

Regular Session, 2010

SENATE BILL NO. 216

BY SENATOR MOUNT

NURSING HOMES. Provides for changes to the Nursing Home Patient's Bill of Rights.
(gov sig)

1 AN ACT

2 To amend and reenact R.S. 40:2010.8(A)(2)(a) and (b), (6), (8), (10), (12), (13) and (21),
3 and to enact R.S. 40:2010(A)(2)(c) and (d), relative to the nursing home resident's
4 bill of rights; to provide for certain rights; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 40:2010.8(A)(2)(a) and (b), (6), (8), (10), (12), (13) and (21), are
7 hereby amended and reenacted and R.S. 40:2010(A)(2)(c) and (d) are hereby enacted to read
8 as follows:

9 §2010.8. Residents' bill of rights

10 A. All nursing homes shall adopt and make public a statement of the rights
11 and responsibilities of the residents residing therein and shall treat such residents in
12 accordance with the provisions of the statement. The statement shall assure each
13 resident the following:

14 * * *

15 (2)(a) The right to private and uncensored communications, including but not
16 limited to receiving and sending unopened correspondence; access to a telephone;
17 ~~visitation with any person of the resident's choice;~~ and overnight visitation outside

1 the facility with family and friends in accordance with nursing home policies,
2 physician orders, and Title XVIII (Medicare) and Title XIX (Medicaid) of the Social
3 Security Act regulations, without the loss of his bed.

4 ~~(b) Nursing home visiting hours shall be flexible, taking into consideration~~
5 ~~special circumstances such as out-of-town visitors and working relatives or friends.~~
6 ~~With the consent of the resident and in accordance with the policies approved by the~~
7 ~~Department of Health and Hospitals, the home shall permit recognized volunteer~~
8 ~~groups, representatives of community-based legal, social, mental health, and leisure~~
9 ~~and planning programs, and members of the clergy access to the home during~~
10 ~~visiting hours for the purpose of visiting with and providing services to any resident.~~

11 **The right to be granted immediate access to the following:**

12 **(i) Any representative of the secretary of the United States Department**
13 **of Health and Human Services.**

14 **(ii) Any representative of the State acting pursuant to their duties and**
15 **responsibilities under state or federal law.**

16 **(iii) The resident's individual physician.**

17 **(iv) The state long term care ombudsman.**

18 **(v) The agency responsible for the protection and the advocacy system**
19 **for developmentally disabled individuals.**

20 **(vi) The agency responsible for the protection and the advocacy system**
21 **for mentally ill individuals.**

22 **(vii) Immediate family members, other relatives of the resident, and the**
23 **resident's clergy subject to the resident's right to deny or withdraw consent at**
24 **any time.**

25 **(viii) Other who are visiting with the consent of the resident, subject to**
26 **reasonable restrictions and the resident's right to deny or withdraw consent at**
27 **any time.**

28 **(c)The facility shall provide reasonable access to any resident by any**
29 **entity or individual that provides health, social, legal, or other services to the**

1 **resident, subject to the resident's right to deny or withdraw consent at any time.**

2 **(d) Reasonable restrictions are those imposed by the facility that protect**
 3 **the security of all the facility's residents. The facility may change the location**
 4 **of visits to assist care giving or protect the privacy of other residents.**

5 * * *

6 (6) The right to be adequately informed of his medical condition and
 7 proposed treatment, ~~unless otherwise indicated by the resident's physician;~~ to
 8 participate in the planning of all medical treatment, including the right to refuse
 9 medication and treatment, ~~unless otherwise indicated by the resident's physician;~~ and
 10 to be informed of the consequences of such actions.

11 * * *

12 (8) The right to have privacy in treatment and in caring for personal needs;
 13 to have closed room doors, and to have facility personnel knock before entering the
 14 room, except in case of an emergency ~~or unless medically contraindicated;~~ to have
 15 confidentiality in the treatment of personal and medical records; and to be secure in
 16 storing and using personal possessions, subject to applicable state and federal health
 17 and safety regulations and the rights of other residents. Privacy of the resident's body
 18 shall be maintained during but not limited to toileting, bathing, and other activities
 19 of personal hygiene, except as needed for resident safety or assistance.

20 * * *

21 (10) The right to be free from mental and physical abuse ~~and from physical~~
 22 ~~and chemical restraints, except those restraints authorized by a physician for a~~
 23 ~~specified and limited period of time or those necessitated by an emergency. In case~~
 24 ~~of an emergency, restraint may only be applied by a qualified licensed nurse, who~~
 25 ~~shall set forth in writing the circumstances requiring the use of the restraint, and, in~~
 26 ~~case of a chemical restraint, a physician shall be consulted immediately thereafter.~~
 27 ~~Restraints shall not be used in lieu of staff supervision or merely for staff~~
 28 ~~convenience or resident punishment, or for any reason other than resident protection~~
 29 ~~or safety ;~~ **and the right to be free from any physical or chemical restraint**

1 **imposed for the purposes of discipline or convenience, and not required to treat**
2 **the resident's medical symptoms.**

3 * * *

4 (12) The right to select a personal physician; to obtain pharmaceutical
5 supplies and services from a pharmacy of the resident's choice, at the resident's own
6 expense or through **Title XVIII or** Title XIX of the Social Security Act; and to
7 obtain information about, and to participate in, community-based activities and
8 programs; ~~unless medically contraindicated, as documented by a physician in the~~
9 ~~resident's medical record, and such participation would violate infection control laws~~
10 ~~or regulations~~ **unless such participation would violate infection control or**
11 **quarantine laws or regulations.**

12 (13) The right to retain and use personal clothing and possessions as space
13 permits, unless to do so would infringe upon the rights of other residents ~~or unless~~
14 ~~medically contraindicated as documented by a physician in the resident's medical~~
15 ~~record.~~ Clothing need not be provided to the resident by the home except in
16 emergency situations. If provided, it shall be of reasonable fit.

17 * * *

18 (21) The right to retire and rise in accordance with ~~his reasonable requests,~~
19 ~~if he does not disturb others and does not disrupt the posted meal schedules and,~~
20 ~~upon the home's request, if he remains in a supervised area unless retiring and rising~~
21 ~~in accordance with the resident's request is not medically advisable as documented~~
22 ~~in his medical record by the attending physician~~ **with the resident's personal**
23 **preference.**

24 * * *

25 Section 2. This Act shall become effective upon signature by the governor or, if not
26 signed by the governor, upon expiration of the time for bills to become law without signature
27 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
28 vetoed by the governor and subsequently approved by the legislature, this Act shall become
29 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Greg Waddell.

DIGEST

Present law provides for a Nursing Home Resident's Bill of Rights.

Proposed law retains present law and amends certain rights.

Present law provides for the right to private and uncensored communications, including but not limited to receiving and sending unopened correspondence; access to a telephone; visitation with any person of the resident's choice; and overnight visitation outside the facility with family and friends in accordance with nursing home policies, physician orders, and Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act regulations, without the loss of his bed.

Proposed law retains present law and expands a resident's right to be granted immediate access to the following:

- (1) Any representative of the secretary of the United States Department of Health and Human Services.
- (2) Any representative of the State acting pursuant to their duties and responsibilities under state or federal law.
- (3) The resident's individual physician.
- (4) The state long term care ombudsman.
- (5) The agency responsible for the protection and the advocacy system for developmentally disabled individuals.
- (6) The agency responsible for the protection and the advocacy system for mentally ill individuals.
- (7) Immediate family members, other relatives of the resident, and the resident's clergy subject to the resident's right to deny or withdraw consent at any time.
- (8) Other who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time.

Proposed law provides that the facility shall provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

Proposed law provides that reasonable restrictions are those imposed by the facility that protect the security of all the facility's residents. The facility may change the location of visits to assist care giving or protect the privacy of other residents.

Present law provides for the right to be adequately informed of his medical condition and proposed treatment, unless otherwise indicated by the resident's physician; 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 be informed of the consequences of such actions.

Proposed law retains present law but removes the provisions which limit the right if it is otherwise indicated by the resident's physician.

Present law provides for the right to have privacy in treatment and in caring for personal needs; to have closed room doors, and to have facility personnel knock before entering the room, except in case of an emergency or unless medically contraindicated.

Proposed law retains present law but removes the provision which limits the right if it medically contraindicated.

Present law provides for the right to be free from mental and physical abuse and from physical and chemical restraints, except those restraints authorized by a physician for a specified and limited period of time or those necessitated by an emergency. In case of an emergency, restraint may only be applied by a qualified licensed nurse, who shall set forth in writing the circumstances requiring the use of the restraint, and, in case of a chemical restraint, a physician shall be consulted immediately thereafter. Restraints shall not be used in lieu of staff supervision or merely for staff convenience or resident punishment, or for any reason other than resident protection or safety.

Proposed law retains the right to be free from mental and physical abuse and provides for a different standard the right to be free from any physical or chemical restraint imposed for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

Present law provides for the right to select 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 and programs, unless medically contraindicated, as documented by a physician in the resident's medical record, and such participation would violate infection control laws or regulations.

Proposed law adds Title XVIII of the Social Security Act and provides that a resident has the right to participate in a community based activity or program unless such participation would violate infection control or quarantine laws or regulations rather than being medically contraindicated.

Present law provides for 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 by a physician in the resident's medical record. Clothing need not be provided to the resident by the home except in emergency situations. If provided, it shall be of reasonable fit.

Proposed law retains present law but removes the limiting provision in the right if exercise of the right would be medically contraindicated as documented by a physician in the resident's medical record.

Present law provides for the right to retire and rise in accordance with his reasonable requests, if he does not disturb others and does not disrupt the posted meal schedules and, upon the home's request, if he remains in a supervised area unless retiring and rising in accordance with the resident's request is not medically advisable as documented in his medical record by the attending physician.

Proposed law provides for the right to retire and rise in accordance with the resident's personal preference.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 40:2010.8(A)(2)(a) and (b), (6), (8), (10), (12), (13) and (21); adds R.S. 40:2010(A)(2)(c) and (d))