

HB 817

2010

1 A bill to be entitled
2 An act relating to assisted living facilities; amending s.
3 429.28, F.S.; revising and specifying certain conditions
4 in an assisted living facility's resident bill of rights
5 for a resident's relocation or termination of residency;
6 requiring grievance procedures to be written; creating s.
7 429.285, F.S.; prohibiting resident relocation or
8 termination of residency in the absence of certain
9 specified conditions; requiring the administrator or a
10 designated employee of a facility to sign a notice of
11 relocation or termination of residency and requiring a
12 physician's signature under certain circumstances;
13 requiring a licensee to provide advance written notice to
14 the resident and other specified persons regarding
15 relocation or termination of residency; providing that the
16 notice contain certain information; providing for the
17 creation of a form to submit relocation or termination of
18 residency information and specifying information to be
19 included therein; requiring a licensee to report
20 relocation or termination of residency to the Office of
21 State Long-Term Care Ombudsman within a specified time;
22 permitting residents to seek the assistance of the local
23 long-term care ombudsman council in reviewing a notice of
24 relocation or termination of residency; providing for
25 emergency relocation and termination of residency;
26 authorizing the department to adopt rules; amending ss.
27 429.07 and 429.31, F.S.; conforming cross-references;
28 providing an effective date.

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

Section 1. Paragraphs (k) and (l) of subsection (1), subsection (2), and paragraph (b) of subsection (3) of section 429.28, Florida Statutes, are amended to read:

429.28 Resident bill of rights.—

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

(k) Receive at least 45 days' written notice of relocation or termination of residency from the licensee as provided in s. 429.285, unless the relocation or termination of residency is initiated by the resident or the resident's designee facility ~~unless, for medical reasons,~~ the resident is certified by a physician to require an emergency relocation for medical reasons to a facility providing a more skilled level of care, or the resident engages in a pattern of conduct that is harmful or offensive to other residents. In the case of a resident who has been adjudicated mentally incapacitated, the guardian shall be given at least 45 days' written notice of a nonemergency relocation or residency termination. Reasons for relocation shall be set forth in writing. In order for a licensee facility to terminate the residency of an individual without notice as provided in this paragraph ~~herein~~, the licensee facility shall show good cause in a court of competent jurisdiction. Admission

57 | to a facility licensed under this part may not be conditioned
 58 | upon a waiver of such right, and any document or provision in a
 59 | document that purports to waive or preclude such right is void
 60 | and unenforceable.

61 | (1) Present grievances and recommend changes in policies,
 62 | procedures, and services to the staff of the facility, governing
 63 | officials, or any other person without restraint, interference,
 64 | coercion, discrimination, or reprisal. Each licensee ~~facility~~
 65 | shall establish a written grievance procedure to facilitate the
 66 | residents' exercise of this right. This right includes access to
 67 | ombudsman volunteers and advocates and the right to be a member
 68 | of, to be active in, and to associate with advocacy or special
 69 | interest groups.

70 | (2) The administrator of a facility shall ensure that a
 71 | written notice of the rights, obligations, and prohibitions set
 72 | forth in this part is posted in a prominent place in each
 73 | facility and read or explained to residents who cannot read.
 74 | This notice shall include the name, address, and telephone
 75 | numbers of the local ombudsman council and central abuse hotline
 76 | and, when applicable, the Advocacy Center for Persons with
 77 | Disabilities, Inc., and the Florida local advocacy council,
 78 | where complaints may be lodged. The licensee ~~facility~~ must
 79 | ensure a resident's access to a telephone to call the local
 80 | ombudsman council, central abuse hotline, Advocacy Center for
 81 | Persons with Disabilities, Inc., and the Florida local advocacy
 82 | council.

83 | (3)

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84 (b) In order to determine whether the licensee facility is
 85 adequately protecting residents' rights, the biennial survey
 86 shall include private informal conversations with a sample of
 87 residents and consultation with the ombudsman council in the
 88 planning and service area in which the facility is located to
 89 discuss residents' experiences within the facility.

90 Section 2. Section 429.285, Florida Statutes, is created
 91 to read:

92 429.285 Resident relocation or termination of residency;
 93 requirements and procedures.—

94 (1) A facility licensed under this part must permit a
 95 resident to remain in the facility unless the conditions
 96 specified in this subsection apply. Relocation or termination of
 97 residency of a resident may occur only if:

98 (a) The relocation or termination of residency is
 99 necessary for the resident's welfare and the resident's needs
 100 cannot be met in the facility;

101 (b) The relocation or termination of residency is
 102 appropriate because the resident's health has improved or
 103 deteriorated to the extent that the resident no longer needs the
 104 services provided by the facility and the resident's health
 105 condition is documented by a physician's order, as required
 106 under subsection (2);

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

109 (d) The resident has failed, after at least 30 days'
 110 written notice, to provide payment for his or her stay in the
 111 facility;

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112 (e) The facility ceases to operate; or

113 (f) There is a documented pattern of harmful or offensive
114 behavior by the resident.

115 (2) When a relocation or termination of residency is
116 initiated by the licensee:

117 (a) The licensee must provide at least 45 days' written
118 notice by certified mail of the proposed relocation or
119 termination of residency to the affected resident and, if known,
120 to a family member or the resident's legal guardian or
121 representative, unless, for medical reasons, the resident is
122 certified by a physician to require an emergency relocation to a
123 facility that provides a more skilled level of care.

124 (b) The administrator who is relocating the resident or
125 terminating residency, or an individual employed by the facility
126 who is designated by the administrator to act on behalf of the
127 administration, must sign the notice of relocation or
128 termination of residency.

129 (3) A notice indicating a medical reason for relocation or
130 termination of residency must be signed by the resident's
131 physician or include an attached written order for the
132 relocation or termination of residency signed by a physician.

133 (a) The notice must be in writing and contain all
134 information required by department rules and state laws.

135 (b) A copy of the notice must be signed by the resident
136 upon receipt and placed in the resident's file.

137 (c) The department shall develop a standard form for the
138 notice to be used by all facilities licensed under this part for
139 the purpose of notifying residents of a relocation or

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140 termination of residency. In addition to any other pertinent
141 information included, the form shall:

142 1. Specify the reason allowed under state law justifying
143 the relocation or termination of the residency, with an
144 explanation to support this action.

145 2. State the effective date of the relocation or
146 termination of residency and the location to which the resident
147 is being relocated.

148 3. State the right and specify the means to request the
149 local long-term care ombudsman council to review the notice of
150 relocation or termination of residency.

151 (4) A relocation or termination of residency notice
152 initiated by a licensee must be reported to the Office of State
153 Long-Term Care Ombudsman by mail, e-mail, or facsimile within 2
154 business days after a resident's receipt of a notice to relocate
155 or terminate residency. A resident may request that the local
156 long-term care ombudsman council review any notice of relocation
157 or termination of residency given to the resident.

158 (5) In the event of an emergency relocation or termination
159 of residency, as provided under s. 429.28(1)(k), notice shall be
160 provided as soon as practicable, but no later than 2 business
161 days after the emergency relocation or termination, to the
162 resident, the resident's legal guardian or representative, and
163 the Office of State Long-Term Care Ombudsman by telephone or in
164 person. If possible, the written notice shall be given before
165 the relocation or termination of residency, as required under
166 subsection (2), no later than 5 business days after the
167 relocation or termination of residency. The resident's file must

168 include documentation indicating who was contacted, whether the
 169 contact was by telephone or in person, and the date and time of
 170 the contact.

171 (6) The department may adopt rules pursuant to ss.
 172 120.536(1) and 120.54 to administer this section.

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

175 429.07 License required; fee.—

176 (3) In addition to the requirements of s. 408.806, each
 177 license granted by the agency must state the type of care for
 178 which the license is granted. Licenses shall be issued for one
 179 or more of the following categories of care: standard, extended
 180 congregate care, limited nursing services, or limited mental
 181 health.

182 (b) An extended congregate care license shall be issued to
 183 facilities providing, directly or through contract, services
 184 beyond those authorized in paragraph (a), including acts
 185 performed pursuant to part I of chapter 464 by persons licensed
 186 thereunder, and supportive services defined by rule to persons
 187 who otherwise would be disqualified from continued residence in
 188 a facility licensed under this part.

189 1. In order for extended congregate care services to be
 190 provided in a facility licensed under this part, the agency must
 191 first determine that all requirements established in law and
 192 rule are met and must specifically designate, on the facility's
 193 license, that such services may be provided and whether the
 194 designation applies to all or part of a facility. Such
 195 designation may be made at the time of initial licensure or

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196 relicensure, or upon request in writing by a licensee under this
197 part and part II of chapter 408. Notification of approval or
198 denial of such request shall be made in accordance with part II
199 of chapter 408. Existing facilities qualifying to provide
200 extended congregate care services must have maintained a
201 standard license and may not have been subject to administrative
202 sanctions during the previous 2 years, or since initial
203 licensure if the facility has been licensed for less than 2
204 years, for any of the following reasons:

- 205 a. A class I or class II violation;
- 206 b. Three or more repeat or recurring class III violations
207 of identical or similar resident care standards as specified in
208 rule from which a pattern of noncompliance is found by the
209 agency;
- 210 c. Three or more class III violations that were not
211 corrected in accordance with the corrective action plan approved
212 by the agency;
- 213 d. Violation of resident care standards resulting in a
214 requirement to employ the services of a consultant pharmacist or
215 consultant dietitian;
- 216 e. Denial, suspension, or revocation of a license for
217 another facility under this part in which the applicant for an
218 extended congregate care license has at least 25 percent
219 ownership interest; or
- 220 f. Imposition of a moratorium pursuant to this part or
221 part II of chapter 408 or initiation of injunctive proceedings.
- 222 2. Facilities that are licensed to provide extended
223 congregate care services shall maintain a written progress

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224 | report on each person who receives such services, which report
225 | describes the type, amount, duration, scope, and outcome of
226 | services that are rendered and the general status of the
227 | resident's health. A registered nurse, or appropriate designee,
228 | representing the agency shall visit such facilities at least
229 | quarterly to monitor residents who are receiving extended
230 | congregate care services and to determine if the facility is in
231 | compliance with this part, part II of chapter 408, and rules
232 | that relate to extended congregate care. One of these visits may
233 | be in conjunction with the regular survey. The monitoring visits
234 | may be provided through contractual arrangements with
235 | appropriate community agencies. A registered nurse shall serve
236 | as part of the team that inspects such facility. The agency may
237 | waive one of the required yearly monitoring visits for a
238 | facility that has been licensed for at least 24 months to
239 | provide extended congregate care services, if, during the
240 | inspection, the registered nurse determines that extended
241 | congregate care services are being provided appropriately, and
242 | if the facility has no class I or class II violations and no
243 | uncorrected class III violations. Before such decision is made,
244 | the agency shall consult with the long-term care ombudsman
245 | council for the area in which the facility is located to
246 | determine if any complaints have been made and substantiated
247 | about the quality of services or care. The agency may not waive
248 | one of the required yearly monitoring visits if complaints have
249 | been made and substantiated.

250 | 3. Facilities that are licensed to provide extended
251 | congregate care services shall:

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- 252 a. Demonstrate the capability to meet unanticipated
 253 resident service needs.
- 254 b. Offer a physical environment that promotes a homelike
 255 setting, provides for resident privacy, promotes resident
 256 independence, and allows sufficient congregate space as defined
 257 by rule.
- 258 c. Have sufficient staff available, taking into account
 259 the physical plant and firesafety features of the building, to
 260 assist with the evacuation of residents in an emergency, as
 261 necessary.
- 262 d. Adopt and follow policies and procedures that maximize
 263 resident independence, dignity, choice, and decisionmaking to
 264 permit residents to age in place to the extent possible, so that
 265 moves due to changes in functional status are minimized or
 266 avoided.
- 267 e. Allow residents or, if applicable, a resident's
 268 representative, designee, surrogate, guardian, or attorney in
 269 fact to make a variety of personal choices, participate in
 270 developing service plans, and share responsibility in
 271 decisionmaking.
- 272 f. Implement the concept of managed risk.
- 273 g. Provide, either directly or through contract, the
 274 services of a person licensed pursuant to part I of chapter 464.
- 275 h. In addition to the training mandated in s. 429.52,
 276 provide specialized training as defined by rule for facility
 277 staff.
- 278 4. Facilities licensed to provide extended congregate care
 279 services are exempt from the criteria for continued residency as

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280 set forth in rules adopted under s. 429.41. Facilities so
 281 licensed shall adopt their own requirements within guidelines
 282 for continued residency set forth by rule. However, such
 283 facilities may not serve residents who require 24-hour nursing
 284 supervision. Facilities licensed to provide extended congregate
 285 care services shall provide each resident with a written copy of
 286 facility policies governing admission and retention.

287 5. The primary purpose of extended congregate care
 288 services is to allow residents, as they become more impaired,
 289 the option of remaining in a familiar setting from which they
 290 would otherwise be disqualified for continued residency. A
 291 facility licensed to provide extended congregate care services
 292 may also admit an individual who exceeds the admission criteria
 293 for a facility with a standard license, if the individual is
 294 determined appropriate for admission to the extended congregate
 295 care facility.

296 6. Before admission of an individual to a facility
 297 licensed to provide extended congregate care services, the
 298 individual must undergo a medical examination as provided in s.
 299 429.26(4) and the facility must develop a preliminary service
 300 plan for the individual.

301 7. When a facility can no longer provide or arrange for
 302 services in accordance with the resident's service plan and
 303 needs and the facility's policy, the facility shall make
 304 arrangements for relocating the person in accordance with s.
 305 429.285 ~~429.28(1)(k)~~.

306 8. Failure to provide extended congregate care services
 307 may result in denial of extended congregate care license
 308 renewal.

309 9. No later than January 1 of each year, the department,
 310 in consultation with the agency, shall prepare and submit to the
 311 Governor, the President of the Senate, the Speaker of the House
 312 of Representatives, and the chairs of appropriate legislative
 313 committees, a report on the status of, and recommendations
 314 related to, extended congregate care services. The status report
 315 must include, but need not be limited to, the following
 316 information:

317 a. A description of the facilities licensed to provide
 318 such services, including total number of beds licensed under
 319 this part.

320 b. The number and characteristics of residents receiving
 321 such services.

322 c. The types of services rendered that could not be
 323 provided through a standard license.

324 d. An analysis of deficiencies cited during licensure
 325 inspections.

326 e. The number of residents who required extended
 327 congregate care services at admission and the source of
 328 admission.

329 f. Recommendations for statutory or regulatory changes.

330 g. The availability of extended congregate care to state
 331 clients residing in facilities licensed under this part and in
 332 need of additional services, and recommendations for

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333 appropriations to subsidize extended congregate care services
334 for such persons.

335 h. Such other information as the department considers
336 appropriate.

337 (c) A limited nursing services license shall be issued to
338 a facility that provides services beyond those authorized in
339 paragraph (a) and as specified in this paragraph.

340 1. In order for limited nursing services to be provided in
341 a facility licensed under this part, the agency must first
342 determine that all requirements established in law and rule are
343 met and must specifically designate, on the facility's license,
344 that such services may be provided. Such designation may be made
345 at the time of initial licensure or relicensure, or upon request
346 in writing by a licensee under this part and part II of chapter
347 408. Notification of approval or denial of such request shall be
348 made in accordance with part II of chapter 408. Existing
349 facilities qualifying to provide limited nursing services shall
350 have maintained a standard license and may not have been subject
351 to administrative sanctions that affect the health, safety, and
352 welfare of residents for the previous 2 years or since initial
353 licensure if the facility has been licensed for less than 2
354 years.

355 2. Facilities that are licensed to provide limited nursing
356 services shall maintain a written progress report on each person
357 who receives such nursing services, which report describes the
358 type, amount, duration, scope, and outcome of services that are
359 rendered and the general status of the resident's health. A
360 registered nurse representing the agency shall visit such

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361 facilities at least twice a year to monitor residents who are
362 receiving limited nursing services and to determine if the
363 facility is in compliance with applicable provisions of this
364 part, part II of chapter 408, and related rules. The monitoring
365 visits may be provided through contractual arrangements with
366 appropriate community agencies. A registered nurse shall also
367 serve as part of the team that inspects such facility.

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

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

377 429.31 Closing of facility; notice; penalty.—

378 (1) In addition to the requirements of part II of chapter
379 408, the facility shall inform each resident or the next of kin,
380 legal representative, or agency acting on each resident's
381 behalf, of the fact and the proposed time of discontinuance of
382 operation, following the notification requirements provided in
383 s. 429.285 ~~429.28(1)(k)~~. In the event a resident has no person
384 to represent him or her, the facility shall be responsible for
385 referral to an appropriate social service agency for placement.

386 Section 5. This act shall take effect July 1, 2010.