

By Senator Fasano

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1 A bill to be entitled
2 An act relating to residents of assisted living
3 facilities; amending s. 429.07, F.S.; conforming
4 provisions to changes made by the act; amending s.
5 429.28, F.S.; revising provisions relating to a
6 resident's right to receive notice before being
7 relocated or terminated from a facility; providing
8 that a document that waives such right is void;
9 requiring a facility's grievance procedure to be in
10 writing; creating s. 429.285, F.S.; providing the
11 grounds and notice requirements for relocating or
12 terminating a resident from a facility; authorizing
13 the Department of Elderly Affairs to adopt rules;
14 amending s. 429.31, F.S.; conforming provisions to
15 changes made by the act; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Paragraphs (b) and (c) of subsection (3) of
20 section 429.07, Florida Statutes, are amended to read:

21 429.07 License required; fee.—

22 (3) In addition to the requirements of s. 408.806, each
23 license granted by the agency must state the type of care for
24 which the license is granted. Licenses shall be issued for one
25 or more of the following categories of care: standard, extended
26 congregate care, limited nursing services, or limited mental
27 health.

28 (b) An extended congregate care license shall be issued to
29 facilities providing, directly or through contract, services

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30 beyond those authorized in paragraph (a), including services
31 performed by persons licensed under ~~acts performed pursuant to~~
32 ~~part I of chapter 464 by persons licensed thereunder,~~ and
33 supportive services, as defined by rule, to persons who would
34 otherwise ~~would~~ be disqualified from continued residence in a
35 facility licensed under this part.

36 1. In order for extended congregate care services to be
37 provided in a facility licensed under this part, the agency must
38 first determine that all requirements established in law and
39 rule are met and must specifically designate, on the facility's
40 license, that such services may be provided and whether the
41 designation applies to all or part of a facility. Such
42 designation may be made at the time of initial licensure or
43 relicensure, or upon request in writing by a licensee under this
44 part and part II of chapter 408. Notification of approval or
45 denial of the ~~such~~ request shall be made in accordance with part
46 II of chapter 408. Existing facilities qualifying to provide
47 extended congregate care services must have maintained a
48 standard license and may not have been subject to administrative
49 sanctions during the previous 2 years, or since initial
50 licensure if the facility has been licensed for less than 2
51 years, for any of the following reasons:

52 a. A class I or class II violation;

53 b. Three or more repeat or recurring class III violations
54 of identical or similar resident care standards as specified in
55 rule from which a pattern of noncompliance is found by the
56 agency;

57 c. Three or more class III violations that were not
58 corrected in accordance with the corrective action plan approved

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59 by the agency;

60 d. Violation of resident care standards resulting in a
61 requirement to employ the services of a consultant pharmacist or
62 consultant dietitian;

63 e. Denial, suspension, or revocation of a license for
64 another facility under this part in which the applicant for an
65 extended congregate care license has at least 25 percent
66 ownership interest; or

67 f. Imposition of a moratorium pursuant to this part or part
68 II of chapter 408 or initiation of injunctive proceedings.

69 2. Facilities that are licensed to provide extended
70 congregate care services shall maintain a written progress
71 report on each person who receives such services, ~~which report~~
72 describes the type, amount, duration, scope, and outcome of
73 services that are rendered and the general status of the
74 resident's health. A registered nurse, or appropriate designee,
75 representing the agency shall visit such facilities at least
76 quarterly to monitor residents who are receiving extended
77 congregate care services and to determine if the facility is in
78 compliance with this part, part II of chapter 408, and rules
79 that relate to extended congregate care. One of these visits may
80 be in conjunction with the regular survey. The monitoring visits
81 may be provided through contractual arrangements with
82 appropriate community agencies. A registered nurse shall serve
83 as part of the team that inspects the ~~such~~ facility. The agency
84 may waive one of the required yearly monitoring visits for a
85 facility that has been licensed for at least 24 months to
86 provide extended congregate care services, if, during the
87 inspection, the registered nurse determines that extended

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88 congregate care services are being provided appropriately, and
89 if the facility has no class I or class II violations and no
90 uncorrected class III violations. Before such decision is made,
91 the agency shall consult with the long-term care ombudsman
92 council for the area in which the facility is located to
93 determine if any complaints have been made and substantiated
94 about the quality of services or care. The agency may not waive
95 one of the required yearly monitoring visits if complaints have
96 been made and substantiated.

97 3. Facilities that are licensed to provide extended
98 congregate care services shall:

99 a. Demonstrate the capability to meet unanticipated
100 resident service needs.

101 b. Offer a physical environment that promotes a homelike
102 setting, provides for resident privacy, promotes resident
103 independence, and allows sufficient congregate space as defined
104 by rule.

105 c. Have sufficient staff available, taking into account the
106 physical plant and firesafety features of the building, to
107 assist with the evacuation of residents in an emergency,~~as~~
108 necessary.

109 d. Adopt and follow policies and procedures that maximize
110 resident independence, dignity, choice, and decisionmaking to
111 permit residents to age in place ~~to the extent possible~~, so that
112 moves due to changes in functional status are minimized or
113 avoided.

114 e. Allow residents or, if applicable, a resident's
115 representative, designee, surrogate, guardian, or attorney in
116 fact to make a variety of personal choices, participate in

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117 developing service plans, and share responsibility in
118 decisionmaking.

119 f. Implement the concept of managed risk.

120 g. Provide, ~~either~~ directly or through contract, the
121 services of a person licensed pursuant to part I of chapter 464.

122 h. In addition to the training mandated in s. 429.52,
123 provide specialized training as defined by rule for facility
124 staff.

125 4. Facilities licensed to provide extended congregate care
126 services are exempt from the criteria for continued residency ~~as~~
127 set forth in rules adopted under s. 429.41. Facilities so
128 licensed shall adopt their own requirements within guidelines
129 for continued residency set forth by rule. However, such
130 facilities may not serve residents who require 24-hour nursing
131 supervision. Facilities licensed to provide extended congregate
132 care services shall provide each resident with a written copy of
133 facility policies governing admission and retention.

134 5. The primary purpose of extended congregate care services
135 is to allow residents, as they become more impaired, the option
136 of remaining in a familiar setting from which they would
137 otherwise be disqualified for continued residency. A facility
138 licensed to provide extended congregate care services may also
139 admit an individual who exceeds the admission criteria for a
140 facility with a standard license, if the individual is
141 determined appropriate for admission to the extended congregate
142 care facility.

143 6. Before admission of an individual to a facility licensed
144 to provide extended congregate care services, the individual
145 must undergo a medical examination as provided in s. 429.26(4)

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146 and the facility must develop a preliminary service plan for the
147 individual.

148 7. If ~~When~~ a facility can no longer provide or arrange for
149 services in accordance with the resident's service plan and
150 needs and the facility's policy, the facility shall make
151 arrangements for relocating the person in accordance with s.
152 429.285 ~~s. 429.28(1)(k)~~.

153 8. Failure to provide extended congregate care services may
154 result in denial of extended congregate care license renewal.

155 9. By ~~No later than~~ January 1 of each year, the department,
156 in consultation with the agency, shall prepare and submit to the
157 Governor, the President of the Senate, the Speaker of the House
158 of Representatives, and the chairs of appropriate legislative
159 committees, a report on the status of, and recommendations
160 related to, extended congregate care services. The status report
161 must include, but need not be limited to, the following
162 information:

163 a. A description of the facilities licensed to provide such
164 services, including total number of beds licensed under this
165 part.

166 b. The number and characteristics of residents receiving
167 such services.

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

170 d. An analysis of deficiencies cited during licensure
171 inspections.

172 e. The number of residents who required extended congregate
173 care services at admission and the source of admission.

174 f. Recommendations for statutory or regulatory changes.

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175 g. The availability of extended congregate care to state
176 clients residing in facilities licensed under this part and in
177 need of additional services, and recommendations for
178 appropriations to subsidize extended congregate care services
179 for such persons.

180 h. Such other information as the department considers
181 appropriate.

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

185 1. In order for limited nursing services to be provided in
186 a facility licensed under this part, the agency must first
187 determine that all requirements established in law and rule are
188 met and must specifically designate, on the facility's license,
189 that such services may be provided. Such designation may be made
190 at the time of initial licensure or relicensure, or upon request
191 in writing by a licensee under this part and part II of chapter
192 408. Notification of approval or denial of such request shall be
193 made in accordance with part II of chapter 408. Existing
194 facilities qualifying to provide limited nursing services shall
195 have maintained a standard license and may not have been subject
196 to administrative sanctions that affect the health, safety, and
197 welfare of residents for the previous 2 years or since initial
198 licensure if the facility has been licensed for less than 2
199 years.

200 2. Facilities that are licensed to provide limited nursing
201 services shall maintain a written progress report on each person
202 who receives ~~such~~ nursing services, ~~which report~~ describes the
203 type, amount, duration, scope, and outcome of services that are

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204 rendered and the general status of the resident's health. A
205 registered nurse representing the agency shall visit such
206 facilities at least twice a year to monitor residents who are
207 receiving limited nursing services and to determine if the
208 facility is in compliance with applicable provisions of this
209 part, part II of chapter 408, and related rules. The monitoring
210 visits may be provided through contractual arrangements with
211 appropriate community agencies. A registered nurse shall also
212 serve as part of the team that inspects the ~~such~~ facility.

213 3. A person who receives limited nursing services ~~under~~
214 ~~this part~~ must meet the admission criteria established by the
215 agency for assisted living facilities. If ~~When~~ a resident no
216 longer meets the admission criteria for a facility licensed
217 under this part, arrangements for relocating the person shall be
218 made in accordance with s. 429.285 ~~s. 429.28(1)(k)~~, unless the
219 facility is also licensed to provide extended congregate care
220 services.

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

223 429.28 Resident bill of rights.—

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

229 (k) Receive notice, as provided in s. 429.285, before at
230 ~~least 45 days' notice of~~ relocation or termination of residency
231 from the facility ~~unless, for medical reasons, the resident is~~
232 ~~certified by a physician to require an emergency relocation to a~~

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233 ~~facility providing a more skilled level of care or the resident~~
234 ~~engages in a pattern of conduct that is harmful or offensive to~~
235 ~~other residents. Such notice is not required if the relocation~~
236 ~~or termination of residency is initiated by the resident or the~~
237 ~~resident's designee. Admission to a facility may not be~~
238 ~~conditioned upon a waiver of this right, and any provision in a~~
239 ~~document which purports to waive or preclude such right is void~~
240 ~~and unenforceable. In the case of a resident who has been~~
241 ~~adjudicated mentally incapacitated, the guardian shall be given~~
242 ~~at least 45 days' notice of a nonemergency relocation or~~
243 ~~residency termination. Reasons for relocation shall be set forth~~
244 ~~in writing. In order for a facility to terminate the residency~~
245 ~~of an individual without notice as provided herein, the facility~~
246 ~~shall show good cause in a court of competent jurisdiction.~~

247 (1) Present grievances and recommend changes in policies,
248 procedures, and services to the staff of the facility, governing
249 officials, or any other person without restraint, interference,
250 coercion, discrimination, or reprisal. Each facility shall
251 establish a written grievance procedure to facilitate the
252 residents' exercise of this right. This right includes access to
253 ombudsman volunteers and advocates and the right to be a member
254 of, to be active in, and to associate with advocacy or special
255 interest groups.

256 Section 3. Section 429.285, Florida Statutes, is created to
257 read:

258 429.285 Relocation or termination of residency.-

259 (1) A resident may not be relocated or terminated from a
260 facility unless:

261 (a) The resident's needs cannot be met in the facility and

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262 the relocation or termination is necessary for the resident's
263 welfare;

264 (b) The resident no longer needs the services provided by
265 the facility;

266 (c) The health and safety of other residents or facility
267 staff are endangered;

268 (d) There is a documented pattern of harmful or offensive
269 behavior by the resident;

270 (e) The resident has failed, after at least 30 days'
271 notice, to provide payment for his or her stay in the facility;
272 or

273 (f) The facility ceases to operate.

274 (2) The department shall develop a standard form to be used
275 by a facility to provide written notice to a resident of a
276 proposed relocation or termination of residency. At a minimum,
277 the notice must specify:

278 (a) The grounds authorized under subsection (1) for
279 relocation or termination of residency and the specific facts
280 relating to the resident which support those grounds.

281 (b) The effective date of the proposed relocation or
282 termination and the name and address of the location to which
283 the resident would be relocated.

284 (c) The right and procedure for requesting the local long-
285 term care ombudsman council to review the proposed relocation or
286 termination.

287 (d) All information required by state laws and rules.

288 (e) Any other pertinent information.

289 (3) At least 45 days before the relocation or termination
290 of the resident, the facility must provide by certified mail

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291 written notice of the proposed relocation or termination to the
292 resident's legal guardian or representative, if known. If the
293 resident has been adjudicated mentally incapacitated, the notice
294 must be provided to the resident's legal guardian.

295 (4) If the relocation or termination of a resident is
296 initiated by the facility, the administrator or designee must
297 sign the written notice of relocation or termination. A copy of
298 the notice must also be signed by the resident and placed in the
299 resident's file. If the relocation or termination is for medical
300 reasons, the notice must be signed by the resident's physician,
301 or the physician's written order for relocation or termination
302 must be attached to the notice.

303 (5) A copy of a notice of relocation or termination of
304 residency initiated by a facility must be submitted to the
305 Office of State Long-Term Care Ombudsman by mail, electronic
306 mail, or facsimile within 2 business days after a resident's
307 receipt of the notice to relocate or terminate residency. A
308 resident may request a review of the proposed relocation or
309 termination by the local long-term care ombudsman council.

310 (6) In the event of an emergency relocation or termination
311 of residency for medical reasons, as certified by a physician,
312 or due to harmful or offensive conduct by the resident, notice
313 must be provided to the resident's legal guardian or
314 representative, if known, and the Office of the State Long-Term
315 Ombudsman, by telephone or in person as soon as practicable, but
316 within 2 business days after the emergency relocation or
317 termination. The resident's file must include documentation
318 indicating who was contacted, whether the contact was by
319 telephone or in person, and the date and time of the contact.

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320 The written notice described in subsection (2) shall be given
321 before the relocation or termination of residency if possible,
322 but within 5 business days after the emergency relocation or
323 termination.

324 (7) A facility that terminates the residency of an
325 individual without providing written notice as required under
326 this section must be able to show good cause in a court of
327 competent jurisdiction.

328 (8) The department may adopt rules to administer this
329 section.

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

332 429.31 Closing of facility; notice; penalty.—

333 (1) In addition to the requirements of part II of chapter
334 408, the facility shall inform each resident or the next of kin,
335 legal representative, or agency acting on the ~~each~~ resident's
336 behalf, of the fact and the proposed time of discontinuance of
337 operation in accordance with s. 429.285, ~~following the~~
338 ~~notification requirements provided in s. 429.28(1)(k).~~ If ~~In the~~
339 ~~event~~ a resident does not have anyone ~~has no person~~ to represent
340 him or her, the facility shall refer the resident ~~be responsible~~
341 ~~for referral~~ to an appropriate social service agency for
342 placement.

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