

**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 Children, Families, and Elder Affairs Committee

BILL: SB 1102

INTRODUCER: Senator Fasano

SUBJECT: Residents of Assisted Living Facilities

DATE: March 4, 2010                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hansson	Walsh	CF	<b>Pre-meeting</b>
2.			JU	
3.			HA	
4.				
5.				
6.				

**I. Summary:**

This bill provides the grounds for relocating or terminating a resident from an assisted living facility, and expands the notice requirements provided to residents regarding a proposed relocation or termination of residency. Among the requirements, the notice must detail the specific reason for relocation or termination of residency, the effective date of the relocation or termination of residency, the location to which the resident is being relocated, and include a means for a resident to request the assistance of the local long-term care ombudsman council in reviewing the notice. The bill further specifies the procedure, timing, and signature requirements regarding the notice, and the review and response requirement of the local long-term care ombudsman council. This bill also:

- Corrects language related to assisted living facility licenses;
- Authorizes the Department of Elder Affairs to adopt rules;
- Requires a facility's grievance procedure to be in writing; and
- Provides that a document that waives a resident's right to receive notice of relocation or termination of residency is void.

This bill substantially amends the following sections of the Florida Statutes: 429.07, 429.28, and 429.31.

This bill creates section 429.285 of the Florida Statutes.

**II. Present Situation:**

**Assisted Living Facilities**

An Assisted Living Facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.<sup>1</sup> A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.<sup>2</sup> Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.<sup>3</sup> An ALF may be operated for profit or not-for-profit. ALFs range from small houses resembling private homes to larger developments with hundreds of residential beds.<sup>4</sup>

There are 2,808 assisted living facilities (ALFs) licensed by the Agency for Health Care Administration (AHCA) in this state.<sup>5</sup> In addition to a standard license, an ALF may have specialty licenses that authorize an ALF to provide limited nursing services (LNS), limited mental health (LMH) services, and extended congregate care (ECC) services.

An ALF holding an ECC license may provide additional nursing services and total assistance with personal care services. Residents living in ECC-licensed facilities may have higher impairment levels than those living in a standard ALF. Residents living in an ALF holding a LNS or LMH license must meet the same residency criteria as a standard-licensed ALF, but the ALF is authorized to provide limited additional services to the residents.

Assisted living facilities are currently licensed by the AHCA pursuant to part I of ch. 429, F.S., relating to assisted care communities and part II of ch. 408, F.S., relating to the general licensing provisions for health care facilities. ALFs are also subject to regulation under Rule Chapter 58A-5, Florida Administrative Code (F.A.C.). These rules are adopted by the Department of Elder Affairs (DOEA) in consultation with the AHCA, the Department of Children and Family Services (DCF), and the Department of Health (DOH).<sup>6</sup> An ALF must also comply with the Uniform Fire Safety Standards for ALFs contained in Rule Chapter 69A-40, F.A.C., and standards enforced by the DOH concerning food hygiene; physical plant sanitation; biomedical waste; and well, pool, or septic systems.<sup>7</sup>

Rules adopted to regulate ALFs are required to make distinct standards for facilities based upon the size of the facility; the types of care provided; the physical and mental capabilities and needs of the residents; the type, frequency, and amount of services and care offered; and the staffing characteristics of the facility. Separate and distinct standards for facilities with 16 or fewer beds are required, except for uniform fire-safety standards.<sup>8</sup>

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<sup>1</sup> s. 429.02(5), Florida Statutes (F.S.).

<sup>2</sup> s. 429.02(16), F.S.

<sup>3</sup> s. 429.02(1), F.S.

<sup>4</sup> Approximately 51 percent of the licensed ALFs have a bed capacity of 6 and under, representing approximately 10.5 percent of the 79,994 total ALF beds. Approximately 32 percent of the licensed ALFs have a bed capacity greater than 16, representing approximately 83 percent of the total beds. The Florida Senate Committee on Health Regulation, Interim Report 2010-118, "Assisted Living Facility Licensure Review" (October 2009) available at:

[http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-118hr.pdf](http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-118hr.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> s. 429.41(1), F.S.

<sup>7</sup> See Rule ch. 64E-12, ch. 64E-11, and 64E-16, F.A.C.

<sup>8</sup> s. 429.41(2), F.S.

### **Resident Bill of Rights**

Section 429.28, F.S., provides for an ALF resident's rights within the facility. If a resident no longer meets the criteria for continued residency, or the facility is unable to meet the resident's needs, as determined by the facility administrator or health care provider, the resident must be discharged in accordance with the Resident Bill of Rights.<sup>9</sup> Among these rights is the resident's right to at least 45 days' notice of relocation or termination of residency.

The notice requirement may be disregarded if the resident is certified by a physician to require an emergency relocation to a facility providing a more skilled level of care for medical reasons or the resident engages in a pattern of conduct that is harmful or offensive to other residents. In non-emergency situations, a resident's guardian is given 45 days' notice in cases where the resident has been determined mentally incapacitated.<sup>10</sup>

The ALF resident bill of rights also requires that each resident be able to present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. Each facility is required to establish a grievance procedure to facilitate the residents' exercise of this right. This right includes access to ombudsman volunteers and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.<sup>11</sup>

### **The Long-Term Care Ombudsman Program**

The Long-Term Care Ombudsman Program was created under the federal Older Americans Act, which was originally passed in 1965 and subsequently amended. The act directs states to create, among other provisions, an Office of the State Ombudsman. In 1993, the Florida Legislature created the Office of State Long-Term Care Ombudsman in the Department of Elderly Affairs.<sup>12</sup> Among other duties and responsibilities, the Office of State Long-Term Care Ombudsman is directed by law to identify, investigate and resolve complaints made by or on behalf of residents of long-term care facilities relating to actions or omissions by providers or representatives of providers of long-term care services, other public or private agencies, guardians, or representative payees that may adversely affect the health, safety, welfare, of rights of the residents.<sup>13</sup> The program, through its network of statewide volunteers, provides assistance to adults residing in long-term care facilities in an effort to secure and maintain the resident's quality of life.

## **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 429.07, F.S., to clarify language relating to the ECC and LNS licenses and cross-references the new section of the law created in this bill.

**Section 2.** Amends s. 429.28, F.S., to reform language within the Resident Bill of Rights that an ALF resident has the right to receive notice before being relocated or having their residency

<sup>9</sup> s. 429.28, F.S.

<sup>10</sup> s. 429.28(1)(k), F.S.

<sup>11</sup> s. 429.28(1)(l), F.S.

<sup>12</sup> Ch.93-177, Laws of Florida

<sup>13</sup> s. 400.0065, F.S.

terminated from the ALF. However, a notice is not required if the relocation or termination of residency is initiated by the resident or the resident's designee.

The bill adds a provision that admission to an ALF may not be based upon that condition that a resident waive their right to a notice of relocation or termination of residency. The bill makes void and unenforceable any document that waives or precludes the resident's right to a notice of relocation or termination of residency.

The bill also adds a provision that each ALF establish a *written* grievance procedure.

**Section 3.** Creates s. 429.285, F.S., to provide the grounds and notice requirements for relocating or terminating a resident from a facility.

The bill establishes that a resident may not be relocated or terminated from a facility unless:

- The resident's needs cannot be met in the facility and relocation is necessary for the resident's welfare;
- The resident no longer needs the services provided by the facility;
- The health and safety of other residents or facility staff are endangered;
- There is a documented pattern of harmful or offensive behavior by the resident;
- The resident has failed, after at least 30 days' notice, to provide payment for his or her stay in the facility; or
- The facility ceases to operate.

The bill requires the DOEA to develop a standard form to be used by ALFs to provide written notice to a resident of a proposed relocation or termination of residency. At a minimum, the notice must specify:

- The grounds for relocation or termination of residency and the specific facts relating to the resident which support those grounds;
- The effective date of the proposed relocation or termination and the name and address of the location to which the resident will be relocate;
- The right and procedure for requesting the local long-term care ombudsman council to review the proposed relocation or termination;
- All information required by state laws and rules; and
- Any other pertinent information.

The facility must provide a written notice of the proposed relocation or termination to the resident's legal guardian or representative by certified mail at least 45 days before the relocation or termination of the resident. If the resident has been adjudicated mentally incapacitated, the notice must be provided to the resident's legal guardian.

The bill requires the notice of relocation or termination to be signed by a facility administrator, or designee, when the relocation or termination of a resident is initiated by the facility. A copy of the notice must also be signed by the resident and placed in the resident's file. If the relocation or termination is for medical reasons, the notice must be signed by the resident's physician, or the physicians' written order for relocation or termination must be attached to the notice.

The bill requires a copy of the notice of relocation or termination of residency initiated by a facility to be submitted to the Office of State Long-Term Care Ombudsman within two business days after a resident's receipt of the notice. The bill allows a resident to request a review of the proposed relocation or termination by the local long-term care ombudsman council.

In the event of an emergency relocation or termination of residency for medical reasons or due to harmful or offensive conduct by the resident, the bill requires a notice to be provided to the resident's legal guardian or representative and to the Office of the State Long-Term Care Ombudsman within two business days after the emergency relocation or termination. The bill requires that the resident's file include documentation indicating who was contacted, whether contact was made in person or by telephone, and the date and time of the contact. The bill allows the written notice to be given within five business days after the emergency relocation or termination.

A facility that terminates the residency of an individual without providing written notice as required must be able to show good cause in a court of competent jurisdiction.

The bill authorizes the Department of Elder Affairs to adopt rules to administer the new provisions.

**Section 4.** Amends s. 429.31, F.S., to conform language related to the notice requirement upon the closing of a facility. When closing, a facility shall inform each resident or the next of kin, legal representative, or agency acting on the resident's behalf, of the fact and proposed time of discontinuance of operation. The bill instructs the facility to refer a resident to an appropriate social service agency for placement if the resident does not have a representative.

**Section 5.** Provides an effective date of July 1, 2010.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

ALFs may incur costs in providing the required notices.

**C. Government Sector Impact:**

The Department of Elder Affairs needs to develop a standard notice form for resident relocation or termination of residency, and may adopt rules to administer the new provisions.

**VI. Technical Deficiencies:**

Section 2 of the bill amends s. 429.28(k), F.S., to include in the Resident Bill of Rights that every resident shall receive notice before relocation or termination of residency, as provided in s. 429.285. However, while 429.285(3) provides that notice shall be given to the resident's legal guardian or representative, if known, at least 45 days before the relocation of a resident or termination of residency, it does not provide that the resident receive notice.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

None.

**B. Amendments:**

None.