

LD4132356

HOUSE BILL NO. 2434

Offered January 23, 1995

A BILL to amend the Code of Virginia by adding a section numbered 8.01-38.2, relating to rights of nursing facility residents.

Patron—Miller

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 8.01-38.2 as follows:**

§ 8.01-38.2 Violations of the rights of nursing facility residents.

A. Any resident whose rights have been violated as described in this section may commence a civil action on that resident's own behalf for injunctive and declaratory relief against any nursing facility that is alleged to be in violation of the rights enumerated in 42 U.S.C. § 1396r, Subsection (c). In order to grant a preliminary or permanent injunction under this section, the court shall find that:

1. The plaintiff will suffer irreparable injury if the injunction is not granted;

2. The irreparable injury outweighs any harm that granting the injunctive relief would inflict on the defendant;

3. The plaintiff has exhibited a likelihood of success on the merits of the case; and

4. The public interest will not be adversely affected by granting the injunction.

B. An action under this section may not be commenced until fifteen days after the resident has given notice of the violation and an intention to bring suit under this section to the State Health Commissioner, the Director of Medical Assistance Services, the Attorney General and each party alleged to be violating 42 U.S.C. § 1396r, subsection (c). The court may waive the fifteen-day notice requirement and issue a temporary restraining order when the plaintiff shows that the alleged violation presents an immediate threat to the plaintiff's health or safety.

C. In any action brought by the Attorney General, the State Health Commissioner or the Director of Medical Assistance Services under this section, any resident who has a right to action under this section may intervene if that resident has a direct interest that is or may be adversely affected by the action and the disposition of the action may impair or impede the resident's ability to protect that interest. The Attorney General, the State Health Commissioner, and the Director of Medical Assistance Services may intervene in any action brought by a resident under this section.

D. A copy of the complaint and other pleadings shall be delivered to the State Health Commissioner, the Director of Medical Assistance Services and the Attorney General at the time of service on the defendant. Copies of all answers and other documents accompanying the answers shall be delivered to the State Health Commissioner, the Director of Medical Assistance Services and the Attorney General at the time of service on the plaintiff.

E. The court may, on the motion of any party or on its own motion, dismiss any action brought under this section that alleges a de minimis violation of 42 U.S.C. § 1396r, subsection (c).

F. The remedies provided under this section are in addition to those otherwise available under state or federal law and may not be construed as limiting any other remedies including any remedy available to an individual at common law. Exhaustion of any available administrative remedy is not required prior to commencement of an action under this section.

INTRODUCED

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