

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 1734

INTRODUCER: Senator Gibson

SUBJECT: Resident Care in Nursing Home Facilities

DATE: February 9, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	Pre-meeting
2.			CF	
3.			RC	

I. Summary:

SB 1734 amends and creates multiple sections of the Florida Statutes related to nursing home licensure.

The bill requires nursing homes to allow residents to select a personal physician and requires the nursing home to consult with that physician when providing acute care to the resident or prescribing medication to the resident, and to provide the physician with medical records and any other records relating to the resident's care at least on a monthly basis and also at other specified times.

The bill creates a new section of law to establish admission procedures for nursing homes and details what a nursing home is required to do before admitting a resident. The bill specifies that a nursing home must provide the resident with a copy of his or her care plan immediately after it is developed. A nursing home is also required to review each resident's care plan at least quarterly and provides details as to who must be involved and what must be assessed in the review.

The bill reduces the time allowed for nursing homes to provide records upon receipt of a written Health Insurance Portability and Accountability Act of 1996 (HIPAA) compliant request from 14 working days to three working days if the request relates to a current resident and from 30 working days to 14 working days if the request relates to a former resident. The also bill expands what information must be posted on a nursing home's website related to staffing and requires a nursing home to post, both online and in its facility, the name and contact information of specified members of its staff.

The bill provides an effective date of July 1, 2022.

II. Present Situation:

Nursing Home Residents' Rights

Section 400.022, F.S., establishes rights that a nursing must afford to each of its residents. The section requires that all nursing home facilities must adopt and make public a statement of the rights and responsibilities of the residents of such facilities and treat such residents in accordance with the provisions of that statement. The statement must assure each resident receives the following rights:

- The right to civil and religious liberties.
- The right to private and uncensored communication.
- Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident. The resident has the right to deny or withdraw consent to access at any time by any entity or individual. Notwithstanding the visiting policy of the facility, the section specifies that certain individuals, including immediate family members and regulatory personnel, must be permitted immediate access to the resident.
- The right to present grievances on behalf of himself or herself or others to the staff or administrator of the facility, to governmental officials, or to any other person; to recommend changes in policies and services to facility personnel; and to join with other residents or individuals within or outside the facility to work for improvements in resident care, free from restraint, interference, coercion, discrimination, or reprisal.
- The right to organize and participate in resident groups in the facility and the right to have the resident's family meet in the facility with the families of other residents.
- The right to participate in social, religious, and community activities that do not interfere with the rights of other residents.
- The right to examine, upon reasonable request, the results of the most recent inspection of the facility conducted by a federal or state agency and any plan of correction in effect with respect to the facility.
- The right to manage his or her own financial affairs or to delegate such responsibility to the licensee, but only to the extent of the funds held in trust by the licensee for the resident.
- The right to be fully informed, in writing and orally, prior to or at the time of admission and during his or her stay, of services available in the facility and of related charges for such services.
- The right to be adequately informed of his or her medical condition and proposed treatment, unless the resident is determined to be unable to provide informed consent under Florida law, or the right to be fully informed in advance of any nonemergency changes in care or treatment that may affect the resident's well-being; and, except with respect to a resident adjudged incompetent, the right to participate in the planning of all medical treatment, including the right to refuse medication and treatment, unless otherwise indicated by the resident's physician; and to know the consequences of such actions.
- The right to refuse medication or treatment and to be informed of the consequences of such decisions, unless determined unable to provide informed consent under state law.
- The right to receive adequate and appropriate health care and protective and support services, including social services; mental health services, if available; planned recreational activities; and therapeutic and rehabilitative services consistent with the resident care plan, with

established and recognized practice standards within the community, and with rules as adopted by the Agency for Health Care Administration (AHCA).

- The right to have privacy in treatment and in caring for personal needs; to close room doors and to have facility personnel knock before entering the room, except in the case of an emergency or unless medically contraindicated; and to security in storing and using personal possessions.
- The right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and an oral explanation of the services provided by the licensee, including those required to be offered on an as-needed basis.
- The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and from physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.
- The right to be transferred or discharged only for medical reasons or for the welfare of other residents, and the right to be given reasonable advance notice of no less than 30 days of any involuntary transfer or discharge, with certain exceptions.
- The right to freedom of choice in selecting a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice; and to obtain information about, and to participate in, community-based activities programs, unless medically contraindicated as documented by a physician in the resident's medical record.
- The right to retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or unless medically contraindicated as documented in the resident's medical record by a physician.
- The right to have copies of the rules and regulations of the facility and an explanation of the responsibility of the resident to obey all reasonable rules and regulations of the facility and to respect the personal rights and private property of the other residents.
- The right to receive notice before the room of the resident in the facility is changed.
- The right to be informed of the bed reservation policy for a hospitalization.
- For residents of Medicaid or Medicare certified facilities, the right to challenge a decision by the facility to discharge or transfer the resident, as required under 42 C.F.R. s. 483.12.

Each nursing home must orally inform the resident of the resident's rights and provide a copy of the statement to each resident or the resident's legal representative at or before the resident's admission to a facility and to each staff member of the facility. Each licensee must prepare a written plan and provide appropriate staff training to implement the provisions of the section.

The written statement of rights must include a statement that a resident may file a complaint with the AHCA or state or local ombudsman council. The statement must be in boldfaced type and include the telephone number and e-mail address of the State Long-Term Care Ombudsman Program and the telephone numbers of the local ombudsman council and the Elder Abuse Hotline operated by the Department of Children and Families.

The section specifies that any violation of the resident's rights constitutes grounds for licensure action. Also, in order to determine whether the licensee is adequately protecting residents' rights, the licensure inspection of the facility must include private informal conversations with a sample of residents to discuss residents' experiences within the facility with respect to rights specified in

this section and general compliance with standards and consultation with the State Long-Term Care Ombudsman Program.

Any person who submits or reports a complaint concerning a suspected violation of the resident's rights or concerning services or conditions in a facility or who testifies in any administrative or judicial proceeding arising from such complaint will have immunity from any criminal or civil liability for that report, unless that person acted in bad faith, with malicious purpose, or if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.

In addition to the rights listed in s. 400.022, F.S., federal law in 42 CFR s. 483.10 establishes rights for residents in Medicaid and Medicare certified nursing homes. Many of the rights mirror rights established in the section above. In general, federal law guarantees the right to:

- Be treated with respect;
- Participate in activities;
- Be free from discrimination;
- Be free from abuse and neglect;
- Be free from restraints;
- Make complaints;
- Get proper medical care (including choosing one's own personal physician);
- Have representatives notified of certain occurrences;
- Get information on services and fees;
- Manage one's own money;
- Have proper privacy, property, and living arrangements;
- Spend time with visitors;
- Get social services;
- Leave the nursing home;
- Have protection against unfair transfers and discharges;
- Form or participate in resident groups; and
- Include family and friends.¹

Nursing Home Records

Section 400.145, F.S., requires that a nursing home release copies of records of care and treatment of a resident as detailed in the section. When a nursing home has received a written request that complies with HIPAA and the section, a nursing home facility must furnish to a competent resident, or to a representative of that resident who is authorized to make requests for the resident's records under HIPAA or as detailed in the section, copies of the resident's paper and electronic records that are in possession of the facility. Such records must include any medical records and records concerning the care and treatment of the resident performed by the facility, except for progress notes and consultation report sections of a psychiatric nature.

¹ For a summary of these rights please see: Your Rights and Protections as a Nursing Home Resident, Centers for Medicare and Medicaid Services, available at https://downloads.cms.gov/medicare/your_resident_rights_and_protections_section.pdf (last visited Feb. 7, 2022).

The facility must provide the requested records within 14 working days after receipt of a request relating to a current resident or within 30 working days after receipt of a request relating to a former resident.

The section specifies who may request resident records if the resident is deceased and allows a nursing home to charge a reasonable fee for the copying of resident records. If a nursing home determines that disclosure of the records to the resident would be detrimental to the physical or mental health of the resident, the facility may refuse to furnish the record directly to the resident; however, upon such refusal, the resident's records must, upon written request by the resident, be furnished to any other medical provider designated by the resident.

The section also indemnifies nursing homes for releasing records and specifies that a nursing home is not required to release records more than once per month. A nursing home may not be cited by the AHCA for violating these requirements and the section does not limit any right to obtain records through the legal system.

III. Effect of Proposed Changes:

Section 1 amends s. 400.022, F.S., to add to the nursing home residents rights the requirement that, if a resident selects a personal physician, the resident's attending health care provider at the facility must consult with the resident's personal physician in providing any acute care to the resident and before ordering or prescribing medication for the resident to ensure that the medication is not medically contraindicated. The attending health care provider must document any consultation with the resident's personal physician in the resident's records and provide copies of the resident's records to the resident's personal physician in accordance with s. 400.141(1)(e), F.S.

The bill also amends this section to add a new right to receive a response from a facility within three days after the resident or the resident's legal representative makes an inquiry or otherwise requests information related to the resident or the resident's care or treatment at the facility.

Section 2 creates s. 400.0221, F.S., in order to establish new admission procedures for nursing homes. The bill requires that before admitting a resident, a nursing home facility must do all of the following:

- Provide the resident or the resident's legal representative with a printed copy of all of the following:
 - The residents' rights provided in s. 400.022, F.S. The resident and the resident's legal representative must also be orally informed of the resident's right under s. 400.022(1)(q), F.S., to select a personal physician and of the requirement that the personal physician be provided with the resident's records and consulted in providing any acute care to the resident and before ordering or prescribing any medication for the resident. The facility must document in the resident's care plan whether he or she selects a personal physician.
 - The most recent version of the Nursing Home Guide published under s. 400.191, F.S.
 - The AHCA's most recent inspection report of the facility.
 - The facility's resident grievance procedures developed pursuant to s. 400.1183, F.S.
 - The name and contact information of the medical director, managers, directors of nursing, care coordinators, and billing staff of the facility.

- Give the resident or the resident's legal representative a meaningful opportunity to discuss the information provided.
- Discuss with the resident or the resident's legal representative any dietary restrictions applicable to the resident. The facility must confirm that it can comply with such restrictions before accepting a resident. The facility must include the resident's dietary restrictions in his or her resident care plan.
- Discuss with the resident or the resident's legal representative any physical or cognitive impairments affecting the resident which require accommodations in facilities or services or require that care be provided by individuals appropriately trained to serve residents with such impairments. If the facility cannot make such accommodations or does not have adequately trained staff to provide the care the resident needs, the facility may not accept the resident until such accommodations and care can be provided. If the resident is admitted, the facility must document the required accommodations and care for the resident in his or her resident care plan.
- Ensure that it has a complete medical history for the resident, including, but not limited to, any prescribed medications, contraindicated medications or treatments, and allergies, which must be included in the resident care plan. The facility must inform the resident's legal representative, if any, and the resident's personal physician, if selected, before prescribing a new medication to the resident.

Additionally, the bill requires that immediately after a facility develops an initial resident care plan, the facility must provide the resident or the resident's legal representative with a copy of the resident care plan. A physician, a registered nurse, or the care coordinator responsible for the resident must discuss the resident care plan with the resident or the resident's legal representative to determine whether any information is missing or incorrect and whether the plan of care delineated in the resident care plan accounts for all of the concerns expressed by the resident, the resident's legal representative, or the resident's personal physician, if applicable, before admission, including, but not limited to, any dietary restrictions or needed accommodations or care specific to the resident.

The nursing home must also, at least quarterly, review the resident care plan to assess:

- The resident's needs;
- The type and frequency of services required to provide the necessary care for the resident to attain or maintain the highest practical physical, mental, and psychosocial well-being;
- The services that are provided to the resident, both within and outside of the facility, and whether such services are sufficient to meet the resident's needs; and
- The resident's service goals.

This assessment must be done by a physician or registered nurse, with participation from other facility staff and the resident or the resident's legal representative. If it is determined that any of the resident's needs are not being met, the resident care plan must be revised to promote the highest practical physical, mental, and psychosocial well-being of the resident.

Section 3 amends s. 400.141, F.S., to require that nursing home provide each resident with the opportunity to select a personal physician as specified in s. 400.022(1)(q), F.S. The resident's attending health care provider at the facility must consult with the resident's personal physician

in providing any acute care to the resident and before ordering or prescribing medication for the resident to ensure the medication is not medically contraindicated for the resident.

The attending health care provider must document any consultation with the resident's personal physician in the resident's records and the facility must provide the resident's personal physician with the resident's medical records and any records relating to the resident's care and treatment at the facility on a monthly basis. However, in the event of a change in the resident's condition, care, or treatment, the facility must inform and provide related records to the resident's personal physician within three days after such change.

If the facility conducts any test or examination on the resident, the facility must immediately forward the results of such test or examination to the resident's personal physician. The facility must continue to provide the resident's records to the resident's personal physician until the resident or the resident's representative notifies the facility that the transfer of such records is no longer requested.

The bill also requires a nursing home to maintain on its website the name and contact information for the medical director, managers, directors of nursing, care coordinators, administrator, and billing staff of the facility. The nursing home must also publicly display in the facility the names of the manager and director of nursing on duty each day or, if different, each shift.

Section 4 amends s. 400.145, F.S., to reduce the time allowed for nursing homes to provide records upon receipt of a written HIPAA compliant request from 14 working days to three working days if the request relates to a current resident and from 30 working days to 14 working days if the request relates to a former resident.

The bill also requires that if a current resident of the facility or his or her legal representative has selected a personal physician outside of the facility for the resident or has requested that any of the resident's health care providers outside of the facility be kept informed of the resident's care and treatment in the facility, the facility must provide such records on a monthly basis. However, in the event of a change in the resident's condition, care, or treatment, the facility must inform and provide related records to the resident's applicable health care providers within three days after such change.

If the facility conducts any test or examination on the resident, the facility must immediately forward the results of such test or examination to the resident's applicable health care providers. The facility must continue to provide the resident's records to the resident's health care providers as applicable until the resident or the resident's legal representative notifies the facility that the transfer of such records is no longer requested. The bill authorizes the AHCA to cite nursing for violating the newly added provisions.

Section 5 amends s. 400.23, F.S., to require each nursing home to post on its website the names of staff on duty and their affiliated staffing agency, if any; the average daily resident-to-staff ratio at the facility; the monthly staff turnover rate at the facility; and any fines imposed by the AHCA for noncompliance with the staffing standards specified in this paragraph. Currently,

facilities are only required to post the names of staff. The facility must post such information in a conspicuous location on its website in an easily accessible format.

Sections 6-12 amend multiple additional sections to make conforming and cross reference changes.

Section 13 provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1734 creates several new requirements for nursing homes which may have an indeterminate negative fiscal impact.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.022, 400.141, 400.145, 400.23, 400.172, 400.211, 408.822, 409.221, 430.80, 430.81, 651.118.

This bill creates section 400.0221 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.