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Senate Bill No. SB 670 would seriously harm nursing home residents and reduce nursing homes' accountability for poor care. Two provisions are most alarming.

Immunity from liability: The bill would authorize lawsuits to be filed only against the licensee, management or consulting company, managing employees, and direct caregivers. Lines 77-84. These categories represent a small portion of the people and entities that have responsibility for the care provided to nursing facility residents. These categories, and certainly direct caregivers, have the least responsibility for financial resources and policy decisions that are made that directly affect quality of care and quality of life for residents. The bill would essentially immunize all others from accountability, including so-called "passive investors."

This section contradicts the Transparency and Accountability provisions of the Affordable Care Act, specifically §6101, which seeks to identify all of the decision-makers about nursing facility policies and spending. Section 6101 requires disclosure, and publication on the federal website *Nursing Home Compare*, of the identity of not only the governing boards of nursing facilities but also of "additional disclosable parties" – i.e., individuals and entities that exercise operational, financial, or managerial control over a facility; or that lease or sublease property to a facility; or that provide management or administrative services, clinical consulting services, or accounting or financial services to a facility. Congress recognized that decisions made by individuals and managers of operational services, clinical services, and financial services directly affect the resources available to on-site caregivers, the policies they must follow, and the care they are able to provide to residents. These decision-makers are critical, but the Florida bill would immunize them from accountability for their decisions.

Non-disclosure of residents' records: The bill would allow facilities to refuse to give a resident the resident's own records if the facility "determines that disclosure of the records to the resident would be detrimental to the physical or mental health of the resident." Lines 327-333. This language also flies in the face of federal requirements, which allow residents to get prompt access to, and copies of, *all* of the records that pertain to them, without restriction. 42 C.F.R. §483.10(b)(2)(i), (ii), (3) provides:

> (2) The resident or his or her legal representative has the right—
> (i) Upon an oral or written request, to access all records pertaining to himself or herself including current clinical records within 24 hours (excluding weekends and holidays); and

(ii) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or any portions of them upon request and 2 working days advance notice to the facility.
(3) The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition;

Senate Bill 670 includes no limitation on how facilities could decide that disclosure of records would be "detrimental." The bill's vague term "detrimental" could allow facilities to refuse to disclose records that might prove embarrassing to the facility or that could conclusively demonstrate its liability (e.g., incident reports or clinical records showing that a facility nurse gave a resident the roommate's medication).

Senate Bill 670 also allows nursing facilities to provide records to residents only once per month (lines 340-345) and to charge $1 per page for the first 25 pages and thereafter, 25 cents per page (lines 318-326). Both provisions are inconsistent with the federal rules quoted above. In addition, Senate Bill 670 prohibits the state from citing a facility with a deficiency for non-compliance with requirements governing records (lines 346-348). This provision effectively immunizes noncompliance with the law.

Senate Bill 670 would harm nursing facility residents and should not be enacted.

Sincerely,

Toby S. Edelman
Senior Policy Attorney

These comments are submitted by the Center for Medicare Advocacy, a national, non-partisan education and advocacy organization founded in 1986 that works to ensure fair access to Medicare and to quality health care. The Center educates older people and people with disabilities to help secure fair access to necessary health care services and educates policy-makers about Medicare issues. Additionally, the Center provides legal representation to ensure that people receive the health care benefits to which they are legally entitled and to the quality health care they need.

These comments were written by Toby S. Edelman, Senior Policy Attorney with the Center's Washington, D.C. office. Edelman has been representing older people in long-term care facilities since 1977. As a Senior Policy Attorney with the Center for Medicare Advocacy since January 2000, Edelman provides training, research, policy analysis, consultation, and litigation support relating to nursing homes and other long-term care facilities. Under two grants from the Commonwealth Fund, she evaluated the federal nursing home survey and enforcement system and its impact on state activities and provided technical assistance to states on effective enforcement practices. Since September 1999, she has written a monthly newsletter on nursing home enforcement issues. Edelman was the lead attorney for a statewide class of nursing facility residents who successfully challenged the state of California's refusal to implement the federal Nursing Home Reform Law (*Valdivia v. California Department of Health Services*, Civ. No. S-90-1226 EJG (E.D. Calif. 1993). As a beneficiary representative, she has testified before Congress and served on federal task forces, technical expert panels, and working groups on nursing home issues.