

By Senator Farmer

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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 a resident and the State Long-Term Care
9 Ombudsman Program; amending s. 400.145, F.S.;
10 authorizing certain requests to be made orally;
11 requiring nursing home facilities to provide a
12 resident or a representative of a resident with access
13 to or copies of certain records under certain
14 conditions and within a specified timeframe; providing
15 an exception for psychiatric records under certain
16 circumstances; amending s. 429.28, F.S.; providing
17 notice requirements regarding relocation or
18 termination of residency from an assisted living
19 facility; requiring the facility to send a copy of the
20 notice to a representative of the State Long-Term Care
21 Ombudsman Program within a specified timeframe;
22 reenacting s. 400.121(1) and (2), F.S., relating to
23 imposition of administrative fines by the agency, to
24 incorporate the amendment made to s. 400.102, F.S., in
25 a reference thereto; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Subsection (5) is added to section 400.102,

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30 Florida Statutes, to read:

31 400.102 Action by agency against licensee; grounds.—In
32 addition to the grounds listed in part II of chapter 408, any of
33 the following conditions shall be grounds for action by the
34 agency against a licensee:

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

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

43 400.141 Administration and management of nursing home
44 facilities.—

45 (1) Every licensed facility shall comply with all
46 applicable standards and rules of the agency and shall:

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

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

55 400.145 Copies of records of care and treatment of
56 resident.—

57 (1) A resident has the right to access personal and medical
58 records pertaining to him or herself. Upon receipt of a written

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59 or oral request that complies with the federal Health Insurance
60 Portability and Accountability Act of 1996 (HIPAA) and this
61 section, a nursing home facility shall furnish to a competent
62 resident, or to a representative of that resident who is
63 authorized to make requests for the resident's records under
64 HIPAA or subsection (2), copies of the resident's paper and
65 electronic records that are in possession of the facility. Such
66 records must include any personal records, medical records, and
67 records concerning the care and treatment of the resident
68 ~~performed by the facility,~~ except for progress notes and
69 consultation report sections of a psychiatric nature. The
70 facility shall provide access to the requested records within 24
71 hours, excluding weekends and holidays, ~~14 working days~~ after
72 receipt of a request relating to a current resident or within 30
73 working days after receipt of a request relating to a former
74 resident. The facility shall provide the resident or the
75 authorized representative of that resident with a copy of the
76 requested records or any portion thereof within 2 working days
77 after receipt of such request.

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

87 Section 4. Paragraph (k) of subsection (1) of section

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88 429.28, Florida Statutes, is amended to read:

89 429.28 Resident bill of rights.—

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

95 (k) At least 45 days' notice of relocation or termination
96 of residency from the facility unless, for medical reasons, the
97 resident is certified by a physician to require an emergency
98 relocation to a facility providing a more skilled level of care
99 or the resident engages in a pattern of conduct that is harmful
100 or offensive to other residents. In the case of a resident who
101 has been adjudicated mentally incapacitated, the guardian shall
102 be given at least 45 days' notice of a nonemergency relocation
103 or residency termination. Reasons for relocation shall be set
104 forth in writing and provided to the resident or the resident's
105 legal representative. The facility shall send a copy of the
106 notice to a representative of the State Long-Term Care Ombudsman
107 Program within 7 calendar days after the notice is provided to
108 the resident or the resident's legal representative. In order
109 for a facility to terminate the residency of an individual
110 without notice as provided herein, the facility shall show good
111 cause in a court of competent jurisdiction.

112 Section 5. For the purpose of incorporating the amendment
113 made by this act to section 400.102, Florida Statutes, in a
114 reference thereto, subsections (1) and (2) of section 400.121,
115 Florida Statutes, are reenacted to read:

116 400.121 Denial, suspension, revocation of license;

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117 administrative fines; procedure; order to increase staffing.—

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

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

126 (b) An adverse action by a regulatory agency against any
127 other licensed facility that has a common controlling interest
128 with the licensee or applicant against whom the action under
129 this section is being brought. If the adverse action involves
130 solely the management company, the applicant or licensee shall
131 be given 30 days to remedy before final action is taken. If the
132 adverse action is based solely upon actions by a controlling
133 interest, the applicant or licensee may present factors in
134 mitigation of any proposed penalty based upon a showing that
135 such penalty is inappropriate under the circumstances.

136
137 All hearings shall be held within the county in which the
138 licensee or applicant operates or applies for a license to
139 operate a facility as defined herein.

140 (2) Except as provided in s. 400.23(8), a \$500 fine shall
141 be imposed for each violation. Each day a violation of this part
142 or part II of chapter 408 occurs constitutes a separate
143 violation and is subject to a separate fine, but in no event may
144 any fine aggregate more than \$5,000. A fine may be levied
145 pursuant to this section in lieu of and notwithstanding the

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146 provisions of s. 400.23. Fines paid shall be deposited in the
147 Health Care Trust Fund and expended as provided in s. 400.063.
148 Section 6. This act shall take effect July 1, 2018.