

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. 429.19, F.S.; conforming a
15 cross-reference; amending s. 429.28, F.S.; providing
16 notice requirements regarding relocation or
17 termination of residency from an assisted living
18 facility; requiring an assisted living facility to
19 provide current and updated contact information to the
20 resident and the State Long-Term Care Ombudsman
21 Program; amending s. 429.55, F.S.; requiring an
22 assisted living facility to report changes to its
23 name, address, and phone number to the agency;
24 requiring the agency to post the facility's new
25 address on the consumer information website within 30

26 | days; reenacting s. 400.121(1) and (2), F.S., relating
 27 | to imposition of administrative fines by the agency to
 28 | incorporate the amendment made to s. 400.102, F.S.;
 29 | providing an effective date.
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31 | Be It Enacted by the Legislature of the State of Florida:
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33 | Section 1. Subsection (5) is added to section 400.102,
 34 | Florida Statutes, to read:

35 | 400.102 Action by agency against licensee; grounds.—In
 36 | addition to the grounds listed in part II of chapter 408, any of
 37 | the following conditions shall be grounds for action by the
 38 | agency against a licensee:

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

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

47 | 400.141 Administration and management of nursing home
 48 | facilities.—

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

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

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

59 400.145 Copies of records of care and treatment of
 60 resident.—

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

76 receipt of a request relating to a current resident ~~or within 30~~
77 ~~working days after receipt of a request relating to a former~~
78 ~~resident.~~ The facility shall provide the resident or the
79 authorized representative of that resident with a copy of the
80 requested records or any portion thereof within 2 working days
81 after receipt of a request relating to a current resident or
82 within 30 working days after receipt of a request relating to a
83 former resident.

84 (5) If a licensed medical provider ~~nursing home facility~~
85 determines that disclosure of psychiatric ~~the~~ records to the
86 resident would reasonably be likely to endanger the life or
87 physical safety of the resident or another person ~~be detrimental~~
88 ~~to the physical or mental health of the resident,~~ the facility
89 may refuse to furnish the record directly to the resident;
90 however, upon such refusal, the resident's records shall, upon
91 written request by the resident, be furnished to any other
92 licensed medical provider designated by the resident.

93 Section 4. Subsection (7) of section 429.19, Florida
94 Statutes, is amended to read:

95 429.19 Violations; imposition of administrative fines;
96 grounds.—

97 (7) In addition to any administrative fines imposed, the
98 agency may assess a survey fee, equal to the lesser of one half
99 of the facility's biennial license and bed fee or \$500, to cover
100 the cost of conducting initial complaint investigations that

101 result in the finding of a violation that was the subject of the
 102 complaint or monitoring visits conducted under s. 429.28(4)(c)
 103 ~~s. 429.28(3)(c)~~ to verify the correction of the violations.

104 Section 5. Subsections (3) through (7) of section 429.28,
 105 Florida Statutes, are renumbered as subsections (4) through (8),
 106 respectively, paragraph (k) of subsection (1) and present
 107 subsection (6) are amended, and a new subsection (3) is added to
 108 that section, to read:

109 429.28 Resident bill of rights.—

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

115 (k) At least 45 days' written notice of relocation or
 116 termination of residency from the facility unless, for medical
 117 reasons, the resident is certified by a physician to require an
 118 emergency relocation to a facility providing a more skilled
 119 level of care or the resident engages in a pattern of conduct
 120 that is harmful or offensive to other residents. In the case of
 121 a resident who has been adjudicated mentally incapacitated, the
 122 guardian shall be given at least 45 days' written notice of a
 123 nonemergency relocation or residency termination. Reasons for
 124 relocation shall be set forth in writing and provided to the
 125 resident or the resident's legal representative. In order for a

126 facility to terminate the residency of an individual without
127 notice as provided herein, the facility shall show good cause in
128 a court of competent jurisdiction.

129 (3) Each facility shall provide residents and the State
130 Long-Term Care Ombudsman Program with the facility's current
131 contact information, including a functional telephone number,
132 and notify residents and the State Long-Term Care Ombudsman
133 Program of any change in contact information within 30 days
134 after a change in such information.

135 (7)~~(6)~~ A facility that terminates the residency of an
136 individual who participated in activities specified in
137 subsection (6) ~~(5)~~ must show good cause in a court of competent
138 jurisdiction. If good cause is not shown, the agency shall
139 impose a fine of \$2,500 in addition to any other penalty
140 assessed against the facility.

141 Section 6. Paragraph (a) of subsection (1) of section
142 429.55, Florida Statutes, is amended to read:

143 429.55 Consumer information website.—The Legislature finds
144 that consumers need additional information on the quality of
145 care and service in assisted living facilities in order to
146 select the best facility for themselves or their loved ones.
147 Therefore, the Agency for Health Care Administration shall
148 create content that is easily accessible through the home page
149 of the agency's website either directly or indirectly through
150 links to one or more other established websites of the agency's

151 choosing. The website must be searchable by facility name,
152 license type, city, or zip code. By November 1, 2015, the agency
153 shall include all content in its possession on the website and
154 add content when received from facilities. At a minimum, the
155 content must include:

156 (1) Information on each licensed assisted living facility,
157 including, but not limited to:

158 (a) The name, ~~and~~ address, and telephone number of the
159 facility. The facility must report changes in such information
160 electronically to the agency through its online licensing
161 portal. The agency shall post the facility's new name, address,
162 and telephone number on the consumer information website within
163 30 days after receiving the report.

164 Section 7. For the purpose of incorporating the amendment
165 made by this act to section 400.102, Florida Statutes, in a
166 reference thereto, subsections (1) and (2) of section 400.121,
167 Florida Statutes, are reenacted to read:

168 400.121 Denial, suspension, revocation of license;
169 administrative fines; procedure; order to increase staffing.—

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

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

178 (b) An adverse action by a regulatory agency against any
179 other licensed facility that has a common controlling interest
180 with the licensee or applicant against whom the action under
181 this section is being brought. If the adverse action involves
182 solely the management company, the applicant or licensee shall
183 be given 30 days to remedy before final action is taken. If the
184 adverse action is based solely upon actions by a controlling
185 interest, the applicant or licensee may present factors in
186 mitigation of any proposed penalty based upon a showing that
187 such penalty is inappropriate under the circumstances.

188
189 All hearings shall be held within the county in which the
190 licensee or applicant operates or applies for a license to
191 operate a facility as defined herein.

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

200 Section 8. This act shall take effect July 1, 2018.