137 must include a means for a resident to request the local long-
138 term care ombudsman council to review the notice and request
139 information about or assistance with initiating a fair hearing
140 with the Department of Children and Family Services' Office of

141 Appeals Hearings. In addition to any other pertinent information
142 included, the form shall:

143 (a) Specify the reason allowed under federal or state law
144 that the resident is being transferred or discharged, with an
145 explanation to support this action.

146 (b) State the effective date of the transfer or discharge
147 and the location to which the resident is being transferred or
148 discharged.

149 (c) Clearly describe the resident's right to appeal and
150 the procedures for filing an appeal, including the right to
151 request the local long-term care ombudsman council to review the
152 notice of transfer or discharge.

153

154 A copy of the notice must be placed in the resident's clinical
155 record, and a copy must be transmitted to the resident's legal
156 guardian or representative and to the local long-term care
157 ombudsman council within 5 business days after signature by the
158 resident or the resident's legal guardian or representative .

159 (9) A resident may request that the local long-term care
160 ombudsman council review any notice of transfer or discharge
161 given to the resident. When requested by a resident to review a
162 notice of transfer or discharge, the local long-term care
163 ombudsman council shall do so within 7 days after receipt of the
164 request. The facility administrator, or the administrator's
165 designee, must forward the request for review contained in the
166 notice to the local long-term care ombudsman council within 24
167 hours after such request is submitted. Failure to forward the
168 request within 24 hours after the request is submitted shall

HB 1401

2008

169 toll the running of the 30-day advance notice period until the
170 request has been forwarded.

171 (10) (a) A resident is entitled to a fair hearing to
172 challenge a facility's proposed transfer or discharge. The
173 resident or the resident's legal guardian or representative may
174 request a hearing at any time within 90 days after the
175 resident's receipt of the facility's notice of the proposed
176 transfer or discharge.

177 (b) If a resident or the resident's legal guardian or
178 representative requests a hearing within 10 days after receiving
179 the notice from the facility, the request shall stay the
180 proposed transfer or discharge pending a hearing decision. The
181 facility may not take action, and the resident may remain in the
182 facility, until the outcome of the initial fair hearing, which
183 must be completed within 90 days after receipt of a request for
184 a fair hearing.

185 (c) If the resident or the resident's legal guardian or
186 representative fails to request a hearing within 10 days after
187 receipt of the facility notice of the proposed transfer or
188 discharge, the facility may transfer or discharge the resident
189 after 30 days from the date the resident received the notice.

190 (11) Notwithstanding paragraph (10) (b), an emergency
191 transfer or discharge may be implemented as necessary pursuant
192 to state law during the period of time after the notice is given
193 and before the time a hearing decision is rendered. Notice of an
194 emergency transfer or discharge to the resident, the resident's
195 legal guardian or representative, and the local long-term care
196 ombudsman council if requested pursuant to subsection (9) must

HB 1401

2008

197 be by telephone or in person. This notice shall be given before
198 the transfer or discharge, if possible, or as soon thereafter as
199 practicable. A local long-term care ombudsman council conducting
200 a review under this subsection shall do so within 24 hours after
201 receipt of the request. The resident's file must be documented
202 to show who was contacted, whether the contact was by telephone
203 or in person, and the date and time of the contact. If the
204 notice is not given in writing, written notice meeting the
205 requirements of subsection (8) must be given the next working
206 day.

207 (12) After receipt of any notice required under this
208 section, the local long-term care ombudsman council may request
209 a private informal conversation with a resident to whom the
210 notice is directed, and, if known, a family member or the
211 resident's legal guardian or representative, to ensure that the
212 facility is proceeding with the transfer or discharge in
213 accordance with the requirements of this section. If requested,
214 the local long-term care ombudsman council shall assist the
215 resident with filing an appeal of the proposed transfer or
216 discharge.

217 (13) The following persons must be present at all hearings
218 authorized under this section:

219 (a) The resident or the resident's legal guardian or
220 representative.

221 (b) The facility administrator or the facility's legal
222 representative or designee.

223

224 A representative of the local long-term care ombudsman council
 225 may be present at all hearings authorized by this section.

226 (14) (a) The Department of Children and Family Services'
 227 Office of Appeals Hearings shall conduct a hearing under this
 228 section. The office shall notify the facility of a resident's
 229 request for a hearing.

230 (b) The Department of Children and Family Services shall,
 231 by rule, establish procedures to be used for fair hearings
 232 requested by residents. These procedures shall be equivalent to
 233 the procedures used for fair hearings for other Medicaid cases,
 234 chapter 10-2, part VI, Florida Administrative Code. The burden
 235 of proof must be clear and convincing evidence. A hearing
 236 decision must be rendered within 90 days after receipt of the
 237 request for hearing.

238 (c) If the hearing decision is favorable to the resident
 239 who has been transferred or discharged, the resident must be
 240 readmitted to the facility's first available bed.

241 (d) The decision of the hearing officer shall be final.
 242 Any aggrieved party may appeal the decision to the district
 243 court of appeal in the appellate district in which the facility
 244 is located. Review procedures shall be conducted in accordance
 245 with the Florida Rules of Appellate Procedure.

246 (15) The agency may adopt rules pursuant to ss. 120.536(1)
 247 and 120.54 to administer this section.

248 Section 3. Paragraphs (b) and (c) of subsection (3) of
 249 section 429.07, Florida Statutes, are amended to read:

250 429.07 License required; fee.--

251 (3) In addition to the requirements of s. 408.806, each
252 license granted by the agency must state the type of care for
253 which the license is granted. Licenses shall be issued for one
254 or more of the following categories of care: standard, extended
255 congregate care, limited nursing services, or limited mental
256 health.

257 (b) An extended congregate care license shall be issued to
258 facilities providing, directly or through contract, services
259 beyond those authorized in paragraph (a), including acts
260 performed pursuant to part I of chapter 464 by persons licensed
261 thereunder, and supportive services defined by rule to persons
262 who otherwise would be disqualified from continued residence in
263 a facility licensed under this part.

264 1. In order for extended congregate care services to be
265 provided in a facility licensed under this part, the agency must
266 first determine that all requirements established in law and
267 rule are met and must specifically designate, on the facility's
268 license, that such services may be provided and whether the
269 designation applies to all or part of a facility. Such
270 designation may be made at the time of initial licensure or
271 relicensure, or upon request in writing by a licensee under this
272 part and part II of chapter 408. Notification of approval or
273 denial of such request shall be made in accordance with part II
274 of chapter 408. Existing facilities qualifying to provide
275 extended congregate care services must have maintained a
276 standard license and may not have been subject to administrative
277 sanctions during the previous 2 years, or since initial

HB 1401

2008

278 licensure if the facility has been licensed for less than 2
279 years, for any of the following reasons:

280 a. A class I or class II violation;

281 b. Three or more repeat or recurring class III violations
282 of identical or similar resident care standards as specified in
283 rule from which a pattern of noncompliance is found by the
284 agency;

285 c. Three or more class III violations that were not
286 corrected in accordance with the corrective action plan approved
287 by the agency;

288 d. Violation of resident care standards resulting in a
289 requirement to employ the services of a consultant pharmacist or
290 consultant dietitian;

291 e. Denial, suspension, or revocation of a license for
292 another facility under this part in which the applicant for an
293 extended congregate care license has at least 25 percent
294 ownership interest; or

295 f. Imposition of a moratorium pursuant to this part or
296 part II of chapter 408 or initiation of injunctive proceedings.

297 2. Facilities that are licensed to provide extended
298 congregate care services shall maintain a written progress
299 report on each person who receives such services, which report
300 describes the type, amount, duration, scope, and outcome of
301 services that are rendered and the general status of the
302 resident's health. A registered nurse, or appropriate designee,
303 representing the agency shall visit such facilities at least
304 quarterly to monitor residents who are receiving extended
305 congregate care services and to determine if the facility is in

306 compliance with this part, part II of chapter 408, and rules
307 that relate to extended congregate care. One of these visits may
308 be in conjunction with the regular survey. The monitoring visits
309 may be provided through contractual arrangements with
310 appropriate community agencies. A registered nurse shall serve
311 as part of the team that inspects such facility. The agency may
312 waive one of the required yearly monitoring visits for a
313 facility that has been licensed for at least 24 months to
314 provide extended congregate care services, if, during the
315 inspection, the registered nurse determines that extended
316 congregate care services are being provided appropriately, and
317 if the facility has no class I or class II violations and no
318 uncorrected class III violations. Before such decision is made,
319 the agency shall consult with the long-term care ombudsman
320 council for the area in which the facility is located to
321 determine if any complaints have been made and substantiated
322 about the quality of services or care. The agency may not waive
323 one of the required yearly monitoring visits if complaints have
324 been made and substantiated.

325 3. Facilities that are licensed to provide extended
326 congregate care services shall:

327 a. Demonstrate the capability to meet unanticipated
328 resident service needs.

329 b. Offer a physical environment that promotes a homelike
330 setting, provides for resident privacy, promotes resident
331 independence, and allows sufficient congregate space as defined
332 by rule.

333 c. Have sufficient staff available, taking into account
334 the physical plant and firesafety features of the building, to
335 assist with the evacuation of residents in an emergency, as
336 necessary.

337 d. Adopt and follow policies and procedures that maximize
338 resident independence, dignity, choice, and decisionmaking to
339 permit residents to age in place to the extent possible, so that
340 moves due to changes in functional status are minimized or
341 avoided.

342 e. Allow residents or, if applicable, a resident's
343 representative, designee, surrogate, guardian, or attorney in
344 fact to make a variety of personal choices, participate in
345 developing service plans, and share responsibility in
346 decisionmaking.

347 f. Implement the concept of managed risk.

348 g. Provide, either directly or through contract, the
349 services of a person licensed pursuant to part I of chapter 464.

350 h. In addition to the training mandated in s. 429.52,
351 provide specialized training as defined by rule for facility
352 staff.

353 4. Facilities licensed to provide extended congregate care
354 services are exempt from the criteria for continued residency as
355 set forth in rules adopted under s. 429.41. Facilities so
356 licensed shall adopt their own requirements within guidelines
357 for continued residency set forth by rule. However, such
358 facilities may not serve residents who require 24-hour nursing
359 supervision. Facilities licensed to provide extended congregate

HB 1401

2008

360 care services shall provide each resident with a written copy of
361 facility policies governing admission and retention.

362 5. The primary purpose of extended congregate care
363 services is to allow residents, as they become more impaired,
364 the option of remaining in a familiar setting from which they
365 would otherwise be disqualified for continued residency. A
366 facility licensed to provide extended congregate care services
367 may also admit an individual who exceeds the admission criteria
368 for a facility with a standard license, if the individual is
369 determined appropriate for admission to the extended congregate
370 care facility.

371 6. Before admission of an individual to a facility
372 licensed to provide extended congregate care services, the
373 individual must undergo a medical examination as provided in s.
374 429.26(4) and the facility must develop a preliminary service
375 plan for the individual.

376 7. When a facility can no longer provide or arrange for
377 services in accordance with the resident's service plan and
378 needs and the facility's policy, the facility shall make
379 arrangements for relocating the person in accordance with s.
380 429.285 ~~429.28(1)(k)~~.

381 8. Failure to provide extended congregate care services
382 may result in denial of extended congregate care license
383 renewal.

384 9. No later than January 1 of each year, the department,
385 in consultation with the agency, shall prepare and submit to the
386 Governor, the President of the Senate, the Speaker of the House
387 of Representatives, and the chairs of appropriate legislative

HB 1401

2008

388 | committees, a report on the status of, and recommendations
389 | related to, extended congregate care services. The status report
390 | must include, but need not be limited to, the following
391 | information:

392 | a. A description of the facilities licensed to provide
393 | such services, including total number of beds licensed under
394 | this part.

395 | b. The number and characteristics of residents receiving
396 | such services.

397 | c. The types of services rendered that could not be
398 | provided through a standard license.

399 | d. An analysis of deficiencies cited during licensure
400 | inspections.

401 | e. The number of residents who required extended
402 | congregate care services at admission and the source of
403 | admission.

404 | f. Recommendations for statutory or regulatory changes.

405 | g. The availability of extended congregate care to state
406 | clients residing in facilities licensed under this part and in
407 | need of additional services, and recommendations for
408 | appropriations to subsidize extended congregate care services
409 | for such persons.

410 | h. Such other information as the department considers
411 | appropriate.

412 | (c) A limited nursing services license shall be issued to
413 | a facility that provides services beyond those authorized in
414 | paragraph (a) and as specified in this paragraph.

415 1. In order for limited nursing services to be provided in
416 a facility licensed under this part, the agency must first
417 determine that all requirements established in law and rule are
418 met and must specifically designate, on the facility's license,
419 that such services may be provided. Such designation may be made
420 at the time of initial licensure or relicensure, or upon request
421 in writing by a licensee under this part and part II of chapter
422 408. Notification of approval or denial of such request shall be
423 made in accordance with part II of chapter 408. Existing
424 facilities qualifying to provide limited nursing services shall
425 have maintained a standard license and may not have been subject
426 to administrative sanctions that affect the health, safety, and
427 welfare of residents for the previous 2 years or since initial
428 licensure if the facility has been licensed for less than 2
429 years.

430 2. Facilities that are licensed to provide limited nursing
431 services shall maintain a written progress report on each person
432 who receives such nursing services, which report describes the
433 type, amount, duration, scope, and outcome of services that are
434 rendered and the general status of the resident's health. A
435 registered nurse representing the agency shall visit such
436 facilities at least twice a year to monitor residents who are
437 receiving limited nursing services and to determine if the
438 facility is in compliance with applicable provisions of this
439 part, part II of chapter 408, and related rules. The monitoring
440 visits may be provided through contractual arrangements with
441 appropriate community agencies. A registered nurse shall also
442 serve as part of the team that inspects such facility.

HB 1401

2008

443 3. A person who receives limited nursing services under
444 this part must meet the admission criteria established by the
445 agency for assisted living facilities. When a resident no longer
446 meets the admission criteria for a facility licensed under this
447 part, arrangements for relocating the person shall be made in
448 accordance with s. 429.285 ~~429.28(1)(k)~~, unless the facility is
449 licensed to provide extended congregate care services.

450 Section 4. Subsection (1) of section 429.31, Florida
451 Statutes, is amended to read:

452 429.31 Closing of facility; notice; penalty.--

453 (1) In addition to the requirements of part II of chapter
454 408, the facility shall inform each resident or the next of kin,
455 legal representative, or agency acting on each resident's
456 behalf, of the fact and the proposed time of discontinuance of
457 operation, following the notification requirements provided in
458 s. 429.285 ~~429.28(1)(k)~~. In the event a resident has no person
459 to represent him or her, the facility shall be responsible for
460 referral to an appropriate social service agency for placement.

461 Section 5. This act shall take effect July 1, 2008.