
CONSTITUTION PROPOSAL ANALYSIS

PROPOSAL: 0088

SPONSOR: Commissioner Heuchan

SUBJECT: Art. I, Creating a New Section to Establish Certain Resident's Rights of Assisted Living Facilities and Nursing Homes

REFERENCES:

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I. SUMMARY

Elder law attorneys support changes that would improve the general quality of care for residents in all long term care facilities (assisted living facilities and nursing homes); enhances and increases the protections of vulnerable adults wherever they reside; and, increase and enhance the rights of residents in any long term care facility. Proposal 88 does all of these things.

Proposal 0088 by Commissioner Heuchan adds a new section in Article I of the Florida Constitution. This new section establishes certain rights for residents of assisted living facilities and nursing home facilities in this state. While some of these rights are provided under Florida or federal statutes or rules, resident rights and protections are being eroded by relaxed inspection and administrative review of facility actions, lack of legislative attention to the changing environment of assisted living facilities and nursing homes, as well as unfair trade practices by large out-of-state corporations who look at Florida's vulnerable, aging population as a growing profit center without regard to the care provided. According to AARP, 20% of residents in assisted living and nursing home facilities are subject to abuse, neglect, and exploitation. With Florida having one of the largest nursing home and assisted living populations in the nation, this proposal attempts to protect Florida's most vulnerable citizens from abuse, neglect and exploitation in facilities.

Because Proposal 0088 creates a new section in Article I of the Florida Constitution, there is no case law in Florida on this section. However, Florida residents' rights laws address basic rights of Florida assisted living and nursing home residents. The statutes with Florida's basic

residents' rights are attached to this analysis as Appendix A and B and are discussed below. There are cases in Florida under those laws.

Federal law also provides a basic framework of nursing home regulation, but provides no independent cause of action for nursing home residents and are not robust as Florida's laws.

II. CURRENT SITUATION

To put the life of a nursing home or assisted living resident in perspective: Imagine having your life reduced to what fits in a medical file and a shoe box. Residents have lost so much physical ability they need assistance getting dressed and going to the bathroom or managing daily decisions and affairs. All suffer from physical impairments that limit their independence or ability to defend themselves. Many suffer from cognitive impairments limiting their ability to remember, reason, or understand. All have had their lives' accumulation of belongings reduced what can fit on a few small shelves and in a shoe box. These issues create a vulnerable population that is subject to abuse, neglect, or exploitation by the people charged with providing their care.

According to the Census Bureau, twenty percent (20%) of Florida's population is over age 65. That percentage grows larger each year. Florida has the highest percentage of elders in the United States. Because of Florida's demographics, more of our population is likely to reside in a nursing home or assisted living facility.

According to the Agency for Health Care Administration (AHCA), there are 683 licensed nursing homes and 3,089 licensed assisted living facilities in Florida. The Florida Health Care Association reports there are more than 83,500 nursing home beds in Florida. Per the Kaiser Family Foundation, the total number of Florida residents in nursing homes at any one time is approximately 73,000. There are nearly 100,000 individuals residing in assisted living facilities. These statistics do not include individuals who receive long term care services in group homes or family care homes.

While nursing homes provide care to the sickest and frailest Floridians, the use of assisted living facilities as a provider of long term care services is growing exponentially. There are currently more than four times the number of assisted living facilities than nursing homes in Florida. There are many reasons for this, including the idea that assisted living facilities are less institutional than nursing homes and the cost of assisted living care is less than a nursing home. Florida Health Care Association estimates the average cost of a semi-private room in a nursing home is \$87,600.00 a year, while a semi-private assisted living facility room is \$37,800.00 a year. The costs of assisted living care increases based on the level of care an individual needs.

According to the Florida Health Care Association, the long term care industry makes up nearly 3% of Florida's economy. It provides nearly 26,000 jobs and generates nearly \$10 billion in labor income in Florida. Protection of those who reside in nursing homes and assisted living

facilities is vital to Florida's national reputation as a retiree friendly state and to our state's economic health.

A. Current Florida Law

1. Nursing Homes

Fla. Stat. 400.022 Residents' Rights (Appendix A) establishes the specific rights that must be provided to all residents in a nursing home. These facilities are to be treated as the residents' homes. However, there are numerous cases and news reports (too numerous to include in this analysis) that illustrate the routine violation of these rights by facilities, administrators, and employees.

One of the most alarming recent cases illustrating the violation of these rights is the death of twelve (12) residents in the Rehabilitation Center at Hollywood Hills, Florida, a nursing facility with a history of violations. Twelve (12) residents died and many more were severely injured because the failed to provide adequate care and safety for the more than 120 residents under its care. After the incident, the Florida Governor took emergency action to attempt to prevent that particular harm to nursing home and assisted living facility residents in the future.

In addition to this story, a simple Google search for nursing home abuse will result in stories of nursing home employees and administrators in Florida and throughout the nation videoing themselves assaulting and humiliating vulnerable residents, allowing residents to drown in their beds during floods, allowing residents to die in facilities due to the facilities' lack of preparedness for any natural disaster or severe weather, illegally disclosing patient information, stealing the meager belongings of residents, leaving residents in severely unsanitary conditions, calling residents derogatory names, ignoring the abuse by employees, stealing medication from residents, dismissing residents' claims of sexual assault despite evidence because the residents had memory problems, allowing residents to go without adequate medical care, allowing residents to attack one another, doctoring records to cover up systemic abuse in facilities, and even neglecting residents to the point they were severely bitten by ants and had maggot infestations in wounds. This parade of grim and tragic examples illustrates the need for greater protections for nursing home residents.

While Florida has statutes and rules regarding the treatment of residents in nursing homes, a review of inspection reports available through the federal Medicare compare website (which were recently removed from the Agency for Health Care Administration's consumer on nursing homes and assisted living facilities) show that sanctions for violations are minimal until the behavior is so egregious that its horrors can no longer be ignored. This means numerous residents can individually be harmed impunity.

Residents who might sue are often subject to pre-suit binding arbitration clauses hidden in 70-90 pages of admission documents that residents or their legal representatives are being asked to sign in a crisis and without being given time to review them or ask questions. Pre-dispute

binding arbitration clauses further erode the resident protections set forth in 400.022 and hide harm by facilities by making it prohibitively expensive for patients to take legal action against a facility. Per the Florida Health Care Association, approximately 60% of all nursing home residents are Medicaid recipients, meaning they have less than \$2000.00 in assets and all their income goes to pay their patient responsibility to the nursing home. Arbitration requires a resident to pay part of the arbitration fees which can be as much as \$600 an hour per arbitrator. Often arbitration clauses call for more than one arbitrator. A resident with less than \$2,000.00 cannot afford arbitration; therefore is unable to seek redress for the damages suffered by a facility that violates their rights.

Couple the exorbitant costs of arbitration for nursing home residents who have been harmed with the practice of nursing homes to break up their facility's ownership and labor into a complex, undisclosed number of legal entities to make sure that no money or assets are available to satisfy damages for even the most egregious of violations and you have a situation where harmed residents have no recourse. These residents must rely on the Long Term Care Ombudsman, state inspectors, and the state sanction system to resolve violations of their rights or the harm they suffer.

Federal law does little to stop these violations outside the mandated state inspections and associated sanctions mandated under federal law or loss of Medicare and Medicaid funding in the most egregious situations.

2. Assisted Living Facilities

Fla. Stat. 429.28 Resident Bill of Rights (Appendix B) establishes the rights that must be provided to all residents of Florida assisted living facilities and provides the only mechanism for residents to vindicate their rights when injury or wrongful death occurs in an Assisted Living Facility ("ALF"), unless the resident is subject to a pre-dispute binding arbitration clause in the ALF's admission contract. ALFs are to be treated as the residents' homes where they are to be provided with a safe living environment free from abuse or neglect and be treated with respect. However, there are numerous cases and news reports (too numerous to include in this analysis) that illustrate the routine violation of these rights by ALFs, administrators, and employees.

A Google search of ALF abuse and neglect results in innumerable accounts of residents eloping from secure ALFs due to lack of supervision and being seriously injured or killed, theft from residents, physical assaults on residents, at least one story of an alligator attacking a cognitively impaired resident, residents being refused or deprived of services they have paid for, uses of garden hoses or other similarly depraved methods to clean residents after a toileting accident, administrators exploiting elderly residents, a resident being severely injured after slipping in a pool of his own urine, employees with criminal backgrounds involving violence being employed by ALFs, spoiled food being fed to impaired residents, food storage being infested with vermin, residents being deprived of appropriate medical attention, residents being called derogatory names, doctored records to hide abuse, theft of resident identities, residents being left in severely soiled conditions, and residents being injured by the lack of sanitary conditions. This

parade of grim and tragic examples illustrates the need for greater protections for assisted living facility residents.

While Florida has statutes and rules regulating the treatment of ALF residents, a review of inspection reports available through the ACHA shows that sanctions for violations are minimal unless the behavior is so egregious its horrors cannot be ignored or it results in inexplicable death. This means that numerous residents can individually be harmed with little or no punishment.

Residents who might sue have often signed pre-suit binding arbitration clauses hidden in the dozens of pages of contracts and forms they or their legal representatives are asked to sign at admission. Most are being asked to sign these documents without being given time to review them or ask questions. Pre-dispute binding arbitration clauses further erode ALF resident protections and hide harm by facilities by making it prohibitively expensive for patients to take legal action against a facility. Residents at ALFs tend to be private pay residents, paying for their care from rapidly dwindling limited resources. However, more and more residents in ALFs are Medicaid recipients due to Florida Medicaid Managed Care Long Term Care Waiver. These residents like the majority of nursing home residents have less than \$2000.00 in assets and all their income going to pay the ALF room and board charges.

Arbitration clauses require a resident to pay part of the arbitration fees which can be as much as \$600 an hour per arbitrator. Often arbitration clauses call for more than one arbitrator. A resident with limited resources to pay for expensive care cannot afford arbitration; therefore is unable to seek redress for the damages suffered by a facility that violates their rights. These residents must rely on the Long Term Care Ombudsman, state inspectors, and the state sanction system to resolve violations of their rights or the harm they suffer.

There are no federal laws that regulate assisted living facilities, even those that receive Medicaid funding through Florida's Medicaid Managed Care Program.

B. The Constitutional Provision and Its Predecessors.

The Florida Constitution has no similar provisions addressing the issues in Proposal 0088.

Article I, Section 2, of the Florida Constitution currently provides:

Basic rights. – All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability. (Emphasis added.)

Article I, Section 2, is essentially Florida’s “Equal Protection” clause and is more extensive than the language in the U.S. Constitution. The Florida Constitution recognizes a right to “the right to enjoy and defend life and liberty, to pursue happiness.”

Proposal 0088 creates a new section in Article I – Declaration of Rights of the State Constitution to establish rights for residents of assisted living facilities and nursing homes. The language of this proposal is in Appendix C. It would expand Florida’s “equal protection” specifically to residents of ALFs and nursing homes and specifically define what those rights mean in the context of individuals who are vulnerable and dependent upon others for their care, safety, and dignity.

Proposal 0088 makes Constitutional rights of those rights ALF and nursing home residents are to be given under Florida statute--giving those rights the power and priority of the Constitutional. It specifically ensures no resident of a facility can be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the Constitution of the State of Florida, or the Constitution of the United States as a resident of a facility; every resident shall have the right to live in a safe and decent living environment, free from abuse and neglect; be treated with consideration, respect and with due recognition of personal dignity, individuality, and the need for privacy.

This new section would demonstrate Florida’s commitment to protecting Florida’s most vulnerable citizens. It ensures Florida takes the safety, dignity, respect, and care for our aging population seriously. It ensures there is recourse for residents against those who harm them when they have assumed the duty to safely care for them. It would also remove them as a target for unscrupulous, out of state corporations who see Florida’s growing aging population as a profit center to be exploited. Good public policy dictates implementation of the parameters set forth for in Proposal 0088 to protect the growing vulnerable population that is highly dependent on nursing homes and ALFs for their health, welfare, and safety.

III. EFFECT OF PROPOSED CHANGES

The proposed new section to Article I, Declaration of Rights, Nursing Home and Assisted Living Facility Residents’ Bill of Rights, specifically addresses the need in Florida for protections guaranteed to residents who must reside in ALFs or nursing homes for their health and safety. This proposal narrowly addresses the constitutional protection of a person’s rights to be free of abuse, negligence, neglect, exploitation; to be treated with dignity and respect; violations of residents’ rights by such facilities; and the protection of a resident’s civil, legal, and Constitutional rights while residing in an ALF or nursing home.

IV. FISCAL IMPACT

A. Government Fiscal Impact

Proposal 0088 should have a neutral fiscal impact on the state since the state should already have the administrative mechanisms to inspect nursing homes and ALFs, accept resident complaints about these facilities, review residents' complaints, and sanction offending facilities.

Proposal 0088 does not require facilities to provide additional care that is not already required by state licensure requirements or patient care rules. Therefore, it should not increase costs of care to the state for Medicaid providers. Medicaid payments are set by the state for nursing homes based on a formula reviewed each year and by private Medicaid Managed Care Organizations for assisted living facilities based on the quality of care provided. The Long Term Care Ombudsman, required by federal law, is already in place, staffed by hundreds of volunteers throughout the state who are already trained and already assist state government with complaints against ALFs and nursing homes. Proposal 088 merely makes Constitutional rights out of the rights the Ombudsman office already investigates.

B. Private Sector Fiscal Impact

Proposal 0088 should not increase the costs of care for Florida Residents because it does not require any additional care for residents not already required pursuant to a facility's licensure or patient care rules. Many ALFs charge for care based on a particular resident's needs, also referred to as "level of care"—charging more for more care. Nursing homes already set private pay rate based on costs of care they provide. In both nursing homes and ALFs, costs of care generally go up each year. This proposal should have no impact on those costs.

Proposal 0088 could have a positive impact on the state's economy by bolstering the reputation of Florida's long term care industry. Many elders in our state do not have family members nearby to ensure the facility in which they live is not abusing, neglecting or exploiting them. When faced with a choice between an average assisted living facility or nursing home in Florida or in another state near a child, the child will choose the one near the child for the protection of the aging parent. This is due to prevalence of violations of residents' rights that can be seen with a simple Google search. Proposal 0088 would heighten the protection of Florida's ALF and nursing home populations and may be a deciding factor in keeping a parent in Florida versus moving to another state.

C. Federal Government vs. State Government Impact

Federal law merely provides a framework for the regulation of nursing homes, which the state uses for regulation of its nursing homes. It does not regulate ALFs or provide individual, private causes of action for residents of nursing homes. The federal government plays a very limited role in Florida's long term care industry and it is mostly through Medicare and Medicaid payments. Proposal 0088 does nothing to change or impair this dynamic.

Appendix A – Fla. Stat. 400.022

400.022 Residents' rights.—

(1) All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident the following:

(a) The right to civil and religious liberties, including knowledge of available choices and the right to independent personal decision, which will not be infringed upon, and the right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these rights.

(b) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends. Unless otherwise indicated in the resident care plan, the licensee shall, with the consent of the resident and in accordance with policies approved by the agency, permit recognized volunteer groups, representatives of community-based legal, social, mental health, and leisure programs, and members of the clergy access to the facility during visiting hours for the purpose of visiting with and providing services to any resident.

(c) 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 following individuals must be permitted immediate access to the resident:

1. Any representative of the federal or state government, including, but not limited to, representatives of the Department of Children and Families, the Department of Health, the Agency for Health Care Administration, the Office of the Attorney General, and the Department of Elderly Affairs; any law enforcement officer; any representative of the State Long-Term Care Ombudsman Program; and the resident's individual physician.
2. Subject to the resident's right to deny or withdraw consent, immediate family or other relatives of the resident.

The facility must allow representatives of the State Long-Term Care Ombudsman Program to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(d) 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. This right includes access to ombudsmen and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups. The right also includes the right to prompt efforts by the facility to resolve resident grievances, including grievances with respect to the behavior of other residents.

(e) 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.

- (f) The right to participate in social, religious, and community activities that do not interfere with the rights of other residents.
- (g) 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.
- (h) 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. A quarterly accounting of any transactions made on behalf of the resident shall be furnished to the resident or the person responsible for the resident. The facility may not require a resident to deposit personal funds with the facility. However, upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as follows:
1. The facility must establish and maintain a system that ensures a full, complete, and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.
 2. The accounting system established and maintained by the facility must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.
 3. A quarterly accounting of any transaction made on behalf of the resident shall be furnished to the resident or the person responsible for the resident.
 4. Upon the death of a resident with personal funds deposited with the facility, the facility must convey within 30 days the resident's funds, including interest, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate, or, if a personal representative has not been appointed within 30 days, to the resident's spouse or adult next of kin named in the beneficiary designation form provided for in [s. 400.162\(6\)](#).
 5. The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Title XVIII or Title XIX of the Social Security Act.
- (i) 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, including any charges for services not covered under Title XVIII or Title XIX of the Social Security Act or not covered by the basic per diem rates and of bed reservation and refund policies of the facility.
- (j) 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.
- (k) 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. When the resident refuses medication or treatment, the nursing home facility must notify the resident or the resident's legal representative of the consequences of such decision and must document the resident's decision in his or her medical record. The nursing home facility must continue to provide other services the resident agrees to in accordance with the resident's care plan.
- (l) 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.

(m) 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. Privacy of the resident's body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. Residents' personal and medical records shall be confidential and exempt from the provisions of s. [119.07\(1\)](#).

(n) 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.

(o) 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. In case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and, in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter. Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety.

(p) 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, except in the case of an emergency as determined by a licensed professional on the staff of the nursing home, or in the case of conflicting rules and regulations which govern Title XVIII or Title XIX of the Social Security Act. For nonpayment of a bill for care received, the resident shall be given 30 days' advance notice. A licensee certified to provide services under Title XIX of the Social Security Act may not transfer or discharge a resident solely because the source of payment for care changes. Admission to a nursing home facility operated by a licensee certified to provide services under Title XIX of the Social Security Act may not be conditioned upon a waiver of such right, and any document or provision in a document which purports to waive or preclude such right is void and unenforceable. Any licensee certified to provide services under Title XIX of the Social Security Act that obtains or attempts to obtain such a waiver from a resident or potential resident shall be construed to have violated the resident's rights as established herein and is subject to disciplinary action as provided in subsection (3). The resident and the family or representative of the resident shall be consulted in choosing another facility.

(q) 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, at the resident's own expense or through Title XIX of the Social Security Act; 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. If a resident chooses to use a community pharmacy and the facility in which the resident resides uses a unit-dose system, the pharmacy selected by the resident shall be one that provides a compatible unit-dose system, provides service delivery, and stocks the drugs normally used by long-term care residents. If a resident chooses to use a community pharmacy and the facility in which the resident resides does not use a unit-dose system, the pharmacy selected by the resident shall be one that provides service delivery and stocks the drugs normally used by long-term care residents.

(r) 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. If clothing is provided to the resident by the licensee, it shall be of reasonable fit.

- (s) 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.
- (t) The right to receive notice before the room of the resident in the facility is changed.
- (u) The right to be informed of the bed reservation policy for a hospitalization. The nursing home shall inform a private-pay resident and his or her responsible party that his or her bed will be reserved for any single hospitalization for a period up to 30 days provided the nursing home receives reimbursement. Any resident who is a recipient of assistance under Title XIX of the Social Security Act, or the resident's designee or legal representative, shall be informed by the licensee that his or her bed will be reserved for any single hospitalization for the length of time for which Title XIX reimbursement is available, up to 15 days; but that the bed will not be reserved if it is medically determined by the agency that the resident will not need it or will not be able to return to the nursing home, or if the agency determines that the nursing home's occupancy rate ensures the availability of a bed for the resident. Notice shall be provided within 24 hours of the hospitalization.
- (v) 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.
- (2) The licensee for each nursing home shall orally inform the resident of the resident's rights and provide a copy of the statement required by subsection (1) to each resident or the resident's legal representative at or before the resident's admission to a facility. The licensee shall provide a copy of the resident's rights to each staff member of the facility. Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section. The written statement of rights must include a statement that a resident may file a complaint with the agency 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.
- (3) Any violation of the resident's rights set forth in this section constitutes grounds for action by the agency under s. [400.102](#), s. [400.121](#), or part II of chapter 408. 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.
- (4) 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 shall have immunity from any criminal or civil liability therefor, unless that person has 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.

Appendix B – 429.28

429.28 Resident bill of rights.—

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

(a) Live in a safe and decent living environment, free from abuse and neglect.

(b) Be treated with consideration and respect and with due recognition of personal dignity, individuality, and the need for privacy.

(c) Retain and use his or her own clothes and other personal property in his or her immediate living quarters, so as to maintain individuality and personal dignity, except when the facility can demonstrate that such would be unsafe, impractical, or an infringement upon the rights of other residents.

(d) Unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his or her choice, at any time between the hours of 9 a.m. and 9 p.m. at a minimum. Upon request, the facility shall make provisions to extend visiting hours for caregivers and out-of-town guests, and in other similar situations.

(e) Freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community.

(f) Manage his or her financial affairs unless the resident or, if applicable, the resident's representative, designee, surrogate, guardian, or attorney in fact authorizes the administrator of the facility to provide safekeeping for funds as provided in s. [429.27](#).

(g) Share a room with his or her spouse if both are residents of the facility.

(h) Reasonable opportunity for regular exercise several times a week and to be outdoors at regular and frequent intervals except when prevented by inclement weather.

(i) Exercise civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, nor any attendance at religious services, shall be imposed upon any resident.

(j) Access to adequate and appropriate health care consistent with established and recognized standards within the community.

(k) At least 45 days' notice of relocation or termination of residency from the facility unless, for medical reasons, the resident is certified by a physician to require an emergency relocation to a facility providing a more skilled level of care or the resident engages in a pattern of conduct that is harmful or offensive to other residents. In the case of a resident who has been adjudicated mentally incapacitated, the guardian shall be given at least 45 days' notice of a nonemergency relocation or residency termination. Reasons for relocation shall be set forth in writing. In order for a facility to terminate the residency of an individual without notice as provided herein, the facility shall show good cause in a court of competent jurisdiction.

(l) 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 shall 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.

(2) The administrator of a facility shall ensure that a written notice of the rights, obligations, and prohibitions set forth in this part is posted in a prominent place in each facility and read or explained to residents who cannot read. The notice must include the

statewide toll-free telephone number and e-mail address of the State Long-Term Care Ombudsman Program and the telephone number of the local ombudsman council, the Elder Abuse Hotline operated by the Department of Children and Families, and, if applicable, Disability Rights Florida, where complaints may be lodged. The notice must state that a complaint made to the Office of State Long-Term Care Ombudsman or a local long-term care ombudsman council, the names and identities of the residents involved in the complaint, and the identity of complainants are kept confidential pursuant to s. [400.0077](#) and that retaliatory action cannot be taken against a resident for presenting grievances or for exercising any other resident right. The facility must ensure a resident's access to a telephone to call the State Long-Term Care Ombudsman Program or local ombudsman council, the Elder Abuse Hotline operated by the Department of Children and Families, and Disability Rights Florida.

(3)(a) The agency shall conduct a survey to determine general compliance with facility standards and compliance with residents' rights as a prerequisite to initial licensure or licensure renewal. The agency shall adopt rules for uniform standards and criteria that will be used to determine compliance with facility standards and compliance with residents' rights.

(b) In order to determine whether the facility is adequately protecting residents' rights, the biennial survey shall include private informal conversations with a sample of residents and consultation with the ombudsman council in the district in which the facility is located to discuss residents' experiences within the facility.

(c) During any calendar year in which no survey is conducted, the agency shall conduct at least one monitoring visit of each facility cited in the previous year for a class I or class II violation, or more than three uncorrected class III violations.

(d) The agency may conduct periodic followup inspections as necessary to monitor the compliance of facilities with a history of any class I, class II, or class III violations that threaten the health, safety, or security of residents.

(e) The agency may conduct complaint investigations as warranted to investigate any allegations of noncompliance with requirements required under this part or rules adopted under this part.

(4) The facility shall not hamper or prevent residents from exercising their rights as specified in this section.

(5) A facility or employee of a facility may not serve notice upon a resident to leave the premises or take any other retaliatory action against any person who:

(a) Exercises any right set forth in this section.

(b) Appears as a witness in any hearing, inside or outside the facility.

(c) Files a civil action alleging a violation of the provisions of this part or notifies a state attorney or the Attorney General of a possible violation of such provisions.

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

(7) Any person who submits or reports a complaint concerning a suspected violation of the provisions of this part or concerning services and conditions in facilities, or who testifies in any administrative or judicial proceeding arising from such a complaint, shall have immunity from any civil or criminal liability therefor, unless such person has acted in bad faith or with malicious purpose or the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.

Appendix C – Proposal 088

Nursing Home and Assisted Living Facility Residents’ Bill of Rights.

(a) In addition to any other rights provided by law, the residents of nursing home facilities and assisted living facilities are entitled to be treated courteously, fairly, and with the fullest measure of dignity by the facilities’ owners, operators, employees, professionals, and others who care for residents at such facilities.

(b) The right to be treated courteously, fairly, and with the fullest measure of dignity includes, but is not limited to:

(1) The right to adequate and appropriate health care and treatment that puts the residents’ needs and best interests first.

(2) The right to a safe, clean, comfortable, and homelike environment that protects residents from harm and takes into account this state’s challenges with respect to climate and natural disasters.

(3) The right to access courts and a jury system that allows for a speedy trial and relief and remedies, without limitations, for loss, injury, and damages caused to residents and their families by the abuse, negligence, neglect, exploitation, or violation of residents’ rights by the facilities’ owners, operators, employees, professionals, and others who care for residents at such facilities.

(4) The right to know and hold accountable all persons or entities who own or operate the facilities, including the persons who are the owners of entities which own or operate the facilities.

(5) The right that the facilities will have the financial resources or liability insurance in order to ensure that residents and their families are justly compensated for any loss, injury, and damage they suffer because of abuse, negligence, neglect, exploitation, or violations of residents’ rights by owners, operators, employees, professionals, and others who care for residents at such facilities.

(6) The right to have the state require and implement regular accountability, audit, and review programs that oversee the facilities, require annual cost reports for reimbursement, and safeguard the health and quality of life of the facilities’ residents.

(c) Nursing home facilities and assisted living facilities, including the owners, operators, employees, professionals, and others who care for residents at such facilities, may not solicit, require, or ask residents, their families, their legal representatives, and their duly appointed guardians to waive the rights of residents provided herein or by other laws.

(d) Any rights granted under this section do not dissolve upon the death or incapacity of a resident. Upon the death or incapacity of a resident, such resident’s heirs, estate, family

members, legal representatives, or other appropriate persons are entitled to any of the rights granted under this section and as may be provided by general law.

(e) This section is self-executing and does not require any implementing legislation or administrative rules. The legislature may enact legislation that protects, furthers, and enhances the rights established by this section. In addition, an executive branch agency may adopt rules, in accordance with general law, that protect, further, and enhance the rights of residents established by this section.

(f) Any statute, rule, common law, or other law that is inconsistent with the rights granted under this section is preempted.