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LEGISLATIVE HISTORY CHECKLIST

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Sponsor(s) Fay

Date Introduced Pre-filed

Committee: Assembly Institutions, Health & Welfare

Senate Institutions, Health & Welfare

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Following statements are attached if available:

Sponsor statement Yes ~~No~~

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Following were printed:

Reports Yes ~~No~~

Hearings Yes ~~No~~

For background see:

974.90 N.J. Nursing Home Study Commission

H434 Public hearing on personal care facilities for the elderly in New Jersey. Trenton, April 16, 1975.

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CHAPTER 120 LAWS OF N. J. 1976
APPROVED 4-30-76

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SENATE, No. 944

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1976 SESSION

By Senator FAY

AN ACT concerning the responsibilities of nursing homes and the rights of nursing home residents.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. The Legislature hereby finds and declares that the well-being
2 of nursing home residents in the State of New Jersey requires a
3 delineation of the responsibilities of nursing homes and a declara-
4 tion of a bill of rights for such residents.

1 2. For the purposes of this act:

2 a. "Administrator" means any individual who is charged with
3 the general administration or supervision of a nursing home
4 whether or not such individual has an ownership interest in such
5 home and whether or not his function and duties are shared with
6 one or more other individuals.

7 b. "Guardian" means a person, appointed by a court of compe-
8 tent jurisdiction, who shall have the right to manage the financial
9 affairs and protect the rights of any nursing home resident who
10 has been declared a mental incompetent. In no case shall the guar-
11 dian of a nursing home resident be affiliated with a nursing home,
12 its operations, its staff personnel or a nursing home administrator
13 in any manner whatsoever.

14 c. "Nursing home" means any institution, whether operated for
15 profit or not, ***[**which is not maintained, supervised or controlled by
16 the Federal Government or by an agency of the government of the
17 State or of any county or municipality, and**]*** which maintains and
18 operates facilities for extended medical and nursing treatment or
19 care for two or more nonrelated individuals who are suffering from
20 acute or chronic illness or injury, or are crippled, convalescent or

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

21 infirm and are in need of such treatment or care on a continuing
 22 basis. Infirm is construed to mean that an individual is in need
 23 of assistance in bathing, dressing or some type of supervision.

24 d. "Reasonable hour" means any time between the hours of 8
 25 a.m. and 8 p.m. daily.

26 e. "Resident" means any individual receiving extended medical
 27 or nursing treatment or care at a nursing home.

1 3. Every nursing home shall have the responsibility for:

2 a. Maintaining a complete record of all funds, personal property
 3 and possessions of a nursing home resident from any source what-
 4 soever, which have been deposited for safekeeping with the nursing
 5 home for use by the resident. This record shall contain a listing
 6 of all deposits and withdrawals transacted, and these shall be sub-
 7 stantiated by receipts given to the resident or his guardian. A
 8 nursing home shall provide to each resident or his guardian a
 9 *~~monthly~~* *quarterly* statement which shall account for all of
 10 such resident's property on deposit at the beginning of the account-
 11 ing period, all deposits and withdrawals transacted during the
 12 period, and the property on deposit at the end of the period. The
 13 resident or his guardian shall be allowed *~~unrestricted~~* *daily*
 14 access to his property on deposit *during specific periods estab-*
 15 *lished by the nursing home for such transactions* at *a* reasonable
 16 *~~hours~~* *hour*. A nursing home may, at its own discretion,
 16A place a limitation as to dollar value and size of any personal *~~pos-~~
 16B ~~sessions~~* *property* accepted for safekeeping.

17 b. Providing for the spiritual needs and wants of residents by
 18 *~~making available~~* *notifying*, at a resident's request, *a*
 19 *clergyman of the resident's choice and allowing* unlimited visits
 20 by *~~a clergyman of the resident's choice~~* *such clergyman*.
 21 Arrangements shall be made, at the resident's expense, for attend-
 22 ance at religious services of his choice when requested. No re-
 23 ligious beliefs or practices, or any attendance at religious services,
 23A shall be imposed upon any resident.

24 c. Admitting only that number of residents for which it reason-
 25 ably believes it can safely and adequately provide *~~skilled~~*
 26 nursing care. Any applicant for admission to a nursing home who
 27 is denied such admission shall be given the reason for such denial
 28 in writing. *~~The policy of a nursing home regarding resident fees~~
 29 and payments, deposits and refund policies shall be given to an
 30 applicant prior to admission and a copy of such policies shall be
 31 provided to each resident or his guardian.*

32 d. Ensuring that discrimination based upon age, race, religion,
 33 sex or nationality with respect to participation in recreational
 34 activities, meals or other social functions is prohibited^{*} [], unless
 35 so^{*} []. *However, the participation of a resident in recreational*
 35A *activities, meals or other social functions may be restricted or pro-*
 35B *hibited if^{*} recommended by a resident's attending physician in*
 35C *writing^{*} and consented to by the resident^{*}.*

36 e. Ensuring that no resident shall be subjected to physical ^{*}[re-
 37 straint]^{*} *restraints^{*}* except upon written orders of an attending
 38 ^{*}[physician]^{*} *physician for a specific period of time^{*}* when nec-
 38A *essary to protect such resident from injury to himself or others.*
 39 *Restraints shall not be employed for purposes of punishment or the*
 40 *convenience of any nursing home staff personnel. The confinement*
 41 *of a resident in a locked room shall be prohibited.*

42 f. Ensuring that drugs and other medications shall not be em-
 43 ployed for purposes of punishment, for convenience of any nursing
 44 home staff personnel or in such quantities so as to interfere with
 45 a resident's rehabilitation or his normal living activities.

46 g. Permitting ^{*}[members of community and religious organiza-
 47 tions]^{*} *citizens, with the consent of the resident being visited^{*},*
 48 *legal services programs^{*} [and]^{*} ,^{*} employees of ^{*}[the Division*
 49 *of Nursing Home Ombudsman in]^{*} the Department of Public Ad-*
 50 *vocate, ^{*}and employees and volunteers of the Office of the Nursing*
 51 *Home Ombudsman Program in the Department of Community*
 52 *Affairs,^{*} whose purposes include rendering assistance without*
 53 *charge to nursing home residents, full and free access to the nurs-*
 54 *ing home in order to visit with and make personal, social and legal*
 55 *services available to all residents^{*} [,]^{*} ^{*}and^{*} to assist and advise*
 56 *residents in the assertion of their rights with respect to the nursing*
 56A *home, involved governmental agencies and the judicial system^{*} [,*
 56B *and to inspect all areas of the nursing home except the living areas*
 56C *of any residents protesting such an inspection]^{*}.*

57 (1) Such access shall be permitted by the nursing home at a
 58 reasonable hour.

59 ^{*}(2) *Such access shall not substantially disrupt the provision*
 60 *of nursing and other care to residents in the nursing home.^{*}*

61 ^{*}[(2)]^{*} ^{*}(3)^{*} All persons entering a nursing home pursuant to
 62 this section shall promptly notify the person in charge of their
 63 presence. They shall, upon request, produce identification to sub-
 64 stantiate their identity. No such person shall enter the immediate
 65 living area of any resident without first identifying himself and
 66 then receiving permission from the resident to enter. **The rights*

67 *of other residents present in the room shall be respected.** A resi-
 68 dent shall have the right to terminate a visit by a person having
 69 access to his living area pursuant to this section at any time. Any
 70 communication whatsoever between a resident and such person
 71 shall be confidential in nature, unless the resident authorizes the
 72 release of such communication in writing.

73 h. Ensuring compliance with all applicable State and Federal
 74 statutes and rules and regulations.

75 **i. Ensuring that every resident, prior to or at the time of ad-*
 76 *mission and during his stay, shall receive a written statement of*
 77 *the services provided by the nursing home, including those re-*
 78 *quired to be offered by the nursing home on an as-needed basis,*
 79 *and of related charges, including any charges for services not cov-*
 80 *ered under Title XVIII and Title XIX of the Social Security Act,*
 81 *as amended, or not covered by the nursing home's basic per diem*
 82 *rate. This statement shall further include the payment, fee, deposit*
 83 *and refund policy of the nursing home.*

1 4. *The responsibilities of nursing homes shall include, but shall*
 2 *not be limited to, those enumerated in this act.**

1 **[4.]* *5.** Every resident of a nursing home shall:

2 a. Have the right to manage his own financial affairs unless he
 3 or his guardian authorizes the administrator of the nursing home
 4 to manage such resident's financial affairs. Such authorization
 5 shall be in writing and shall be attested by a witness that is uncon-
 6 nected with the nursing home*, *its operations, its staff personnel**
 7 and the administrator thereof, in any manner whatsoever.

8 b. Have the right to wear his own clothing. If clothing is pro-
 9 vided to the resident by the nursing home, it shall be of a proper fit.

10 c. Have the right to retain **and use** his personal **[posses-*
 11 *sions]* *property** in his immediate living quarters, unless the
 12 nursing home can demonstrate that it is unsafe or impractical to
 12A do so.

13 d. Have **[his mail delivered unopened]* *the right to receive*
 13A *and send unopened correspondence and, upon request, to obtain*
 13B *assistance in the reading and writing of such correspondence*.*

14 e. Have the right to unaccompanied access to a telephone at a
 15 reasonable hour, including the right to a private phone at the
 16 resident's expense.

17 f. Have the right to privacy **[in his own room. Nursing home*
 18 *staff personnel shall not enter the room of any resident without*
 19 *knocking]*.*

- 20 g. Have the right to retain the services of his own personal
21 physician at his own expense or under a health care plan. Every
22 resident shall have the right to obtain from his own physician or
23 the physician attached to the nursing home complete and current
24 information concerning his medical diagnosis, treatment and prog-
25 nosis **in terms and language the resident can reasonably be ex-*
26 *pected to understand**, except when the physician deems it medi-
27 cally inadvisable to give such information to the resident **and*
28 *records the reason for such decision in the resident's medical rec-*
29 *ord**. In such a case, the physician shall inform the resident's
29A next-of-kin or guardian. **The resident shall be afforded the oppor-*
29B *tunity to participate in the planning of his total care and medical*
29C *treatment to the extent that his condition permits. A resident shall*
29D *have the right to refuse treatment. A resident shall have the right*
29E *to refuse to participate in experimental research, but if he chooses*
29F *to participate, his informed written consent must be obtained.**
- 30 Every resident shall have the right to confidentiality and privacy
30A concerning his medical condition and treatment*, *except that rec-*
30B *ords concerning said medical condition and treatment may be*
30C *disclosed to another nursing home or health care facility on trans-*
30D *fer, or as required by law or third-party payment contracts*.*
- 30E h. Have the right to unrestricted communication, including per-
31 sonal visitation with any persons of his choice, at any reasonable
32 hour.
- 33 i. Have the right to present grievances on behalf of himself or
34 others to the nursing home administrator, State governmental
35 agencies or other persons without threat of discharge or reprisal
36 in any form or manner whatsoever. The administrator shall pro-
37 vide all residents or their guardians with the name, address, and
38 telephone number of the appropriate State governmental office
39 where complaints may be lodged. Such telephone number shall be
40 posted in a conspicuous place near every public telephone in the
41 nursing home.
- 42 j. Have the right to a safe and decent living environment and
43 considerate and respectful care **that recognizes the dignity and*
44 *individuality of the resident**.
- 45 **k. Have the right to refuse to perform services for the nursing*
46 *home that are not included for therapeutic purposes in his plan of*
47 *care as recorded in his medical record by his physician.*
- 48 l. Have the right to reasonable opportunity for interaction with
49 members of the opposite sex. If married, the resident shall enjoy
50 reasonable privacy in visits by his spouse and, if both are residents

51 *of the nursing home, they shall be afforded the opportunity, where*
 52 *feasible, to share a room, unless medically inadvisable.*

53 *m. Not be deprived of any constitutional, civil or legal right*
 54 *solely by reason of admission to a nursing home.**

1 ***[5.]*** *6.* Any nursing home resident may discharge himself
 2 from a nursing home upon presentation of a written release **and*
 3 *if the resident is an adjudicated mental incompetent, upon the*
 4 *written consent of his guardian**. In such case, the nursing home
 5 is free from any responsibility for the resident upon his release.
 6 ***[A resident declared a mental incompetent may be discharged**
 7 **only upon the written consent of his guardian.]*** When a nursing
 8 home wishes to transfer or discharge a competent **or an adjudi-*
 9 *cated mental incompetent** resident on a nonemergency basis, it
 10 may do so ***[only]*** **for medical reasons or for his welfare or that*
 11 *of other residents** upon receiving a written order from the attend-
 12 ing physician*, *or for nonpayment of his stay, except as prohibited*
 13 *by Title XVIII or Title XIX of the Social Security Act, as amended,*
 14 *and such action shall be recorded in the resident's medical record*.*
 15 ***[Any transfer or discharge at the request of the nursing home**
 16 **of a mental incompetent resident on a nonemergency basis shall**
 17 **require a written order from the attending physician and timely**
 18 **notification of the resident's next-of-kin or guardian.]*** **When*
 19 *a transfer or discharge on a nonemergency basis of a resident is*
 20 *requested by a nursing home, the resident or, in the case of an*
 21 *adjudicated mental incompetent resident, the guardian, shall be*
 22 *given at least 30 days advance notice of such transfer or discharge.**

1 *7. The administrator of a nursing home shall ensure that a
 2 written notice of the rights, obligations and prohibitions set forth
 3 in this act be given to every resident or his guardian upon admit-
 4 tance to the nursing home and to each individual already in resi-
 5 dence or to his guardian. The administrator shall also post this
 6 notice in a conspicuous, public place in the nursing home.*

1 ***[6.]*** *8.* Any person or resident whose rights as defined herein
 2 are violated shall have a cause of action against any person com-
 3 mitting such violation. **The Department of Health may maintain*
 4 *an action in the name of the State to enforce the provisions of this*
 5 *act and any rules or regulations promulgated pursuant to this act.**
 6 The action may be brought in any court of competent jurisdiction
 7 to enforce such rights and to recover actual and punitive damages
 8 for their violation. Any plaintiff who prevails in any such action
 9 shall be entitled to recover reasonable attorney's fees and costs
 10 of the action.

1 *9. Nothing in this act shall be construed to require the provi-
2 sion of any medical care or treatment by any nursing home op-
3 erated by and for the members or adherents of any well recognized
4 church or religious denomination which relies upon spiritual means
5 through prayer alone for healing, where such care or treatment
6 is contrary to the tenets of such church or religious denomination.

1 10. The Commissioner of Health is hereby authorized to adopt
2 reasonable rules and regulations, in accordance with the provisions
3 of the Administrative Procedure Act, P. L. 1968, c. 410 (C. 52:14B-1
4 et seq.) to carry out its functions and duties under this act and to
5 effectuate its purposes.*

1 *~~7.~~* *11.* If any section, subsection, paragraph, sentence or
2 other part of this act is adjudged unconstitutional or invalid, such
3 judgment shall not affect, impair or invalidate the remainder of
4 this act, but shall be confined in its effect to the section, subsection,
5 paragraph, sentence or other part of this act directly involved in
6 the controversy in which said judgment shall have been rendered.

1 *~~8.~~* *12.* This act shall take effect immediately.

4 upon his release. A resident declared a mental incompetent may
5 be discharged only upon the written consent of his guardian. When
6 a nursing home wishes to transfer or discharge a competent resi-
7 dent on a nonemergency basis, it may do so only upon receiving a
8 written order from the attending physician. Any transfer or dis-
9 charge at the request of the nursing home of a mental incompetent
10 resident on a nonemergency basis shall require a written order
11 from the attending physician and timely notification of the resi-
12 dent's next-of-kin or guardian.

1 6. Any person or resident whose rights as defined herein are
2 violated shall have a cause of action against any person commit-
3 ting such violation. The action may be brought in any court of
4 competent jurisdiction to enforce such rights and to recover actual
5 and punitive damages for their violation. Any plaintiff who pre-
6 vails in any such action shall be entitled to recover reasonable
7 attorney's fees and costs of the action.

1 7. If any section, subsection, paragraph, sentence or other part
2 of this act is adjudged unconstitutional or invalid, such judgment
3 shall not affect, impair or invalidate the remainder of this act, but
4 shall be confined in its effect to the section, subsection, paragraph,
5 sentence or other part of this act directly involved in the contro-
6 versy in which said judgment shall have been rendered.

1 8. This act shall take effect immediately.

SPONSOR'S STATEMENT

This bill establishes certain responsibilities for nursing homes and provides for certain rights for nursing homes residents.

SENATE INSTITUTIONS, HEALTH AND WELFARE
COMMITTEE

STATEMENT TO
SENATE, No. 944

STATE OF NEW JERSEY

DATED: JUNE 4, 1976

PURPOSE AND PROVISIONS

Residents of nursing homes are all too often given inferior treatment because they are old, feeble or poor. They are in need of a bill of rights similar to the bill recently passed by the Legislature and signed into law, enumerating certain rights of the mentally ill.

This bill not only declares that nursing home residents have certain rights; it also lists a number of responsibilities that nursing homes have with regard to the care of residents.

The Federal government has established clear standards of care for residents of skilled and intermediate care nursing facilities who are Medicaid or Medicare recipients. However, this bill makes similar standards of care applicable to *all* nursing homes and nursing home residents in the State and, moreover, makes such standards an expression of legislative policy and intent.

The responsibilities of nursing homes under the provisions of the bill include the following:

1. Maintaining a complete record of all funds and possessions deposited by residents for safekeeping;
2. Providing for the spiritual care of residents, if such care is desired;
3. Admitting only that number of residents which can be safely accommodated;
4. Ensuring that no physical restraints are used, except upon written order of a physician, and that drugs are not used for purposes of punishment;
5. Permitting members of certain groups which render assistance without charge to nursing home residents, full access to nursing homes at reasonable hours and under specific conditions; and
6. Ensuring compliance by the nursing home with all applicable State and Federal statutes and rules and regulations.

The rights of nursing home residents under the provisions of the bill include the following:

1. To manage their own financial affairs;

2. To wear their own clothing and retain their own possessions, unless unsafe or impractical;

3. To have mail delivered unopened, have access to a telephone and be allowed personal visitation by any person of their choice;

4. To present grievances to the nursing home administrator, without threat of discharge or reprisal; and

5. To discharge themselves upon presentation of a written release, under certain circumstances.

If the rights of any persons or residents as defined in the bill are violated, they would have a cause of action against any person violating such rights.

COMMITTEE AMENDMENTS

The committee made numerous minor amendments to the bill. However, some of its amendments are significant and deserve attention.

One amendment to the section defining "nursing home," ensures that homes maintained, supervised or controlled by agencies of the State or counties or municipalities would also be covered by the bill. Federally controlled nursing homes (such as veterans' facilities) would not, in any case, be subject to State supervision.

The committee extended another responsibility to nursing homes: that of giving each residents a written list of the services provided by the nursing home and of related charges.

The committee also added to the bill's list of residents' rights. Under the committee's amendments, residents would also have the right.

1. To participate in the planning of their total care, to refuse treatment, and to refuse to participate in experimental research;

2. To refuse to perform services for the nursing home;

3. To reasonable opportunity for interaction with members of the opposite sex; and

4. To notice of nonemergency transfer or discharge at least 30 days in advance.

In other amendments, the committee required nursing home administrators to give each resident a list of the rights and obligations set forth in this act; gave the Department Christian Science nursing facilities from any requirement to provide medical care or treatment.