

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS

Senator Storms, Chair

Senator Hill, Vice Chair

MEETING DATE: Tuesday, April 12, 2011

TIME: 3:00 —4:30 p.m.

PLACE: James E. "Jim" King, Jr., Committee Room, 401 Senate Office Building

MEMBERS: Senator Storms, Chair; Senator Hill, Vice Chair; Senators Detert, Hays, and Rich

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 898 Bennett (Identical H 4167)	Faith-based & Community-based Advisory Council; Abrogates the repeal of provisions governing the Florida Faith-based and Community-based Advisory Council.	GO 04/05/2011 Favorable CF 04/12/2011 CA
2	SB 1340 Bogdanoff (Identical H 1037)	Continuing Care Retirement Communities; Provides for the provision of continuing care at-home. Amends provisions relating to the requirement for certificates of authority. Requires that a person in the business of issuing continuing care at-home contracts obtain a certificate of authority from the Office of Financial Regulation. Requires written approval from the Office of Financial Regulation for a 20 percent or more expansion in the number of continuing care at-home contracts. Provides additional requirements for continuing care at-home contracts, etc.	CF 04/12/2011 BI BC
3	SB 1422 Altman (Similar H 911)	Developmental Disabilities; Establishes a Developmental Disabilities Savings Program to allow for the advance payment of services for individuals who have developmental disabilities and who will be ineligible for certain services due to age. Requires the program to provide certain information. Provides that the program may not be implemented until certain legal opinions are obtained. Establishes the Development Disabilities Savings Program Board to administer the savings program, etc.	CF 04/12/2011 BC

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs
 Tuesday, April 12, 2011, 3:00 —4:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 1458 Health Regulation / Garcia (Compare CS/H 119, H 1295, H 4045, H 4051, H 4055, H 4199, S 688, S 694, S 698, CS/S 1736, S 1756)	Assisted Care Communities; Deletes adult care communities from the standards and rules of the Agency for Health Care Administration which apply to registered pharmacists under contract with a nursing home and related health care facilities. Provides that assisted living facilities are exempt from certain provisions authorizing the agency to impose administrative fines for violations of laws and applicable rules. Requires the agency to provide for the establishment of a demonstration project for a psychiatric facility in Miami-Dade County, etc.	
		HR 03/28/2011 Not Considered HR 04/04/2011 Fav/CS CF 04/12/2011 BC	

5	SB 1362 Garcia (Similar CS/H 4041, Compare CS/CS/S 1346)	Department of Children & Family Services Employee; Removes a provision prohibiting a federal, state, county, or municipal officer from serving as an employee of the Department of Children and Family Services.	
		CF 04/12/2011 GO JU	

6	Discussion of CBC Governance and Salaries		
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TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
7	Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.		
	Secretary of Children and Family Services		
	Wilkins, David (Tallahassee)	Pleasure of Governor	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	Discussion of NICA Issue		

Pending Reconsideration:

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Tuesday, April 12, 2011, 3:00 —4:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SB 694 Richter (Identical H 4051, Compare CS/H 119, H 1295, CS/S 1458, CS/S 1736)	Assisted Living Facilities; Removes reporting requirements for assisted living facilities relating to liability claims. CF 04/04/2011 Pending reconsider (Unfavorable) CF 04/12/2011 HR BI	

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 898

INTRODUCER: Senator Bennett

SUBJECT: Faith-based & Community-based Advisory Council

DATE: April 8, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mason	Roberts	GO	Favorable
2.	Preston	Walsh	CF	Pre-meeting
3.			CA	
4.				
5.				
6.				

I. Summary:

The bill removes that subsection of section 14.31, Florida Statutes, which abolishes the council on June 30, 2011, unless the council is reviewed and saved from repeal by the Legislature.

This bill repeals subsection (8) of section 14.31, Florida Statutes.

II. Present Situation:

The Florida Faith-based and Community-based Advisory Council was established on July 1, 2006 to provide advice on the development of broadly based secular and faith-based engagements in the delivery of important state services and to report to the Governor and the Legislature on these recommendations. It was the intent of the Legislature that “faith-based and community-based organizations work cooperatively with government entities in order to deliver services more effectively.”¹

The Florida Faith-based and Community-based Advisory Council was established and assigned to the Executive Office of the Governor under s. 20.02, Florida Statutes. The council is a 25-member advisory council which may include representatives from various faiths, faith-based organizations, community-based organizations, foundations, corporations, and municipalities.² The Governor appoints 17 members, the President of the Senate appoints 4 members, and the Speaker of the House of Representatives appoints 4 members.³ The council must meet at least

¹ 14.31(2), F.S.

² 14.31(3)(b), F.S.

³ 14.31(3)(c), F.S.

once per quarter and may notice and hold its meetings electronically and through teleconferencing.⁴

The duties of the council are to review and recommend in a report to the Governor and the Legislature:⁵

- How faith-based and community-based organizations can best compete with other organizations for the delivery of state services, regardless of an organization's orientation, whether faith-based or secular;
- How best to develop and coordinate activities of faith-based and other community programs and initiatives, enhance such efforts in communities, and seek such resources, legislation, and regulatory relief as may be necessary to accomplish these objectives;
- How best to ensure that state policy decisions take into account the capacity of faith-based and other community initiatives to assist in the achievement of state priorities;
- How best to identify and promote best practices across state government relating to the delivery of services by faith-based and other community organizations;
- How best to coordinate public awareness of faith-based and other community organizations, such as demonstration pilot programs or projects, public-private partnerships, volunteerism, and special projects;
- How best to encourage private charitable giving to support faith-based and community initiatives;
- How best to bring concerns, ideas, and policy options to the Governor and Legislature for assisting, strengthening, and replicating successful faith-based and other community programs;
- How best to develop and implement strategic initiatives to strengthen the institutions of families and communities in this state;
- How best to showcase and herald innovative grassroots nonprofit organizations and civic initiatives;
- How best to eliminate unnecessary legislative, regulatory, and other bureaucratic barriers that impede effective faith-based and other community efforts to address social problems;
- How best to monitor implementation of state policy affecting faith-based and other community organizations; and
- How best to ensure that the efforts of faith-based and other community organizations meet objective criteria for performance and accountability.

In providing the recommendations noted above, the council is expressly prohibited from making any recommendation that is in conflict with the Establishment Clause of the First Amendment of the United States Constitution or the public funding provision of s. 3, Art. I of the State Constitution.⁶

In the 2010 Report to the Governor and the Legislature, the council established the following subcommittees: Recognition and Best Practices, Education and Evaluation, and Disaster Recovery. The Recognition and Best Practices subcommittee will identify and recognize those

⁴ 14.31(4), F.S.

⁵ 14.31(5), F.S.

⁶ 14.31(6), F.S.

faith-based and community-based organizations presently engaged in effective practices in cooperation with government entities and look at models to replicate their efforts of success. The Education and Evaluation subcommittee will support the final year of the Compassion Florida initiative to train and give technical assistance to faith-based and community-based groups with the continued funding of a major federal grant to Volunteer Florida Foundation to perform this service. The Disaster Recovery subcommittee will assist as needed with communication, planning, and support of the state's disaster response.⁷

In its report, the council recommended the following: The Recognition and Best Practices subcommittee should study public-private partnerships and their effective operation, providing statewide recognition and potential replication; the Education and Evaluation subcommittee should study public-private partnerships and their effective operation, offering technical assistance; and the Disaster Recovery subcommittee should activate as needed in the event of a disaster and participate as requested in disaster planning events.⁸

Over the years, the council has also improved the system for contract opportunities for Florida non-profits; held face-to-face meetings with key mayoral leaders to learn about effective partnerships; developed a toolkit for community leaders to establish more effective partnerships; built a strong network of faith-based organizations, community groups, foundations, civic, grassroots and state leaders; conducted regional training for state agencies to encourage their participation; established Neighbors to the Rescue; created and maintained over 40 long-term recovery organizations; launched the Compassion Florida program; and collaborated with the Governor's Office of Adoption and Child Protection through the Child Abuse Prevention and Permanency Council.⁹

III. Effect of Proposed Changes:

The bill removes the expiration subsection of section 14.31, Florida Statutes, which abolishes the council on June 30, 2011, unless the council is reviewed and saved from repeal from the Legislature. Therefore, the council will not expire and will have perpetual existence.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷ 2010 Annual Report & Recommendations by the Florida Faith-Based and Community-Based Advisory Council (Feb. 1, 2010), available at <http://www.floridasfoundation.org/pdfs/recommendations.pdf> (last visited Apr. 1, 2011).

⁸ *Id.*

⁹ *Id.*

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Children, Families, and Elder Affairs (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 651.011, Florida Statutes, is amended to read:

651.011 Definitions.—As used in ~~For the purposes of~~ this chapter, the term:

(1) "Advertising" means the dissemination of written, visual, or electronic information by a provider, or any person affiliated with or controlled by a provider, to potential residents or their representatives for the purpose of inducing



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13 such persons to subscribe to or enter into a contract for
14 continuing care or continuing care at-home ~~to reside in a~~
15 ~~continuing care community that is subject to this chapter.~~

16 (2) "Continuing care" or "care" means, pursuant to a
17 contract, furnishing shelter and nursing care or personal
18 services to a resident who resides in a facility ~~as defined in~~
19 ~~s. 429.02~~, whether such nursing care or personal services are
20 provided in the facility or in another setting designated in ~~by~~
21 the contract for continuing care, by ~~to~~ an individual not
22 related by consanguinity or affinity to the resident ~~provider~~
23 ~~furnishing such care~~, upon payment of an entrance fee. ~~Other~~
24 ~~personal services provided must be designated in the continuing~~
25 ~~care contract. Contracts to provide continuing care include~~
26 ~~agreements to provide care for any duration, including contracts~~
27 ~~that are terminable by either party.~~

28 (3) "Continuing Care Advisory Council" or "advisory
29 council" means the council established in s. 651.121.

30 (4) "Continuing care at-home" means, pursuant to a contract
31 other than a contract described in subsection (2), furnishing to
32 a resident who resides outside the facility the right to future
33 access to shelter and nursing care or personal services, whether
34 such services are provided in the facility or in another setting
35 designated in the contract, by an individual not related by
36 consanguinity or affinity to the resident, upon payment of an
37 entrance fee.

38 (5) ~~(4)~~ "Entrance fee" means an initial or deferred payment
39 of a sum of money or property made as full or partial payment
40 for continuing care or continuing care at-home ~~to assure the~~
41 ~~resident a place in a facility.~~ An accommodation fee, admission



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42 fee, member fee, or other fee of similar form and application
43 are considered to be an entrance fee.

44 (6)~~(5)~~ "Facility" means a place where that provides
45 continuing care is furnished and may include one or more
46 physical plants on a primary or contiguous site or an
47 immediately accessible site. As used in this subsection, the
48 term "immediately accessible site" means a parcel of real
49 property separated by a reasonable distance from the facility as
50 measured along public thoroughfares, and "primary or contiguous
51 site" means the real property contemplated in the feasibility
52 study required by this chapter.

53 (7)~~(6)~~ "Generally accepted accounting principles" means
54 those accounting principles and practices adopted by the
55 Financial Accounting Standards Board and the American Institute
56 of Certified Public Accountants, including Statement of Position
57 90-8 with respect to any full year to which the statement
58 applies.

59 (8)~~(7)~~ "Insolvency" means the condition in which the
60 provider is unable to pay its obligations as they come due in
61 the normal course of business.

62 (9)~~(8)~~ "Licensed" means that the provider has obtained a
63 certificate of authority from the department.

64 (10) "Nursing care" means those services or acts rendered
65 to a resident by an individual licensed or certified pursuant to
66 chapter 464.

67 (11) "Personal services" has the same meaning as in s.
68 429.02.

69 (12)~~(9)~~ "Provider" means the owner or operator, whether a
70 natural person, partnership or other unincorporated association,



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71 however organized, trust, or corporation, of an institution,
72 building, residence, or other place, whether operated for profit
73 or not, which owner or operator provides continuing care or
74 continuing care at-home for a fixed or variable fee, or for any
75 other remuneration of any type, whether fixed or variable, for
76 the period of care, payable in a lump sum or lump sum and
77 monthly maintenance charges or in installments. The term, ~~but~~
78 does not apply to ~~mean~~ an entity that has existed and
79 continuously operated a facility located on at least 63 acres in
80 this state providing residential lodging to members and their
81 spouses for at least 66 years on or before July 1, 1989, and has
82 the residential capacity of 500 persons, is directly or
83 indirectly owned or operated by a nationally recognized
84 fraternal organization, is not open to the public, and accepts
85 only its members and their spouses as residents.

86 (13) ~~(10)~~ "Records" means the permanent financial,
87 directory, and personnel information and data maintained by a
88 provider pursuant to this chapter.

89 (14) ~~(11)~~ "Resident" means a purchaser of, a nominee of, or
90 a subscriber to a continuing care or continuing care at-home
91 contract agreement. Such contract agreement does not give the
92 resident a part ownership of the facility in which the resident
93 is to reside, unless expressly provided ~~for~~ in the contract
94 agreement.

95 (15) "Shelter" means an independent living unit, room,
96 apartment, cottage, villa, personal care unit, nursing bed, or
97 other living area within a facility set aside for the exclusive
98 use of one or more identified residents.

99 Section 2. Section 651.012, Florida Statutes, is amended to



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100 read:

101 651.012 Exempted facility; written disclosure of
102 exemption.—Any facility exempted under ss. 632.637(1)(e) and
103 651.011(12)(9) must provide written disclosure of such exemption
104 to each person admitted to the facility after October 1, 1996.
105 This disclosure must be written using language likely to be
106 understood by the person and must briefly explain the exemption.

107 Section 3. Section 651.013, Florida Statutes, is amended to
108 read:

109 651.013 Chapter exclusive; applicability of other laws.—

110 (1) Except as herein provided, providers of continuing care
111 and continuing care at-home are shall be governed by the
112 provisions of this chapter and are shall be exempt from all
113 other provisions of the Florida Insurance Code.

114 (2) In addition to other applicable provisions cited in
115 this chapter, the office has the authority granted under ss.
116 624.302 and 624.303, 624.308-624.312, 624.319(1)-(3), 624.320-
117 624.321, 624.324, and 624.34 of the Florida Insurance Code to
118 regulate providers of continuing care and continuing care at-
119 home.

120 Section 4. Section 651.021, Florida Statutes, is amended to
121 read:

122 651.021 Certificate of authority required.—

123 (1) No person may engage in the business of providing
124 continuing care, ~~or~~ issuing contracts for continuing care or
125 continuing care at-home, or constructing agreements or construct
126 a facility for the purpose of providing continuing care in this
127 state without a certificate of authority ~~therefor~~ obtained from
128 the office as provided in this chapter. This subsection does



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129 ~~shall not be construed to prohibit the~~ preparation of a the
130 construction site or construction of a model residence unit for
131 marketing purposes, or both. The office may allow the purchase
132 of an existing building for the purpose of providing continuing
133 care if the office determines that the purchase is not being
134 made to circumvent for the purpose of circumventing the
135 prohibitions ~~contained~~ in this section.

136 (2) ~~(a)~~ Written approval must be obtained from the office
137 before commencing commencement of construction or marketing for
138 an any expansion of a certificated facility equivalent to the
139 addition of at least 20 percent of existing units or 20 percent
140 or more in the number of continuing care at-home contracts,
141 ~~written approval must be obtained from the office.~~ This
142 provision does not apply to construction for which a certificate
143 of need from the Agency for Health Care Administration is
144 required.

145 (a) For providers that offer both continuing care and
146 continuing care at-home, the 20 percent is based on the total of
147 both existing units and existing contracts for continuing care
148 at-home. For purposes of this subsection, an expansion includes
149 increases in the number of constructed units or continuing care
150 at-home contracts or a combination of both.

151 (b) The application for such approval shall be on forms
152 adopted by the commission and provided by the office. The
153 application must ~~shall~~ include the feasibility study required by
154 s. 651.022(3) or s. 651.023(1)(b) and such other information as
155 required by s. 651.023. If the expansion is only for continuing
156 care at-home contracts, an actuarial study prepared by an
157 independent actuary in accordance with standards adopted by the



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158 American Academy of Actuaries which presents the financial
159 impact of the expansion may be substituted for the feasibility
160 study.

161 (c) In determining whether an expansion should be approved,
162 the office shall use ~~utilize~~ the criteria provided in ss.
163 651.022(6) and 651.023 (4) ~~(2)~~.

164 Section 5. Paragraphs (d) and (g) of subsection (2) and
165 subsections (4) and (6) of section 651.022, Florida Statutes,
166 are amended to read:

167 651.022 Provisional certificate of authority; application.-

168 (2) The application for a provisional certificate of
169 authority shall be on a form prescribed by the commission and
170 shall contain the following information:

171 (d) The contracts ~~agreements~~ for continuing care and
172 continuing care at-home to be entered into between the provider
173 and residents which meet the minimum requirements of s. 651.055
174 or s. 651.057 and which include a statement describing the
175 procedures required by law relating to the release of escrowed
176 entrance fees. Such statement may be furnished through an
177 addendum.

178 (g) The forms of the ~~continuing care~~ residency contracts,
179 reservation contracts, escrow agreements, and wait list
180 contracts, if applicable, which are proposed to be used by the
181 provider in the furnishing of care. ~~If~~ The office shall approve
182 ~~finds that the continuing care~~ contracts and escrow agreements
183 that comply with ss. 651.023(1)(c), 651.033, ~~and~~ 651.055, and
184 651.057 ~~it shall approve them~~. Thereafter, no other form of
185 contract or agreement may be used by the provider until it has
186 been submitted to the office and approved.



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187 (4) If an applicant has or proposes to have more than one
188 facility offering continuing care or continuing care at-home, a
189 separate provisional certificate of authority and a separate
190 certificate of authority must ~~shall~~ be obtained for each
191 facility.

192 (6) Within 45 days after ~~from~~ the date an application is
193 deemed ~~to be~~ complete, as set forth in paragraph (5) (b), the
194 office shall complete its review and ~~shall~~ issue a provisional
195 certificate of authority to the applicant based upon its review
196 and a determination that the application meets all requirements
197 of law, ~~and~~ that the feasibility study was based on sufficient
198 data and reasonable assumptions, and that the applicant will be
199 able to provide continuing care or continuing care at-home as
200 proposed and meet all financial obligations related to its
201 operations, including the financial requirements of this chapter
202 ~~to provide continuing care as proposed~~. If the application is
203 denied, the office shall notify the applicant in writing, citing
204 the specific failures to meet the provisions of this chapter.
205 Such denial entitles ~~shall entitle~~ the applicant to a hearing
206 pursuant to ~~the provisions of~~ chapter 120.

207 Section 6. Section 651.023, Florida Statutes, is amended to
208 read:

209 651.023 Certificate of authority; application.—

210 (1) After issuance of a provisional certificate of
211 authority, the office shall issue to the holder of such
212 provisional certificate ~~of authority~~ a certificate of authority
213 ~~if; provided, however, that no certificate of authority shall be~~
214 ~~issued until~~ the holder of the ~~such~~ provisional certificate ~~of~~
215 ~~authority~~ provides the office with the following information:



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216 (a) Any material change in status with respect to the
217 information required to be filed under s. 651.022(2) in the
218 application for the ~~a~~ provisional certificate ~~of authority~~.

219 (b) A feasibility study prepared by an independent
220 consultant which contains all of the information required by s.
221 651.022(3) and ~~contains~~ financial forecasts or projections
222 prepared in accordance with standards adopted ~~promulgated~~ by the
223 American Institute of Certified Public Accountants or ~~financial~~
224 ~~forecasts or projections prepared~~ in accordance with standards
225 for feasibility studies or continuing care retirement
226 communities adopted ~~promulgated~~ by the Actuarial Standards
227 Board.

228 1. The study must also contain an independent evaluation
229 and examination opinion, or a comparable opinion acceptable to
230 the office, by the consultant who prepared the study, of the
231 underlying assumptions used as a basis for the forecasts or
232 projections in the study and that the assumptions are reasonable
233 and proper and ~~that~~ the project as proposed is feasible.

234 2. The study must ~~shall~~ take into account project costs,
235 actual marketing results to date and marketing projections,
236 resident fees and charges, competition, resident contract
237 provisions, and any other factors which affect the feasibility
238 of operating the facility.

239 3. If the study is prepared by an independent certified
240 public accountant, it must contain an examination opinion for
241 the first 3 years of operations and financial projections having
242 a compilation opinion for the next 3 years. If the study is
243 prepared by an independent consulting actuary, it must contain
244 mortality and morbidity data and an actuary's signed opinion



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245 that the project as proposed is feasible and that the study has
246 been prepared in accordance with standards adopted by the
247 American Academy of Actuaries.

248 (c) Subject to ~~the requirements of~~ subsection (4) ~~(2)~~, a
249 provider may submit an application for a certificate of
250 authority and any required exhibits upon submission of proof
251 that the project has a minimum of 30 percent of the units
252 reserved for which the provider is charging an entrance fee.~~†~~
253 ~~however,~~ This does ~~provision shall~~ not apply to an application
254 for a certificate of authority for the acquisition of a facility
255 for which a certificate of authority was issued before ~~prior to~~
256 October 1, 1983, to a provider who subsequently becomes a debtor
257 in a case under the United States Bankruptcy Code, 11 U.S.C. ss.
258 101 et seq., or to a provider for which the department has been
259 appointed receiver pursuant to ~~the provisions of~~ part II of
260 chapter 631.

261 (d) Proof that commitments have been secured for both
262 construction financing and long-term financing or a documented
263 plan acceptable to the office has been adopted by the applicant
264 for long-term financing.

265 (e) Proof that all conditions of the lender have been
266 satisfied to activate the commitment to disburse funds other
267 than the obtaining of the certificate of authority, the
268 completion of construction, or the closing of the purchase of
269 realty or buildings for the facility.

270 (f) Proof that the aggregate amount of entrance fees
271 received by or pledged to the applicant, plus anticipated
272 proceeds from any long-term financing commitment, plus funds
273 from all other sources in the actual possession of the



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274 applicant, equal at least ~~not less than~~ 100 percent of the
275 aggregate cost of constructing or purchasing, equipping, and
276 furnishing the facility plus 100 percent of the anticipated
277 startup losses of the facility.

278 (g) Complete audited financial statements of the applicant,
279 prepared by an independent certified public accountant in
280 accordance with generally accepted accounting principles, as of
281 the date the applicant commenced business operations or for the
282 fiscal year that ended immediately preceding the date of
283 application, whichever is later, and complete unaudited
284 quarterly financial statements attested to by the applicant
285 after ~~subsequent to~~ the date of the last audit.

286 (h) Proof that the applicant has complied with the escrow
287 requirements of subsection (5) ~~(3)~~ or subsection (7) ~~(5)~~ and
288 will be able to comply with s. 651.035.

289 (i) Such other reasonable data, financial statements, and
290 pertinent information as the commission or office may require
291 with respect to the applicant or the facility, to determine the
292 financial status of the facility and the management capabilities
293 of its managers and owners.

294 (2) ~~(j)~~ Within 30 days after ~~of the~~ receipt of the
295 information required under subsection (1) ~~paragraphs (a) - (h)~~,
296 the office shall examine such information and ~~shall~~ notify the
297 provider in writing, specifically requesting any additional
298 information the office is permitted by law to require. Within 15
299 days after receipt of all of the requested additional
300 information, the office shall notify the provider in writing
301 that all of the requested information has been received and the
302 application is deemed to be complete as of the date of the



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303 notice. Failure to ~~so~~ notify the applicant in writing within the
304 15-day period constitutes ~~shall constitute~~ acknowledgment by the
305 office that it has received all requested additional
306 information, and the application shall be deemed ~~to be~~ complete
307 for purposes of review on ~~upon~~ the date of ~~the~~ filing ~~of~~ all of
308 the required additional information.

309 (3) ~~(k)~~ Within 45 days after an application is deemed
310 complete as set forth in subsection (2) ~~paragraph (j)~~, and upon
311 completion of the remaining requirements of this section, the
312 office shall complete its review and ~~shall~~ issue, or deny a
313 certificate of authority, to the holder of a provisional
314 certificate of authority ~~a certificate of authority~~. If a
315 certificate of authority is denied, the office must ~~shall~~ notify
316 the holder of the provisional certificate ~~of authority~~ in
317 writing, citing the specific failures to satisfy the provisions
318 of this chapter. If denied, the holder of the provisional
319 certificate is ~~of authority shall be~~ entitled to an
320 administrative hearing pursuant to chapter 120.

321 (4) ~~(2)~~ ~~(a)~~ The office shall issue a certificate of authority
322 upon determining ~~its determination~~ that the applicant meets all
323 requirements of law and has submitted all of the information
324 required by this section, that all escrow requirements have been
325 satisfied, and that the fees prescribed in s. 651.015(2) have
326 been paid.

327 (a) Notwithstanding satisfaction of the 30-percent minimum
328 reservation requirement of paragraph (1)(c), no certificate of
329 authority shall be issued until the project has a minimum of 50
330 percent of the units reserved for which the provider is charging
331 an entrance fee, and proof ~~thereof~~ is provided to the office. If



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332 a provider offering continuing care at-home is applying for a
333 certificate of authority or approval of an expansion pursuant to
334 s. 651.021(2), the same minimum reservation requirements must be
335 met for the continuing care and continuing care at-home
336 contracts, independently of each other.

337 (b) In order for a unit to be considered reserved under
338 this section, the provider must collect a minimum deposit of 10
339 percent of the then-current entrance fee for that unit, and ~~must~~
340 assess a forfeiture penalty of 2 percent of the entrance fee due
341 to termination of the reservation contract after 30 days for any
342 reason other than the death or serious illness of the resident,
343 the failure of the provider to meet its obligations under the
344 reservation contract, or other circumstances beyond the control
345 of the resident that equitably entitle the resident to a refund
346 of the resident's deposit. The reservation contract must ~~shall~~
347 state the cancellation policy and the terms of the continuing
348 care or continuing care at-home contract to be entered into.

349 ~~(5)-(3)~~ Up to ~~No more than~~ 25 percent of the moneys paid for
350 all or any part of an initial entrance fee may be included or
351 pledged for the construction or purchase of the facility, ~~or~~
352 ~~included or pledged~~ as security for long-term financing. The
353 term "initial entrance fee" means the total entrance fee charged
354 by the facility to the first occupant of a unit.

355 (a) A minimum of 75 percent of the moneys paid for all or
356 any part of an initial entrance fee collected for continuing
357 care or continuing care at-home shall be placed in an escrow
358 account or on deposit with the department as prescribed in s.
359 651.033.

360 (b) For an expansion as provided in s. 651.021(2), a



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361 minimum of 75 percent of the moneys paid for all or any part of
362 an initial entrance fee collected for continuing care and 50
363 percent of the moneys paid for all or any part of an initial fee
364 collected for continuing care at-home shall be placed in an
365 escrow account or on deposit with the department as prescribed
366 in s. 651.033.

367 (6)-(4) The provider is ~~shall be~~ entitled to secure release
368 of the moneys held in escrow within 7 days after receipt by the
369 office of an affidavit from the provider, along with appropriate
370 copies to verify, and notification to the escrow agent by
371 certified mail, that the following conditions have been
372 satisfied:

373 (a) A certificate of occupancy has been issued.

374 (b) Payment in full has been received for at least ~~no less~~
375 ~~than~~ 70 percent of the total units of a phase or of the total of
376 the combined phases constructed. If a provider offering
377 continuing care at-home is applying for a release of escrowed
378 entrance fees, the same minimum requirement must be met for the
379 continuing care and continuing care at-home contracts,
380 independently of each other.

381 (c) The consultant who prepared the feasibility study
382 required by this section or a substitute approved by the office
383 certifies within 12 months before the date of filing for office
384 approval that there has been no material adverse change in
385 status with regard to the feasibility study, ~~with such statement~~
386 ~~dated not more than 12 months from the date of filing for office~~
387 ~~approval~~. If a material adverse change exists ~~should exist~~ at
388 the time of submission, ~~then~~ sufficient information acceptable
389 to the office and the feasibility consultant must ~~shall~~ be



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390 submitted which remedies the adverse condition.

391 (d) Proof that commitments have been secured or a
392 documented plan adopted by the applicant has been approved by
393 the office for long-term financing.

394 (e) Proof that the provider has sufficient funds to meet
395 the requirements of s. 651.035, which may include funds
396 deposited in the initial entrance fee account.

397 (f) Proof as to the intended application of the proceeds
398 upon release and proof that the entrance fees when released will
399 be applied as represented to the office.

400

401 Notwithstanding ~~any provision of~~ chapter 120, no person, other
402 than the provider, the escrow agent, and the office, ~~may shall~~
403 have a substantial interest in any office decision regarding
404 release of escrow funds in any proceedings under chapter 120 or
405 this chapter regarding release of escrow funds.

406 ~~(7)(5)~~ In lieu of the provider fulfilling the requirements
407 in subsection ~~(5) (3)~~ and paragraphs ~~(6)(b) (4)(b)~~ and (d), the
408 office may authorize the release of escrowed funds to retire all
409 outstanding debts on the facility and equipment upon application
410 of the provider and upon the provider's showing that the
411 provider will grant to the residents a first mortgage on the
412 land, buildings, and equipment that constitute the facility, and
413 that the provider has satisfied ~~satisfies the requirements of~~
414 paragraphs ~~(6)(a) (4)(a)~~, (c), and (e). Such mortgage shall
415 secure the refund of the entrance fee in the amount required by
416 this chapter. The granting of such mortgage is ~~shall be~~ subject
417 to the following:

418 (a) The first mortgage is ~~shall be~~ granted to an



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419 independent trust that ~~which~~ is beneficially held by the
420 residents. The document creating the trust must include ~~shall~~
421 ~~contain~~ a provision that ~~it~~ agrees to an annual audit and will
422 furnish to the office all information the office may reasonably
423 require. The mortgage may secure payment on bonds issued to the
424 residents or trustee. Such bonds are ~~shall be~~ redeemable after
425 termination of the residency contract in the amount and manner
426 required by this chapter for the refund of an entrance fee.

427 (b) Before granting a first mortgage to the residents, all
428 construction must ~~shall~~ be substantially completed and
429 substantially all equipment must ~~shall~~ be purchased. No part of
430 the entrance fees may be pledged as security for a construction
431 loan or otherwise used for construction expenses before the
432 completion of construction.

433 (c) If the provider is leasing the land or buildings used
434 by the facility, the leasehold interest must ~~shall~~ be for a term
435 of at least 30 years.

436 ~~(8)-(6)~~ The timeframes provided under s. 651.022(5) and (6)
437 apply to applications submitted under s. 651.021(2). The office
438 may not issue a certificate of authority ~~under this chapter~~ to a
439 ~~any~~ facility that ~~which~~ does not have a component that ~~which~~ is
440 to be licensed pursuant to part II of chapter 400 or to part I
441 of chapter 429 or that does ~~which will~~ not offer personal
442 services or nursing services through written contractual
443 agreement. A ~~Any~~ written contractual agreement must be disclosed
444 in the ~~continuing care~~ contract for continuing care or
445 continuing care at-home and is subject to the provisions of s.
446 651.1151, relating to administrative, vendor, and management
447 contracts.



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448 (9) ~~(7)~~ The office may ~~shall~~ not approve an application that
449 ~~which~~ includes in the plan of financing any encumbrance of the
450 operating reserves required by this chapter.

451 Section 7. Paragraphs (a) and (d) of subsection (3) of
452 section 651.033, Florida Statutes, are amended to read:

453 651.033 Escrow accounts.—

454 (3) In addition, when entrance fees are required to be
455 deposited in an escrow account pursuant to s. 651.022, s.
456 651.023, or s. 651.055:

457 (a) The provider shall deliver to the resident a written
458 receipt. The receipt must ~~shall~~ show the payor's name and
459 address, the date, the price of the care contract, and the
460 amount of money paid. A copy of each receipt, together with the
461 funds, shall be deposited with the escrow agent or as provided
462 in paragraph (c). The escrow agent shall release such funds to
463 the provider ~~upon the expiration of~~ 7 days after the date of
464 receipt of the funds by the escrow agent if the provider,
465 operating under a certificate of authority issued by the office,
466 has met the requirements of s. 651.023 (6) ~~(4)~~. However, if the
467 resident rescinds the contract within the 7-day period, the
468 escrow agent shall release the escrowed fees to the resident.

469 (d) A provider may assess a nonrefundable fee, which is
470 separate from the entrance fee, for processing a prospective
471 resident's application for continuing care or continuing care
472 at-home.

473 Section 8. Subsections (2) and (3) of section 651.035,
474 Florida Statutes, are amended to read:

475 651.035 Minimum liquid reserve requirements.—

476 (2) (a) In facilities where not all residents are under



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477 continuing care or continuing care at-home contracts, the
478 reserve requirements of subsection (1) shall be computed only
479 with respect to the proportional share of operating expenses
480 that ~~which~~ are applicable to residents ~~as defined in s. 651.011~~.
481 For purposes of this calculation, the proportional share shall
482 be based upon the ratio of residents under continuing care or
483 continuing care at-home contracts to those residents who do not
484 hold such contracts.

485 (b) In facilities that have voluntarily and permanently
486 discontinued marketing continuing care and continuing care at-
487 home contracts, the office may allow a reduced debt service
488 reserve as required in subsection (1) based upon the ratio of
489 residents under continuing care or continuing care at-home
490 contracts to those residents who do not hold such contracts if
491 the office finds that such reduction is not inconsistent with
492 the security protections intended by this chapter. In making
493 this determination, the office may consider such factors as the
494 financial condition of the facility, the provisions of ~~the~~
495 outstanding continuing care and continuing care at-home
496 contracts, the ratio of residents under continuing care or
497 continuing care at-home contracts ~~agreements~~ to those residents
498 who do not hold such contracts ~~a continuing care contract~~, the
499 current occupancy rates, the previous sales and marketing
500 efforts, the life expectancy of the remaining residents ~~contract~~
501 ~~holders~~, and the written policies of the board of directors of
502 the provider or a similar board.

503 (3) If principal and interest payments are paid to a trust
504 that is beneficially held by the residents as described in s.
505 651.023(7)(~~5~~), the office may waive all or any portion of the



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506 escrow requirements for mortgage principal and interest
507 contained in subsection (1) if the office finds that such waiver
508 is not inconsistent with the security protections intended by
509 this chapter.

510 Section 9. Section 651.055, Florida Statutes, is amended to
511 read:

512 651.055 Continuing care contracts; right to rescind.-

513 (1) Each continuing care contract and each addendum to such
514 contract shall be submitted to and approved by the office before
515 ~~prior to~~ its use in this state. Thereafter, no other form of
516 contract shall be used by the provider until ~~unless~~ it has been
517 submitted to and approved by the office. Each contract must
518 ~~shall~~:

519 (a) Provide for the continuing care of only one resident,
520 or for two persons occupying space designed for double
521 occupancy, under appropriate regulations established by the
522 provider, and must ~~shall~~ list all properties transferred and
523 their market value at the time of transfer, including donations,
524 subscriptions, fees, and any other amounts paid or payable by,
525 or on behalf of, the resident or residents.

526 (b) Specify all services that ~~which~~ are to be provided by
527 the provider to each resident, including, in detail, all items
528 that ~~which~~ each resident will receive, whether the items will be
529 provided for a designated time period or for life, and whether
530 the services will be available on the premises or at another
531 specified location. The provider shall indicate which services
532 or items are included in the contract for continuing care and
533 which services or items are made available at or by the facility
534 at extra charge. Such items ~~shall~~ include, but are not limited



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535 to, food, shelter, personal services or nursing care, drugs,
536 burial, and incidentals.

537 (c) Describe the terms and conditions under which a
538 contract for continuing care may be canceled by the provider or
539 by a resident and the conditions, if any, under which all or any
540 portion of the entrance fee will be refunded in the event of
541 cancellation of the contract by the provider or by the resident,
542 including the effect of any change in the health or financial
543 condition of a person between the date of entering a contract
544 for continuing care and the date of initial occupancy of a
545 living unit by that person.

546 (d) Describe the health and financial conditions required
547 for a person to be accepted as a resident and to continue as a
548 resident, once accepted, including the effect of any change in
549 the health or financial condition of the person between the date
550 of submitting an application for admission to the facility and
551 entering into a continuing care contract. If a prospective
552 resident signs a contract but postpones moving into the
553 facility, the individual is deemed to be occupying a unit at the
554 facility when he or she pays the entrance fee or any portion of
555 the fee, other than a reservation deposit, and begins making
556 monthly maintenance fee payments. Such resident may rescind the
557 contract and receive a full refund of any funds paid, without
558 penalty or forfeiture, within 7 days after executing the
559 contract as specified in subsection (2).

560 (e) Describe the circumstances under which the resident
561 will be permitted to remain in the facility in the event of
562 financial difficulties of the resident. The stated policy may
563 not be less than the terms stated in s. 651.061.



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564 (f) State the fees that will be charged if the resident
565 marries while at the designated facility, the terms concerning
566 the entry of a spouse to the facility, and the consequences if
567 the spouse does not meet the requirements for entry.

568 (g) Provide that the contract may be canceled by giving at
569 least 30 days' written notice of cancellation by the provider,
570 the resident, or the person who provided the transfer of
571 property or funds for the care of such resident. ~~+~~ However, if a
572 contract is canceled because there has been a good faith
573 determination that a resident is a danger to himself or herself
574 or others, only such notice as is reasonable under the
575 circumstances is required.

576 1. The contract must also provide in clear and
577 understandable language, in print no smaller than the largest
578 type used in the body of the contract, the terms governing the
579 refund of any portion of the entrance fee.

580 2. For a resident whose contract with the facility provides
581 that the resident does not receive a transferable membership or
582 ownership right in the facility, and who has occupied his or her
583 unit, the refund shall be calculated on a pro rata basis with
584 the facility retaining up to 2 percent per month of occupancy by
585 the resident and up to a 5 percent ~~5-percent~~ processing fee.
586 Such refund must be paid within 120 days after giving the notice
587 of intention to cancel.

588 3. In addition to a processing fee, if the contract
589 provides for the facility to retain up to 1 percent per month of
590 occupancy by the resident, it may provide that such refund will
591 be paid from the proceeds of the next entrance fees received by
592 the provider for units for which there are no prior claims by



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593 any resident until paid in full or, if the provider has
594 discontinued marketing continuing care contracts, within 200
595 days after the date of notice.

596 4. Unless subsection (5) applies, for any prospective
597 resident, regardless of whether or not such a resident receives
598 a transferable membership or ownership right in the facility,
599 who cancels the contract before occupancy of the unit, the
600 entire amount paid toward the entrance fee shall be refunded,
601 less a processing fee of up to 5 percent of the entire entrance
602 fee; however, the processing fee may not exceed the amount paid
603 by the prospective resident. Such refund must be paid within 60
604 days after giving ~~the~~ notice of intention to cancel. For a
605 resident who has occupied his or her unit and who has received a
606 transferable membership or ownership right in the facility, the
607 foregoing refund provisions do not apply but are deemed
608 satisfied by the acquisition or receipt of a transferable
609 membership or an ownership right in the facility. The provider
610 may not charge any fee for the transfer of membership or sale of
611 an ownership right. A prospective resident, resident, or
612 resident's estate is not entitled to interest of any type on a
613 deposit or entrance fee unless it is specified in the continuing
614 care contract.

615 (h) State the terms under which a contract is canceled by
616 the death of the resident. These terms may contain a provision
617 that, upon the death of a resident, the entrance fee of such
618 resident is ~~shall be~~ considered earned and becomes ~~shall become~~
619 the property of the provider. If ~~When~~ the unit is shared, the
620 conditions with respect to the effect of the death or removal of
621 one of the residents must ~~shall~~ be included in the contract.



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622 (i) Describe the policies that ~~which~~ may lead to changes in
623 monthly recurring and nonrecurring charges or fees for goods and
624 services received. The contract must ~~shall~~ provide for advance
625 notice to the resident, of at least ~~not less than~~ 60 days,
626 before any change in fees or charges or the scope of care or
627 services is ~~may be~~ effective, except for changes required by
628 state or federal assistance programs.

629 (j) Provide that charges for care paid in one lump sum may
630 ~~shall~~ not be increased or changed during the duration of the
631 agreed upon care, except for changes required by state or
632 federal assistance programs.

633 (k) Specify whether ~~or not~~ the facility is, or is
634 affiliated with, a religious, nonprofit, or proprietary
635 organization or management entity; the extent to which the
636 affiliate organization will be responsible for the financial and
637 contractual obligations of the provider; and the provisions of
638 the federal Internal Revenue Code, if any, under which the
639 provider or affiliate is exempt from the payment of federal
640 income tax.

641 (2) A resident has the right to rescind a continuing care
642 contract and receive a full refund of any funds paid, without
643 penalty or forfeiture, within 7 days after executing the
644 contract. A resident may not be required to move into the
645 facility designated in the contract before the expiration of the
646 7-day period. During the 7-day period, the resident's funds must
647 be held in an escrow account unless otherwise requested by the
648 resident pursuant to s. 651.033(3)(c).

649 (3) The contract must ~~shall~~ include or ~~shall~~ be accompanied
650 by a statement, printed in boldfaced type, which reads: "This



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651 facility and all other continuing care facilities in the State
652 of Florida are regulated by chapter 651, Florida Statutes. A
653 copy of the law is on file in this facility. The law gives you
654 or your legal representative the right to inspect our most
655 recent financial statement and inspection report before signing
656 the contract."

657 (4) Before the transfer of any money or other property to a
658 provider by or on behalf of a prospective resident, the provider
659 shall present a typewritten or printed copy of the contract to
660 the prospective resident and all other parties to the contract.
661 The provider shall secure a signed, dated statement from each
662 party to the contract certifying that a copy of the contract
663 with the specified attachment, as required pursuant to this
664 chapter, was received.

665 (5) Except for a resident who postpones moving into the
666 facility but is deemed to have occupied a unit as described in
667 paragraph (1)(d), if a prospective resident dies before
668 occupying the facility or, through illness, injury, or
669 incapacity, is precluded from becoming a resident under the
670 terms of the continuing care contract, the contract is
671 automatically canceled, and the prospective resident or his or
672 her legal representative shall receive a full refund of all
673 moneys paid to the facility, except those costs specifically
674 incurred by the facility at the request of the prospective
675 resident and set forth in writing in a separate addendum, signed
676 by both parties, to the contract.

677 (6) In order to comply with this section, a provider may
678 furnish information not contained in his or her continuing care
679 contract through an addendum.



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680 (7) Contracts to provide continuing care, including
681 contracts that are terminable by either party, may include
682 agreements to provide care for any duration.

683 (8)-(7) Those contracts entered into after subsequent to
684 July 1, 1977, and before the issuance of a certificate of
685 authority to the provider are valid and binding upon both
686 parties in accordance with their terms. Within 30 days after
687 receipt of a letter from the office notifying the provider of a
688 noncompliant residency contract, the provider shall file a new
689 residency contract for approval which complies with Florida law.
690 Pending review and approval of the new residency contract, the
691 provider may continue to use the previously approved contract.

692 (9)-(8) The provisions of this section shall control over
693 any conflicting provisions contained in part II of chapter 400
694 or in part I of chapter 429.

695 Section 10. Section 651.057, Florida Statutes, is created
696 to read:

697 651.057 Continuing care at-home contracts.-

698 (1) In addition to the requirements of s. 651.055, a
699 provider offering contracts for continuing care at-home must:

700 (a) Disclose the following in the continuing care at-home
701 contract:

702 1. Whether transportation will be provided to residents
703 when traveling to and from the facility for services;

704 2. That the provider has no liability for residents
705 residing outside the facility beyond the delivery of services
706 specified in the contract and future access to nursing care or
707 personal services at the facility or in another setting
708 designated in the contract;



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709 3. The mechanism for monitoring residents who live outside
710 the facility;

711 4. The process that will be followed to establish priority
712 if a resident wishes to exercise his or her right to move into
713 the facility; and

714 5. The policy that will be followed if a resident living
715 outside the facility relocates to a different residence and no
716 longer avails himself or herself of services provided by the
717 facility.

718 (b) Ensure that persons employed by or under contract with
719 the provider who assist in the delivery of services to residents
720 residing outside the facility are appropriately licensed or
721 certified as required by law.

722 (c) Include operating expenses for continuing care at-home
723 contracts in the calculation of the operating reserve required
724 by s. 651.035(1)(c).

725 (d) Include the operating activities for continuing care
726 at-home contracts in the total operation of the facility when
727 submitting financial reports to the office as required by s.
728 651.026.

729 (2) A provider that holds a certificate of authority and
730 wishes to offer continuing care at-home must also:

731 (a) Submit a business plan to the office with the following
732 information:

733 1. A description of the continuing care at-home services
734 that will be provided, the market to be served, and the fees to
735 be charged;

736 2. A copy of the proposed continuing care at-home contract;

737 3. An actuarial study prepared by an independent actuary in



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738 accordance with the standards adopted by the American Academy of
739 Actuaries which presents the impact of providing continuing care
740 at-home on the overall operation of the facility;

741 4. A market feasibility study that meets the requirements
742 of s. 651.022(3) and documents that there is sufficient interest
743 in continuing care at-home contracts to support such a program;
744 and

745 (b) Demonstrate to the office that the proposal to offer
746 continuing care at-home contracts to individuals who do not
747 immediately move into the facility will not place the provider
748 in an unsound financial condition;

749 (c) Comply with the requirements of s. 651.021(2), except
750 that an actuarial study may be substituted for the feasibility
751 study; and

752 (d) Comply with the requirements of this chapter.

753 (3) Contracts to provide continuing care at-home, including
754 contracts that are terminable by either party, may include
755 agreements to provide care for any duration.

756 (4) A provider offering continuing care at-home contracts
757 must, at a minimum, have a facility that is licensed under this
758 chapter and has accommodations for independent living which are
759 primarily intended for residents who do not require staff
760 supervision. The facility need not offer assisted living units
761 licensed under part I of chapter 429 or nursing home units
762 licensed under part II of chapter 400 in order to be able to
763 offer continuing care at-home contracts.

764 (a) The combined number of outstanding continuing care
765 (CCRC) and continuing care at-home (CAAH) contracts allowed at
766 the facility may be the greater of:



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767 1. One and one-half times the combined number of
768 independent living units (ILU), assisted living units (ALF) that
769 are licensed under part I of chapter 429, and nursing home units
770 licensed under part II of chapter 400 at the facility; or

771 2. Four times the combined number of assisted living units
772 (ALF) that are licensed under part I of chapter 429 and nursing
773 home units that are licensed under part II of chapter 400 at
774 that facility.

775 (b) The number of independent living units at the facility
776 must be equal to or greater than 10 percent of the initial 100
777 continuing care (CCRC) and continuing care at-home (CAAH)
778 contracts and 5 percent of the combined number of outstanding
779 continuing care (CCRC) and continuing care at home (CAAH)
780 contracts in excess of 100 issued by that facility.

781 Section 11. Subsection (1) of section 651.071, Florida
782 Statutes, is amended to read:

783 651.071 Contracts as preferred claims on liquidation or
784 receivership.—

785 (1) In the event of receivership or liquidation proceedings
786 against a provider, all continuing care and continuing care at-
787 home contracts executed by a provider shall be deemed preferred
788 claims against all assets owned by the provider; however, such
789 claims are ~~shall be~~ subordinate to those priority claims set
790 forth in s. 631.271 and any secured claim ~~as defined in s.~~
791 ~~631.011.~~

792 Section 12. Paragraph (h) of subsection (2) and subsection
793 (3) of section 651.091, Florida Statutes, are amended to read:

794 651.091 Availability, distribution, and posting of reports
795 and records; requirement of full disclosure.—



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796 (2) Every continuing care facility shall:

797 (h) Upon request, deliver to the president or chair of the
798 residents' council a copy of any newly approved continuing care
799 or continuing care at-home contract within 30 days after
800 approval by the office.

801 (3) Before entering into a contract to furnish continuing
802 care or continuing care at-home, the provider undertaking to
803 furnish the care, or the agent of the provider, shall make full
804 disclosure, and provide copies of the disclosure documents to
805 the prospective resident or his or her legal representative, of
806 the following information:

807 (a) The contract to furnish continuing care or continuing
808 care at-home.

809 (b) The summary listed in paragraph (2) (b).

810 (c) All ownership interests and lease agreements, including
811 information specified in s. 651.022(2)(b)8.

812 (d) In keeping with the intent of this subsection relating
813 to disclosure, the provider shall make available for review,
814 master plans approved by the provider's governing board and any
815 plans for expansion or phased development, to the extent that
816 the availability of such plans do ~~will~~ not put at risk real
817 estate, financing, acquisition, negotiations, or other
818 implementation of operational plans and thus jeopardize the
819 success of negotiations, operations, and development.

820 (e) Copies of the rules and regulations of the facility and
821 an explanation of the responsibilities of the resident.

822 (f) The policy of the facility with respect to admission to
823 and discharge from the various levels of health care offered by
824 the facility.



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825 (g) The amount and location of any reserve funds required
826 by this chapter, and the name of the person or entity having a
827 claim to such funds in the event of a bankruptcy, foreclosure,
828 or rehabilitation proceeding.

829 (h) A copy of s. 651.071.

830 (i) A copy of the resident's rights as described in s.
831 651.083.

832 Section 13. Section 651.106, Florida Statutes, is amended
833 to read:

834 651.106 Grounds for discretionary refusal, suspension, or
835 revocation of certificate of authority.—The office, ~~in its~~
836 ~~discretion~~, may deny, suspend, or revoke the provisional
837 certificate of authority or the certificate of authority of any
838 applicant or provider if it finds that any one or more of the
839 following grounds applicable to the applicant or provider exist:

840 (1) Failure by the provider to continue to meet the
841 requirements for the authority originally granted.

842 (2) Failure by the provider to meet one or more of the
843 qualifications for the authority specified by this chapter.

844 (3) Material misstatement, misrepresentation, or fraud in
845 obtaining the authority, or in attempting to obtain the same.

846 (4) Demonstrated lack of fitness or trustworthiness.

847 (5) Fraudulent or dishonest practices of management in the
848 conduct of business.

849 (6) Misappropriation, conversion, or withholding of moneys.

850 (7) Failure to comply with, or violation of, any proper
851 order or rule of the office or commission or violation of any
852 provision of this chapter.

853 (8) The insolvent condition of the provider or the



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854 provider's being in such condition or using such methods and
855 practices in the conduct of its business as to render its
856 further transactions in this state hazardous or injurious to the
857 public.

858 (9) Refusal by the provider to be examined or to produce
859 its accounts, records, and files for examination, or refusal by
860 any of its officers to give information with respect to its
861 affairs or to perform any other legal obligation under this
862 chapter when required by the office.

863 (10) Failure by the provider to comply with the
864 requirements of s. 651.026 or s. 651.033.

865 (11) Failure by the provider to maintain escrow accounts or
866 funds as required by this chapter.

867 (12) Failure by the provider to meet the requirements of
868 this chapter for disclosure of information to residents
869 concerning the facility, its ownership, its management, its
870 development, or its financial condition or failure to honor its
871 continuing care or continuing care at-home contracts.

872 (13) Any cause for which issuance of the license could have
873 been refused had it then existed and been known to the office.

874 (14) Having been found guilty of, or having pleaded guilty
875 or nolo contendere to, a felony in this state or any other
876 state, without regard to whether a judgment or conviction has
877 been entered by the court having jurisdiction of such cases.

878 (15) In the conduct of business under the license, engaging
879 in unfair methods of competition or in unfair or deceptive acts
880 or practices prohibited under part IX of chapter 626.

881 (16) A pattern of bankrupt enterprises.
882



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883 Revocation of a certificate of authority under this section does
884 not relieve a provider from the provider's obligation to
885 residents under the terms and conditions of any continuing care
886 or continuing care at-home contract between the provider and
887 residents or the provisions of this chapter. The provider shall
888 continue to file its annual statement and pay license fees to
889 the office as required under this chapter as if the certificate
890 of authority had continued in full force, but the provider shall
891 not issue any new ~~continuing care~~ contracts. The office may seek
892 an action in the circuit court of Leon County to enforce the
893 office's order and the provisions of this section.

894 Section 14. Subsection (8) of section 651.114, Florida
895 Statutes, is amended to read:

896 651.114 Delinquency proceedings; remedial rights.—

897 (8) (a) The rights of the office described in this section
898 are ~~shall be~~ subordinate to the rights of a trustee or lender
899 pursuant to the terms of a resolution, ordinance, loan
900 agreement, indenture of trust, mortgage, lease, security
901 agreement, or other instrument creating or securing bonds or
902 notes issued to finance a facility, and the office, subject to
903 the provisions of paragraph (c), shall not exercise its remedial
904 rights provided under this section and ss. 651.018, 651.106,
905 651.108, and 651.116 with respect to a facility that is subject
906 to a lien, mortgage, lease, or other encumbrance or trust
907 indenture securing bonds or notes issued in connection with the
908 financing of the facility, if the trustee or lender, by
909 inclusion or by amendment to the loan documents or by a separate
910 contract with the office, agrees that the rights of residents
911 under a continuing care or continuing care at-home contract will



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912 be honored and will not be disturbed by a foreclosure or
913 conveyance in lieu thereof as long as the resident:

914 1. Is current in the payment of all monetary obligations
915 required by the ~~continuing care~~ contract;

916 2. Is in compliance and continues to comply with all
917 provisions of the ~~resident's continuing care~~ contract; and

918 3. Has asserted no claim inconsistent with the rights of
919 the trustee or lender.

920 (b) ~~Nothing in~~ This subsection does not require ~~requires~~ a
921 trustee or lender to:

922 1. Continue to engage in the marketing or resale of new
923 continuing care or continuing care at-home contracts;

924 2. Pay any rebate of entrance fees as may be required by a
925 resident's continuing care or continuing care at-home contract
926 as of the date of acquisition of the facility by the trustee or
927 lender and until expiration of the period described in paragraph
928 (d);

929 3. Be responsible for any act or omission of any owner or
930 operator of the facility arising before ~~prior to~~ the acquisition
931 of the facility by the trustee or lender; or

932 4. Provide services to the residents to the extent that the
933 trustee or lender would be required to advance or expend funds
934 that have not been designated or set aside for such purposes.

935 (c) Should the office determine, at any time during the
936 suspension of its remedial rights as provided in paragraph (a),
937 that the trustee or lender is not in compliance with ~~the~~
938 ~~provisions of~~ paragraph (a), or that a lender or trustee has
939 assigned or has agreed to assign all or a portion of a
940 delinquent or defaulted loan to a third party without the



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941 office's written consent, the office shall notify the trustee or
942 lender in writing of its determination, setting forth the
943 reasons giving rise to the determination and specifying those
944 remedial rights afforded to the office which the office shall
945 then reinstate.

946 (d) Upon acquisition of a facility by a trustee or lender
947 and evidence satisfactory to the office that the requirements of
948 paragraph (a) have been met, the office shall issue a 90-day
949 temporary certificate of authority granting the trustee or
950 lender the authority to engage in the business of providing
951 continuing care or continuing care at-home and to issue
952 continuing care or continuing care at-home contracts subject to
953 the office's right to immediately suspend or revoke the
954 temporary certificate of authority if the office determines that
955 any of the grounds described in s. 651.106 apply to the trustee
956 or lender or that the terms of the contract agreement used as
957 the basis for the issuance of the temporary certificate of
958 authority by the office have not been or are not being met by
959 the trustee or lender since the date of acquisition.

960 Section 15. Subsections (4), (7), (9), and (11) of section
961 651.118, Florida Statutes, are amended to read:

962 651.118 Agency for Health Care Administration; certificates
963 of need; sheltered beds; community beds.—

964 (4) Not including the residences of residents residing
965 outside the facility pursuant to a continuing care at-home
966 contract, the Agency for Health Care Administration shall
967 approve one sheltered nursing home bed for every four proposed
968 residential units, including those that are licensed under part
969 I of chapter 429, in the continuing care facility unless the



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970 provider demonstrates the need for a lesser number of sheltered
971 nursing home beds based on proposed utilization by prospective
972 residents or demonstrates the need for additional sheltered
973 nursing home beds based on actual utilization and demand by
974 current residents.

975 (7) Notwithstanding ~~the provisions of~~ subsection (2), at
976 the discretion of the ~~continuing care~~ provider, sheltered
977 nursing home beds may be used for persons who are not residents
978 of the continuing care facility and who are not parties to a
979 continuing care contract for ~~a period of~~ up to 5 years after the
980 date of issuance of the initial nursing home license. A provider
981 whose 5-year period has expired or is expiring may request an
982 extension from the Agency for Health Care Administration for an
983 extension, not to exceed 30 percent of the total sheltered
984 nursing home beds or 30 sheltered beds, whichever is greater, if
985 the utilization by residents of the nursing home facility in the
986 sheltered beds will not generate sufficient income to cover
987 nursing home facility expenses, as evidenced by one of the
988 following:

989 (a) The nursing home facility has a net loss for the most
990 recent fiscal year as determined under generally accepted
991 accounting principles, excluding the effects of extraordinary or
992 unusual items, as demonstrated in the most recently audited
993 financial statement. ~~;~~ ~~or~~

994 (b) The nursing home facility would have had a pro forma
995 loss for the most recent fiscal year, excluding the effects of
996 extraordinary or unusual items, if revenues were reduced by the
997 amount of revenues from persons in sheltered beds who were not
998 residents, as reported ~~on~~ by a certified public accountant.



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999
1000 The Agency for Health Care Administration may ~~shall be~~
1001 ~~authorized to~~ grant an extension to the provider based on the
1002 evidence required in this subsection. The Agency for Health Care
1003 Administration may request a continuing care facility to use up
1004 to 25 percent of the patient days generated by new admissions of
1005 nonresidents during the extension period to serve Medicaid
1006 recipients for those beds authorized for extended use if there
1007 is a demonstrated need in the respective service area and if
1008 funds are available. A provider who obtains an extension is
1009 prohibited from applying for additional sheltered beds under ~~the~~
1010 ~~provision of~~ subsection (2), unless additional residential units
1011 are built or the provider can demonstrate need by continuing
1012 care facility residents to the Agency for Health Care
1013 Administration. The 5-year limit does not apply to up to five
1014 sheltered beds designated for inpatient hospice care as part of
1015 a contractual arrangement with a hospice licensed under part IV
1016 of chapter 400. A continuing care facility that uses such beds
1017 after the 5-year period shall report such use to the Agency for
1018 Health Care Administration. For purposes of this subsection,
1019 "resident" means a person who, upon admission to the continuing
1020 care facility, initially resides in a part of the continuing
1021 care facility not licensed under part II of chapter 400, or who
1022 contracts for continuing care at-home.

1023 (9) This section does not preclude a ~~continuing care~~
1024 provider from applying to the Agency for Health Care
1025 Administration for a certificate of need for community nursing
1026 home beds or a combination of community and sheltered nursing
1027 home beds. Any nursing home bed located in a continuing care



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1028 facility which ~~that~~ is or has been issued for nonrestrictive use
1029 retains ~~shall retain~~ its legal status as a community nursing
1030 home bed unless the provider requests a change in status. Any
1031 nursing home bed located in a continuing care facility and not
1032 issued as a sheltered nursing home bed before ~~prior to~~ 1979 must
1033 be classified as a community bed. The Agency for Health Care
1034 Administration may require continuing care facilities to submit
1035 bed utilization reports for the purpose of determining community
1036 and sheltered nursing home bed inventories based on historical
1037 utilization by residents and nonresidents.

1038 (11) For a provider issued a provisional certificate of
1039 authority after July 1, 1986, to operate a facility not
1040 previously regulated under this chapter, the following criteria
1041 must ~~shall~~ be met in order to obtain a certificate of need for
1042 sheltered beds pursuant to subsections (2), (3), (4), (5), (6),
1043 and (7):

1044 (a) Seventy percent or more of the current residents hold
1045 continuing care or continuing care at-home contracts ~~agreements~~
1046 ~~pursuant to s. 651.011(2)~~ or, if the facility is not occupied,
1047 70 percent or more of the prospective residents will hold such
1048 contracts ~~continuing care agreements pursuant to s. 651.011(2)~~
1049 as projected in the feasibility study and demonstrated by the
1050 provider's marketing practices; and

1051 (b) The continuing care or continuing care at-home
1052 contracts ~~agreements~~ entered into or to be entered into by 70
1053 percent or more of the current residents or prospective
1054 residents must ~~pursuant to s. 651.011(2)~~ shall provide nursing
1055 home care for a minimum of 360 cumulative days, and such
1056 residents ~~the holders of the continuing care agreements~~ shall be



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1057 charged at rates that ~~which~~ are 80 percent or less than the
1058 rates charged by the provider to persons receiving nursing home
1059 care who have not entered into such contracts ~~continuing care~~
1060 ~~agreements pursuant to s. 651.011(2).~~

1061 Section 16. Subsection (1) of section 651.121, Florida
1062 Statutes, is amended to read:

1063 651.121 Continuing Care Advisory Council.—

1064 (1) The Continuing Care Advisory Council to the office is
1065 created consisting ~~to consist~~ of 10 members who are residents of
1066 this state appointed by the Governor and geographically
1067 representative of this state. Three members shall be
1068 administrators of facilities that hold valid certificates of
1069 authority under this chapter and shall have been actively
1070 engaged in the offering of continuing care contracts ~~agreements~~
1071 in this state for 5 years before appointment. The remaining
1072 members include:

1073 (a) A representative of the business community whose
1074 expertise is in the area of management.

1075 (b) A representative of the financial community who is not
1076 a facility owner or administrator.

1077 (c) A certified public accountant.

1078 (d) An attorney.

1079 (e) Three residents who hold continuing care or continuing
1080 care at-home contracts ~~agreements~~ with a facility certified in
1081 this state.

1082 Section 17. Subsection (1) of section 651.125, Florida
1083 Statutes, is amended to read:

1084 651.125 Criminal penalties; injunctive relief.—

1085 (1) Any person who maintains, enters into, or, as manager



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1086 or officer or in any other administrative capacity, assists in
1087 entering into, maintaining, or performing any continuing care or
1088 continuing care at-home contract agreement subject to this
1089 chapter without doing so in pursuance of a valid certificate of
1090 authority or renewal thereof, as contemplated by or provided in
1091 this chapter, or who otherwise violates any provision of this
1092 chapter or rule adopted in pursuance of this chapter, is guilty
1093 of a felony of the third degree, punishable as provided in s.
1094 775.082 or s. 775.083. Each violation of this chapter
1095 constitutes a separate offense.

1096 Section 18. This act shall take effect July 1, 2011.

1097
1098 ===== T I T L E A M E N D M E N T =====

1099 And the title is amended as follows:

1100 Delete everything before the enacting clause
1101 and insert:

1102 A bill to be entitled
1103 An act relating to continuing care retirement
1104 communities; providing for the provision of continuing
1105 care at-home; amending s. 651.011, F.S.; revising
1106 definitions; defining "continuing care at-home,"
1107 "nursing care," "personal services," and "shelter";
1108 amending s. 651.012, F.S.; conforming a cross-
1109 reference; amending s. 651.013, F.S.; conforming
1110 provisions to changes made by the act; amending s.
1111 651.021, F.S., relating to the requirement for
1112 certificates of authority; requiring that a person in
1113 the business of issuing continuing care at-home
1114 contracts obtain a certificate of authority from the



1115 Office of Insurance Regulation; requiring written
1116 approval from the Office of Insurance Regulation for a
1117 20 percent or more expansion in the number of
1118 continuing care at-home contracts; providing that an
1119 actuarial study may be substituted for a feasibility
1120 study in specified circumstances; amending s. 651.022,
1121 F.S., relating to provisional certificates of
1122 authority; conforming provisions to changes made by
1123 the act; amending s. 651.023, F.S., relating to an
1124 application for a certificate of authority; specifying
1125 the content of the feasibility study that is included
1126 in the application for a certificate; requiring the
1127 same minimum reservation requirements for continuing
1128 care at-home contracts as continuing care contracts;
1129 requiring that a certain amount of the entrance fee
1130 collected for contracts resulting from an expansion be
1131 placed in an escrow account or on deposit with the
1132 department; amending ss. 651.033, 651.035, and
1133 651.055, F.S.; requiring a facility to provide proof
1134 of compliance with a residency contract; conforming
1135 provisions to changes made by the act; creating s.
1136 651.057, F.S.; providing additional requirements for
1137 continuing care at-home contracts; requiring that a
1138 provider who wishes to offer continuing care at-home
1139 contracts submit certain additional documents to the
1140 office; requiring that the provider comply with
1141 certain requirements; limiting the number of
1142 continuing care and continuing care at-home contracts
1143 at a facility based on the types of units at the



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1144 facility; amending ss. 651.071, 651.091, 651.106,
1145 651.114, 651.118, 651.121, and 651.125, F.S.;
1146 conforming provisions to changes made by the act;
1147 providing an effective date.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 1340
 INTRODUCER: Senator Bogdanoff
 SUBJECT: Continuing Care Retirement Communities
 DATE: April 11, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.			BI	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill authorizes the use of continuing care at-home contracts in order to allow individuals to receive services offered by a continuing care retirement community (CCRCs) in their own homes while reserving the right to shelter to be provided by the CCRC at a later date. The provisions of the bill closely reflect the provisions regulating continuing care contracts found throughout ch. 651, F.S.

This bill substantially amends following sections of the Florida Statutes: 651.011, 651.012, 651.013, 651.021, 651.022, 651.023, 651.033, 651.035, 651.055, 651.071, 651.091, 651.106, 651.114, 651.118, 651.121, and 651.125.

This bill creates section 651.057, Florida Statutes.

II. Present Situation:

Continuing Care Retirement Communities

Continuing care retirement communities (CCRCs), also known as life-care facilities, are retirement facilities that furnish residents with shelter and health care for an entrance fee and monthly payments.¹ A major benefit of joining a CCRC is that residents are provided a continuum of care for the rest of their lives in an environment familiar to them, close to family and friends. Residents are offered a variety of social and medical services while residing in

¹ Florida Dep't of Financial Servs., *Long-Term Care: A Guide for Consumers*, 18 (2009), available at <http://www.myfloridacfo.com/Consumers/Guides/Health/docs/LongTermCare2009.pdf> (last visited April 6, 2011).

independent living or assisted living arrangements or nursing homes. Entry fees can range from \$2,000 to \$500,000 or more and monthly fees can range from \$250 to \$5,000 or more.² As of July 2009, there were 1,891 individual CCRCs in the United States.³ Currently, there are 70 CCRCs in Florida and approximately 28,978 residents call a CCRC home.⁴

With the rather unique nature of CCRCs, oversight responsibility of these entities is shared among several state agencies. The Department of Financial Services (DFS) may become involved after a contractual agreement has been signed by both parties or during a mediation process. These matters are usually initially addressed through DFS's Consumer Helpline. The Agency for Health Care Administration regulates other aspects of CCRCs, such as assisted living, skilled nursing care, quality of care, and concerns with medical facilities. Because residents pay, in some cases, considerable amounts in entrance fees and ongoing monthly fees, there is a need to ensure that CCRCs are in the proper financial and managerial position to provide service not only to the present residents, but to future residents. Accordingly, the Office of Insurance Regulation (OIR) is given primary responsibility to authorize and monitor the operation of facilities and to determine facilities' financial status and the management capabilities of their managers and owners.⁵

In order to operate a CCRC in Florida, a provider must obtain from OIR a certificate of authority predicated upon first receiving a provisional certificate.⁶ The application process involves submitting a market feasibility study and various financial information, including projected revenues and expenses, current assets and liabilities of the applicant, and expectations of the financial condition of the project.⁷ A certificate of authority will only be issued once a provider submits proof that a minimum of 50 percent of the units available have been reserved.⁸

Continuing care services are governed by a contract between the facility and the resident of a CCRC. In Florida, continuing care contracts are considered an insurance product and are reviewed and approved for the market by OIR.⁹ Each contract for continuing care services must:

- Provide for continuing care of one resident, or two residents living in a double occupancy room, under regulations set out by the provider.
- List all property transferred to the facility by the resident upon moving to the CCRC, including amounts paid or payable by the resident.
- Specify all services to be provided by the provider to each resident, including, but not limited to, food, shelter, personal services, nursing care, drugs, burial and incidentals.

² *Id.* at 19.

³ U.S. Gov't Accountability Office, *Older Americans: Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk*, 3 (GAO-10-611) (June 2010), available at <http://www.gao.gov/new.items/d10611.pdf> (last visited April 6, 2011).

⁴ Office of Insurance Regulation, *Presentation to the Governor's Continuing Care Advisory Council* (Sept. 14, 2010), available at <http://www.floir.com/pdf/2009CouncilPresentation.pdf> (last visited April 6, 2011).

⁵ See ss. 651.021 and 651.023, F.S.

⁶ Section 651.022, F.S.

⁷ See ss. 651.021-651.023, F.S.

⁸ Section 651.023(2)(a), F.S.

⁹ Section 651.055(1), F.S.

- Describe the terms and conditions for cancellation of the contract given a variety of circumstances.
- Describe all other relevant terms and conditions included in statute.¹⁰

Continuing Care At-Home

Some states have started to offer continuing care at-home (CCAH) programs which allow a resident that resides outside the CCRC the right to future access to shelter, nursing care, or personal services by contracting with the CCRC for services while remaining in their home.¹¹ Participants pay a one-time entrance fee and monthly premiums for access to a varying range of home-based services, including care coordination, routine home maintenance, in-home assistance with activities of daily living, nursing services, transportation, meals, and other social programs.¹² These at-home programs give participants the ability to use personal, health care, and other concierge services offered by the CCRC until they are ready to move to the CCRC. These programs are generally much less expensive than the cost of moving to a CCRC.¹³

To qualify for a CCAH program, new members must meet age requirements, be in good health, and not require services at the time of enrollment. While the goal of a CCAH program is to provide services within the client's home, most programs provide nursing or assisted living facility care, if needed.¹⁴

New Jersey, Pennsylvania, Ohio, Tennessee, Maryland, and Connecticut are among the states that offer CCAH programs.¹⁵ New Hampshire and Maine passed legislation establishing CCAH contracts effective January 2011. The regulation of these programs varies from state to state.¹⁶

Florida does not provide for CCAH contracts in current law. The problem with providing CCAH programs in Florida is the statutory definition of "continuing care," which means furnishing *shelter* and nursing care or personal services pursuant to a contract.¹⁷ According to Rule 690-193.002(25) of the Florida Administrative Code, the term "shelter" means an independent living unit, room, apartment, cottage, villa, personal care unit, nursing bed, or other living area **within a facility** set aside for the exclusive use of one or more identified residents. Accordingly, under current Florida law, at-home care may not be provided because the care must be given within a facility.

Florida Task Force on Continuing Care Retirement Communities

In June 2009, the Florida Life Care Residents Association and the Florida Association of Homes and Services for the Aging created a joint task force to review the provisions of ch. 651, F.S.,

¹⁰ *Id.*

¹¹ Office of Legislative Research, Connecticut General Assembly, *Continuing Care Retirement Community "At Home" Programs* (Feb. 21, 2008), available at <http://www.cga.ct.gov/2008/rpt/2008-R-0110.htm> (last visited April 6, 2011).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*; see also Office of Insurance Regulation, *supra* note 4.

¹⁶ Office of Insurance Regulation, *supra* note 4.

¹⁷ Section 651.011(2), F.S.

and the recommendations of the task force form the basis of this legislation.¹⁸

III. Effect of Proposed Changes:

This bill authorizes the use of continuing care at-home contracts in order to allow individuals to receive services offered by a continuing care retirement community (CCRCs) in their own homes while reserving the right to shelter to be provided by the CCRC at a later date.

The bill defines the term “continuing care at-home” to mean “pursuant to a contract, furnishing to a resident who resides outside the facility the right to future access to shelter and nursing care or personal services, whether such services are provided in the facility or in another setting designated in the contract, by an individual not related by consanguinity or affinity to the resident, upon payment of an entrance fee.”

The bill creates s. 651.057, F.S., to govern continuing care at-home (CCAH) contracts. A provider offering CCAH contracts must:

- Disclose in the contract whether transportation will be provided to residents, that the provider has no liability for residents living outside the facility, the mechanism for monitoring residents, the process that will be followed to establish priority if a resident wishes to exercise his or her right to move into the facility, and the policy that will be followed if a resident living outside the facility relocates to a different residence;
- Ensure that persons employed by or under contract with the provider who assist in the delivery of services to residents residing outside the facility are appropriately licensed or certified as required by law;
- Include operating expenses for CCAH contracts in the calculation of the operating reserve;
- Include the operating activities for CCAH contracts in the total operation of the facility when submitting financial reports to the office.

In order to offer CCAH services, a provider must submit a business plan, demonstrate that the proposal to offer CCAH contracts will not place the provider in an unsound financial condition, comply with the requirements of s. 651.021(2), F.S.,¹⁹ except that an actuarial study may be substituted for the feasibility study, and comply with the requirements of ch. 651, F.S. Additionally, the provider must have a licensed facility and accommodations for independent living which are primarily intended for residents who do not require staff supervision.

The combined total of outstanding CCAH contracts allowed at a facility may be up to 1.5 times the combined total of licensed independent living units, assisted living units, and nursing home units, unless the facility’s provisional certificate of authority was issued on December 21, 2005.²⁰

¹⁸ The Office of Insurance Regulation participated in meetings of the task force and served as a resource to the task force.

¹⁹ Section 651.021(2), F.S., provides that before constructing or marketing for an expansion of a facility for the addition of at least 20 percent of existing units, written approval must be obtained from the Office of Insurance Regulation and the application must include a feasibility study.

²⁰ One facility in Tallahassee, Wescott Lakes at Southwood, was issued a provisional certificate of authority (COA) on December 21, 2005, that included approval for the facility to offer CCAH contracts. It appears that the Office of Insurance Regulation interpreted current law to allow for CCAH contracts to be marketed in Florida by this particular facility. The

Additionally, the number of independent living units at the facility must be equal to or greater than 10 percent of the combined total of outstanding continuing care and continuing care at-home contracts issued by that facility.

Section 651.021, F.S., is amended to require written approval from the Office of Insurance Regulation (OIR) before constructing a new facility or marketing the expansion of an existing facility equivalent to the addition of at least 20 percent of existing units or 20 percent or more in the number of CCAH contracts. If a provider is offering both continuing care and CCAH, the 20 percent is based on the total of both existing units and existing contracts for CCAH. The bill provides that an “expansion” includes the increases in the number of constructed units or CCAH contracts or a combination of both. If the expansion is only for CCAH contracts, an actuarial study presenting the financial impact of the expansion may be substituted for the feasibility study required of proposals for new construction.

Section 651.023, F.S., provides that OIR shall issue the holder of a provisional certificate of authority a certificate of authority if the holder of the provisional certificate provides information regarding any material change in status of the information in the application for the provisional certificate and a feasibility study is prepared. The bill amends this section of law to provide that if the feasibility study is prepared by an independent certified public accountant, it must contain an examination opinion for the first three years of operations and financial projections having a compilation opinion for the next three years. If the feasibility study is prepared by an independent consulting actuary, it must contain mortality and morbidity data and an actuary’s signed opinion that the project as proposed is feasible and that the study has been prepared in accordance with standards adopted by the American Academy of Actuaries.

Under current law, a certificate of authority may not be issued until the project has a minimum of 50 percent of the units reserved and proof is provided to OIR.²¹ The bill provides that if a provider offering CCAH is applying for a certificate of authority or approval of an expansion, then the same minimum reservation requirements must be met for the continuing care and CCAH contracts, independently of each other.

The bill further provides that for an expansion of a continuing care facility or CCAH contracts, a minimum of 75 percent of the moneys paid for all or any part of an initial entrance fee for continuing care and 50 percent of the moneys paid for all or any part of the initial fee collected for CCAH shall be placed in an escrow account or on deposit with the department. If a provider offering CCAH is applying for a release of escrowed entrance fees, the same minimum requirement must be met for the continuing care and the CCAH contracts, independently of each other. Additionally, a provider is entitled to secure release of moneys held in escrow if, among other things, the consultant who prepared the feasibility study (or an approved substitute) certifies *within 12 months before the date of filing for office approval* that there has been no material adverse change in status with regard to the study.

exemption included in the bill is designed to preserve the rights of the facility included in the provisional COA issued on the specific date. Health and Human Servs. Quality Subcommittee, The Florida House of Representatives, *House of Representatives Staff Analysis HB 1037* (April 5, 2011), available at <http://www.flsenate.gov/Session/Bill/2011/1037/Analyses/IHfQjonrPwFH/jDF4WSo3naLoWU=%7C7/Public/Bills/1000-1099/1037/Analysis/h1037.HSQS.PDF> (last visited April 6, 2011).

²¹ Section 651.023(2)(a), F.S.

The bill permits contracts for continuing care and CCAH to include agreements to provide care for any duration. The bill also requires a provider to submit proof of compliance with a residency contract within 90 days of receipt of a letter from OIR requesting the same. The bill provides that all current contracts remain in force until resolved by OIR and the facility.

Section 651.118, F.S., requires the Agency for Health Care Administration (AHCA) to approve one sheltered nursing home bed for every four proposed residential units in a continuing care facility, unless the provider demonstrates why fewer beds are needed. The bill amends this section of law to provide that AHCA does not need to approve sheltered nursing home beds for the residences of residents residing outside the facility pursuant to a CCAH contract. Additionally, current law authorizes providers to use nursing home beds for persons who are not residents of the continuing care facility and who are not parties to a continuing care contract for a certain period of time. The provider may request an extension from AHCA that does not exceed 30 percent of the total sheltered nursing home beds *or 30 sheltered beds, whichever is greater*.

In addition to the term “continuing care at-home,” which is defined above, the bill amends s. 651.011, F.S., to add definitions of “nursing care,” “personal services,” and “shelter.” The bill also expands the definition of “facility.”

Finally, the bill makes technical and conforming changes by adding the term “continuing care at-home” to provisions throughout ch. 651, F.S.

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill authorizes continuing care at-home (CCAH) contracts to be provided to individuals who want to receive services offered by a continuing care retirement community (CCRC) in their own homes while reserving the right to shelter to be provided by the CCRC at a later date. Receiving CCAH is a less expensive option for individuals needing services than a CCRC; therefore, the bill has the potential to save these individuals money.

According to the Office of Insurance Regulation, providers choosing to implement CCAH programs will have another revenue source. Some continuing care providers will be able to receive additional revenue from utilizing empty skilled nursing beds for non-continuing care residents. The impact of these service changes would likely create some measure of competition between CCRCs and skilled nursing home providers.²²

C. Government Sector Impact:

According to the Office of Insurance Regulation, there may be costs for updating and modifying technology programs to accommodate amended form filings, but these costs will be absorbed within current resources.²³

VI. Technical Deficiencies:

According to the Office of Insurance Regulation (OIR) and the Office of Financial Regulation (OFR), there is a drafting error in the title of the bill. Specifically, the title references the OFR, but it should reference OIR.²⁴

On line 408, the bill uses the term “initial fee” when referring to monies collected for continuing care at-home, whereas, the term “initial entrance fee” is used when referring to monies collected for continuing care. On line 423, the bill uses the term “entrance fees” when referring to monies escrowed for continuing care at-home. The bill appears inconsistent in regards to these provisions.

Additionally, the Florida Association of Homes and Services for the Aging recommended several technical amendments to the bill.²⁵

VII. Related Issues:

None.

²² Office of Insurance Regulation, *SB 1340* (Mar. 17, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

²³ *Id.*

²⁴ *Id.*

²⁵ See Florida Ass’n of Homes and Services for the Aging, *Requested Changes to SB 1340* (on file with the Senate Committee on Children, Families, and Elder Affairs).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 1422

INTRODUCER: Senator Altman

SUBJECT: Developmental Disabilities

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

This bill creates the Developmental Disabilities Savings Program (savings program), which is a savings and investment program that offers continued accessibility to services, regardless of income, insurance, or Medicaid eligibility, for families who have children with developmental disabilities who will become ineligible for services due to age.

The bill creates the Developmental Disabilities Savings Program Board (board) to administer the savings program. The board consists of seven members who are to serve on the board without compensation. The bill lists the powers and duties of the board and provides that the goals of the board are to provide all purchasers and benefactors of the program with the most secure, well-diversified, and beneficially administered savings program possible, to allow all qualified firms interested in providing services equal consideration, and to provide such services to the state at no cost and to the purchasers and benefactors at the lowest cost possible.

This bill creates unnumbered sections of the Florida Statutes.

II. Present Situation:

Services Provided by the Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD or agency) has the responsibility to provide services to persons with developmental disabilities. A developmental disability is a disorder or syndrome attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi

syndrome and constitutes a substantial handicap expected to continue indefinitely.¹ The agency serves approximately 35,000 Floridians with developmental disabilities annually.²

To be eligible for services, a person must be three years of age or older and have a confirmed diagnosis of a developmental disability prior to age 18. Services provided by APD include community services and supports as well as a limited institutional program. The agency determines eligibility, assesses service needs, and provides funding for purchasing the supports and services identified in assessments. The range of services and supports available to an individual include employment and training services, environmental adaptive equipment, personal or family supports, residential habilitation, support coordination, and therapeutic supports. The majority of services are provided through one of two federal Medicaid waivers.³

The developmental disabilities Home and Community Based Services (HCBS) waiver program is a Medicaid funded program that allows Florida to serve persons with developmental disabilities in community settings, such as a client's home or group home, instead of institutions.⁴ Services provided include personal care assistance, supported employment, respite care, skilled nursing, and residential rehabilitation.⁵

The Family and Supported Living (FSL) waiver makes services available to clients who live with their family or in their own home. Annual expenditures per client are capped at \$14,792, and fewer services are available.⁶

In 2007, section 393.0661, F.S., was modified to require a four tier delivery system for waiver services and in 2010 the specific criteria and dollar caps for each of the tiers was updated.⁷ Because there are not enough HCBS waiver slots to serve all eligible persons, APD maintains a waiting list of individuals who have requested services.⁸ According to Disability Rights Florida, an advocacy group for persons with disabilities, there were over 19,000 individuals with developmental and intellectual disabilities waiting for home and community based Medicaid waiver services in 2010.⁹ As of March 2010, 10,926 of those individuals waiting for waiver

¹ Section 393.063(9), F.S.

² *APD Takes Action to Prevent Elimination of Services*, CapitalSoup.com (Mar. 31, 2011), <http://capitalsoup.com/2011/03/31/apd-takes-action-to-prevent-elimination-of-services/> (last visited April 5, 2011).

³ Comm. on Ways and Means, The Florida Senate, *Bill Analysis and Fiscal Impact Statement CS/SB 1660* (April 6, 2009), available at <http://archive.flsenate.gov/data/session/2009/Senate/bills/analysis/pdf/2009s1660.wpsc.pdf> (last visited April 5, 2011).

⁴ Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *APD Should Take Steps to Ensure New Needs Assessment and Individual Budget Process is Timely and Effective*, Report No. 08-15, 2 (Mar. 2008), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0815rpt.pdf> (last visited April 5, 2011).

⁵ *Id.*

⁶ *Id.*

⁷ Chapter 2007-64, Laws of Fla. and ch. 2010-157, Laws of Fla.

⁸ Office of Program Policy Analysis and Gov't Accountability, *Gov't Program Summaries, Agency for Persons with Disabilities* (Jan. 21, 2011), <http://www.oppaga.state.fl.us/profiles/5060/> (last visited April 5, 2011).

⁹ Disability Rights Florida, *Annual Report*, 12 (2010) (on file with the Senate Committee on Children, Families, and Elder Affairs).

services were under the age of 22.¹⁰ Many individuals on the waiting list have few options for meaningful activities, training, education, or employment.

Education for Persons with Developmental Disabilities

Prior to 1975, children with developmental disabilities often did not receive appropriate educational services, in part, because they were being excluded from public schools or because there was a lack of adequate resources in public schools. However, that changed with the passage of the Education for All Handicapped Children Act of 1975 (Act), which has been successful in ensuring children with disabilities, and the families of such children, access to a free appropriate public education and in improving educational results for children with disabilities.¹¹

The federal government provides grants to states through the Act in order to assist them in providing special education and related services to children with disabilities.¹² In order to be eligible for these funds, federal law requires each state to make free appropriate public education available to all children with disabilities residing in the state between the ages of three and 21, including children who have been suspended or expelled from school.¹³ The state educational agency must exercise general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies, and ensure that the programs meet the educational standards of the state educational agency.¹⁴

Exceptional Students in Florida

Florida law provides that special education services be available to persons with disabilities. The law defines “special education services” as specially designed instruction and related services that are necessary for an exceptional student to benefit from education. These services may include:

- Transportation;
- Diagnostic and evaluation services;
- Social services;
- Physical and occupational therapy;
- Speech and language pathology services;
- Job placement;
- Orientation and mobility training;
- Braillists, typists, and readers for the blind;
- Interpreters and auditory amplification;
- Rehabilitation counseling;
- Transition services;

¹⁰ Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Bill Analysis and Fiscal Impact Statement CS/SB 2192* (Mar. 19, 2010), available at <http://archive.flsenate.gov/data/session/2010/Senate/bills/analysis/pdf/2010s2192.cf.pdf> (last visited April 5, 2011).

¹¹ 20 U.S.C. s. 1400.

¹² 20 U.S.C. s. 1411.

¹³ 20 U.S.C. s. 1412.

¹⁴ 34 C.F.R. s. 300.149.

- Mental health services;
- Guidance and career counseling;
- Specified materials, assistive technology devices, and other specialized equipment; and
- Other such services as approved by rules of the State Board of Education.¹⁵

An “exceptional student” is defined as:

[A]ny student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes students who are gifted and students with disabilities who have an intellectual disability; autism spectrum disorder; a speech impairment; a language impairment; an orthopedic impairment; [any] other health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; students who are deaf or hard of hearing or dual sensory impaired; students who are hospitalized or homebound; children with developmental delays ages birth through 5 years, or children, ages birth through 2 years, with established conditions that are identified in State Board of Education rules pursuant to s. 1003.21(1)(e).¹⁶

Section 1003.57, F.S., ensures that all exceptional students are provided a public education with appropriate due process rights. Chapter 6A-6 of the Florida Administrative Code operationally defines the statute and establishes program eligibility and evaluation criteria for all exceptional students, including students identified as gifted.¹⁷ In the fall of 2010, there were nearly 362,000 exceptional students in the state, not including those designated as gifted students.¹⁸

Prepaid Educational Plans

The Stanley G. Tate Florida Prepaid College Program allow purchasers to buy prepaid contracts to pay the registration fees, local fees, tuition differential fees, and dormitory expenses of beneficiaries at Florida community colleges and state universities, in advance of enrollment.¹⁹ Beneficiaries of prepaid contracts are permitted to transfer the benefits of their contracts to any of the following institutions that qualify as an “eligible educational institution” under s. 529 of the Internal Revenue Code:

- An independent college or university located and chartered in Florida, that confers degrees and is accredited by the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools and that confers degrees;

¹⁵ Section 1003.01(3)(b), F.S.

¹⁶ Section 1003.01(3)(a), F.S.

¹⁷ Florida Dep’t of Education, *Memorandum: Revised Exceptional Student Education Rules*, 2 (Oct. 15, 2004), available at <http://info.fldoe.org/docushare/dsweb/Get/Document-2533/ESE.pdf> (last visited April 5, 2011).

¹⁸ Education Information and Accountability Servs., Florida Dep’t of Education, *Data Report: Membership in Programs for Exceptional Students, Fall 2010*, 2 (Feb. 2011), available at <http://www.fldoe.org/eias/eiaspubs/default.asp> (follow the “Membership in Programs for Exceptional Students” hyperlink) (last visited April 5, 2011).

¹⁹ Section 1009.98, F.S.

- Any out-of-state college or university that confers degrees, is not-for-profit, and is accredited by a regional accrediting association; and
- An applied technology diploma program or career certification program operated by a Florida community college or a career center operated by a district school board.²⁰

Prepaid Services for Parents of Children with Developmental Disabilities Study Group

In 2009, the Florida Legislature created the Prepaid Services for Parents of Children with Developmental Disabilities Study Group to evaluate the feasibility of establishing a prepaid service plan for children with disabilities modeled after the Florida prepaid college plan.²¹ The purpose of the plan was to allow funds to be paid into a plan on behalf of a child to provide a voucher for purchasing additional services from a qualified, willing provider upon the child's exit from an exceptional student program.²² The services would provide support to help the parent retain the benefits to the child of the exceptional student program and to help the child in transitioning to the workforce.²³

In its Final Report, the study group concluded that “the years after a student with a developmental disability ages out of the education system are critical for learning and transition.”²⁴ The study group also drafted a legislative proposal for consideration by the Legislature.²⁵

III. Effect of Proposed Changes:

Developmental Disabilities Savings Program

This bill creates the Developmental Disabilities Savings Program (savings program), which is a savings and investment program that offers continued accessibility to services, regardless of income, insurance, or Medicaid eligibility, for families who have children with developmental disabilities who will become ineligible for services due to age.

The bill defines the following terms:

- “Advance payment contract” means the contract under the savings program which allows a purchaser or benefactor to make payments into an investment plan that will provide funds that may be used to pay for eligible services for a qualified beneficiary.
- “Benefactor” means any person making a deposit, payment, contribution, gift, or other expenditure into the investment plan for a qualified beneficiary, and may include a noncustodial parent who is obligated to make payments into the plan for his or her child.

²⁰ *Id.*

²¹ Chapter 2009-56, s. 4, Laws of Fla.

²² *Id.*

²³ *Id.*

²⁴ Developmental Disabilities Prepaid Services, Florida Gap Plan, *Prepaid Services for Parents of Children with Developmental Disabilities Study Group, Final Report*, 9, available at <http://www.floridagapplan.com/wp-content/uploads/2010/02/Final-Report-12-28-09.pdf> (last visited April 5, 2011).

²⁵ *Id.* at 3-9.

- “Developmental disability” means a disorder or syndrome attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome, that manifests before the age of 18, and that can reasonably be expected to continue indefinitely;²⁶ **or** means any severe, chronic disability that:
 - Is attributable to a mental or physical impairment or a combination of those impairments;
 - Occurs before the individual reaches 18 years of age;
 - Is likely to continue indefinitely;
 - Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency;
 - Reflects the individual’s need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated; and
 - For a child younger than 10 years of age, is likely to meet the criteria above without intervention.
- “Eligible services” may be health-related, housing-related, education-related, employment-related, or other specific services.
- “Purchaser” means a resident of this state who is the parent or grandparent of a qualified beneficiary and who enters into an advance payment contract.
- “Qualified beneficiary” means an individual with a developmental disability who is a resident of the state and who is under 22 years of age at the time a purchaser enters into an advance payment contract on his or her behalf.
- “Savings program” means the Developmental Disabilities Savings Program.

The bill provides that the savings program must inform the purchaser of the potential impact of plan participation on eligibility for Medicaid or other state or federally funded programs. Also, information and training concerning the program and its benefits for a qualified beneficiary to advance his or her goals and become a contributing member of society must be provided.

Before the savings program may be implemented, the following must be obtained by the Developmental Disabilities Savings Program Board:

- A written opinion of qualified counsel specializing in federal securities law that the savings program and the offering of participation in the investment plan does not violate federal securities law; and
- A private letter ruling from the federal Internal Revenue Service (IRS) indicating that under the savings program taxes on any payments made, moneys deposited, investments made, and resulting earnings may be deferred under the Internal Revenue Code.

If the IRS declines to issue a private letter ruling, the bill provides that the program may rely on the legal opinion of a qualified attorney specializing in tax law.

²⁶ This is the definition of “developmental disability” found in s. 393.063(9), F.S.

The bill provides that the savings program is not a promise or guarantee that a qualified beneficiary or a designated beneficiary will become eligible for Medicaid, receive permanent services, be enrolled in the Medicaid waiver program, or receive any other state or federal assistance.

Developmental Disabilities Savings Program Board

The bill creates the Developmental Disabilities Savings Program Board (board), which has all of the powers of a body corporate, and is to administer the savings program.

The board consists of seven members:

- The director of the Agency for Persons with Disabilities.
- The director of Vocational Rehabilitation.
- The executive director of The Arc of Florida.
- The president of The Family Care Council of Florida, or designee.
- Three members, appointed by the Governor, who possess knowledge, skill, and experience in the areas of accounting, actuary, risk management, or investment management. These members are appointed for three-year terms.

A chair and vice chair shall be elected annually and the board shall designate a secretary-treasurer who does not need to be a member of the board. The board shall meet on a quarterly basis. Members of the board are to serve without compensation and must file a full and public disclosure of his or her financial interests.

The bill provides that the board shall have the following powers and duties:

- Appointing an executive director to serve as the chief administrative and operational officer of the program and to perform other duties assigned to him or her by the board.
- Delegating responsibility for administration of the savings program to persons the board determines are qualified.
- Adopting an official seal and rules.
- Making and executing contracts and other necessary instruments.
- Establishing agreements or other transactions with federal, state, and local agencies.
- Forming strategic alliances with public and private entities to provide benefits to the savings program.
- Appearing in its own behalf before boards, commissions, or other government agencies.
- Procuring and contracting for goods and services, employing personnel, and engaging the services of private consultants, actuaries, managers, legal counsel, and auditors in a manner determined to be necessary and appropriate by the board.
- Adopting procedures to govern contract dispute proceedings between the board and its vendors.
- Soliciting proposals and contracting for the marketing of the savings program.²⁷

²⁷ The bill provides that all marketing materials must be approved by the board and that neither the state nor the board is liable for misrepresentation of the savings program by a marketing agent.

- Investing funds not required for immediate disbursement.
- Holding, buying, and selling any instruments, obligations, securities, and property determined appropriate by the board.
- Administering the savings program in a manner that is sufficiently actuarially sound to defray the obligations of the savings program. The board shall evaluate the actuarial soundness of the investment plan on an annual basis.
- Soliciting and accepting gifts, grants, loans, and other aids from any source or participating in any other way in any government program to carry out the purposes of the savings program.
- Requiring and collecting administrative fees and charges in connection with any transaction and imposing reasonable penalties, including default, for delinquent payments or for entering into an advance payment contract on a fraudulent basis.
- Suing and being sued.
- Endorsing insurance coverage written exclusively for the purpose of protecting the investment plan, and the purchasers, benefactors, and beneficiaries thereof.
- Procuring insurance against any loss in connection with the property, assets, and activities of the savings program or the board.
- Providing for the receipt of contributions in lump sums or installment payments.
- Imposing reasonable time limits on use of the benefits provided by the savings program.
- Delineating the terms and conditions under which payments may be withdrawn from the investment plan and impose reasonable fees and charges for such withdrawal.
- Establishing other policies, procedures, and criteria to implement and administer the savings program.

Additionally, the bill provides that the board shall solicit proposals and contract for investment managers, investment consultants, trustee services firms, and records administrators. The board may adopt rules necessary for the savings program to qualify for or retain its status as a qualified tax-deferred program or other similar status of the program, purchasers, and qualified beneficiaries under the Internal Revenue Code.

Effective Date

The bill shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill provides that neither the state nor the Developmental Disabilities Savings Program Board (board) is liable for the misrepresentation of the savings program by a marketing agent. This bill possibly implicates the right of access to the courts under article I, section 21 of the Florida Constitution by eliminating or circumscribing an individual's right of action. Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The Florida Constitution protects "only rights that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution."²⁸ Constitutional limitations were placed on the Legislature's right to abolish a cause of action in the Florida Supreme Court case *Kluger v. White*, 281 So. 2d 1 (Fla. 1973). The Court held:

[W]here a right of access ... has been provided ... the Legislature is without power to abolish such a right without providing a reasonable alternative ... unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.²⁹

To the extent that this bill is seen as depriving a person of the right to go to court to pursue a claim against the state or the board for a misrepresentation of the savings program, the bill may face constitutional scrutiny.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Parents or grandparents of children with developmental disabilities may be able to use the savings program to plan for their children or grandchildren's future educational and health related services.

C. Government Sector Impact:

According to the Agency for Persons with Disabilities, the bill should not have a direct financial impact on the agency; however, the bill will require some administrative support and costs in the establishment and staffing of the program.³⁰

²⁸ 10A FLA. JUR 2D *Constitutional Law* s. 360. When analyzing an access to courts issue, the Florida Supreme Court clarified that 1968 is the relevant year in deciding whether a common law cause of action existed. *Eller v. Shova*, 630 So. 2d 537, 542 n. 4 (Fla. 1993).

²⁹ *Kluger*, 281 So. 2d at 4.

³⁰ Agency for Persons with Disabilities, *2011 Bill Analysis SB 1422* (Mar. 17, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

Members of the Developmental Disabilities Savings Program Board (board) serve without compensation and without reimbursement for per diem and travel expenses.

The bill prescribes the powers and duties of the board, such as procuring and contracting for goods and services, employing personnel, and engaging the services of private consultants, actuaries, managers, legal counsel, and auditors. However, the bill does not provide a funding source for the board to pay for these services.

VI. Technical Deficiencies:

The definition of “developmental disabilities” (lines 47-65) differs from and is broader than the definition found in ch. 393, F.S., the chapter of law relating to developmental disabilities. In addition, the definition as it relates to children younger than 10 years of age may be overly vague and problematic to administer.

On line 114, the bill provides that a written opinion of “qualified *counsel* specializing in federal securities law” is needed to implement the Developmental Disabilities Savings Program (savings program). Additionally, if the Internal Revenue Service declines to provide a private letter ruling, then a legal opinion rendered by a “qualified *attorney* specializing in tax law” is also needed to implement the savings program (line 124). It is unclear whether “qualified counsel” on line 114 is meant to mean a “qualified attorney,” similar to line 124.

On line 127, the bill references a “qualified beneficiary or a designated beneficiary.” The bill provides a definition for qualified beneficiary, but not for a designated beneficiary. It is unclear who will be considered a designated beneficiary.

On line 223, the bill provides that time limits on the use of benefits provided by the savings program must be specified in the “contract.” It appears that the bill is referencing the “advance payment contract,” which is defined by the bill. The Legislature may wish to use the term “advance payment contract” rather than “contract” on line 223 in order to avoid confusion.

VII. Related Issues:

This bill allows a purchaser to enter into an advance payment contract to make payments into an investment plan that will provide funds to be used to pay for eligible services for a qualified beneficiary. The bill defines “eligible services” broadly and includes health-related services, housing-related services, education-related services, employment-related services, and other specific services. It appears that based on the types of services eligible, the advance payment contracts will provide both immediate as well as deferred benefits; however it is unclear what reimbursement parameters will accompany them. Unlike the pre-paid college program, these contracts will have a wider spectrum of services reimbursement and the recipient’s needs will have been determined very early in life. In a pre-paid tuition or dormitory contract, the recipient may choose to enroll or not in a postsecondary institution as that status is voluntary. Many of the recipients and services affected by the advance payment contracts in this bill are entitlements and the voluntariness of the governmental role in providing direct support services is materially different.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 1458

INTRODUCER: Health Regulation Committee and Senator Garcia

SUBJECT: Assisted Care Communities

DATE: April 11, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	Fav/CS
2.	Daniell	Walsh	CF	Pre-meeting
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:	
A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/> Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/> Technical amendments were recommended
	<input type="checkbox"/> Amendments were recommended
	<input type="checkbox"/> Significant amendments were recommended

I. Summary:

This bill makes substantial changes to part I of ch. 429, F.S., the Assisted Living Facilities Act. The changes made relate to legislative intent, definitions, standard and specialty licensure, licensure fees, monitoring activities, unlicensed activity, proof of financial ability to operate, administrative penalties, standards of operation, classes of violations and attendant penalties, referrals, solicitations, adverse incidents, administration of medication, assessment of residents, property of residents, resident Bill of Rights, fire safety, inspections to assess quality-of-care standards, corrective action plans, new construction and local zoning requirements, prohibited acts, staff training, Agency for Health Care Administration (AHCA) consultation, residency agreements, and training violations and penalties.

In addition, the bill repeals laws relating to the Department of Elderly Affairs' (DOEA) authority to adopt rules to clarify terms, establish requirements for financial records, accounting procedures, personnel procedures, insurance coverage, and reporting procedures and relating to the collection of information required by the Legislature and local subsidies of assisted living facilities (ALFs).

This bill substantially amends the following sections of the Florida Statutes: 400.141, 408.820, 409.912, 429.01, 429.02, 429.04, 429.07, 429.08, 429.11, 429.12, 429.14, 429.17, 429.178, 429.19, 429.195, 429.20, 429.23, 429.255, 429.256, 429.26, 429.27, 429.28, 429.41, 429.42, 429.445, 429.47, 429.49, 429.52, 429.53, 429.71, 429.81, and 817.505.

This bill creates section 430.081, Florida Statutes.

This bill repeals sections 429.275(4) and 429.54, Florida Statutes.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Assisted Living Facilities

An assisted living facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.¹ A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.² Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.

The ALFs are licensed by the AHCA pursuant to part I of ch. 429, F.S., relating to assisted living facilities, and part II of ch. 408, F.S., relating to the general licensing provisions for health care facilities. The ALFs are also subject to regulation under Chapter 58A-5, Florida Administrative Code (F.A.C.). These rules are adopted by the DOEA in consultation with the AHCA, the Department of Children and Family Services (DCF), and the Department of Health (DOH).³ An ALF must also comply with the Uniform Fire Safety Standards for ALFs contained in Chapter 69A-40, F.A.C., and standards enforced by the DOH concerning food hygiene; physical plant sanitation; biomedical waste; and well, pool, or septic systems.⁴

There are currently 2,932 licensed ALFs in Florida.⁵ In addition to a standard license, an ALF may have specialty licenses that authorize an ALF to provide limited nursing services (LNS), limited mental health (LMH) services,⁶ and extended congregate care (ECC) services.

¹ Section 429.02(5), F.S. An ALF does not include an adult family-care home or a nontransient public lodging establishment. An adult family-care home is regulated under ss. 429.60 – 429.87, F.S., and is defined as a full-time, family-type living arrangement in a private home where the person who owns or rents the home, lives in the home. An adult family-care home provides room, board, and personal care, on a 24-hour basis, for no more than five disabled adults or frail elders, who are not relatives. A nontransient establishment (a.k.a. boarding house) is regulated under part I of ch. 509, F.S., and is defined as any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.

² Section 429.02(16), F.S.

³ Section 429.41(1), F.S.

⁴ See ch. 64E-12, ch. 64E-11, and 64E-16, F.A.C.

⁵ Senate professional staff of the Health Regulation Committee received this information via email on March 25, 2011. A copy of the email is on file with the committee.

⁶ An ALF that serves three or more mental health residents must obtain a limited mental health specialty license. A mental health resident is an individual who receives social security disability income (SSDI) due to a mental disorder or supplemental security income (SSI) due to a mental disorder, and receives OSS.

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility. Generally, the care and services include at a minimum:

- Supervising the resident in order to monitor the resident's diet; being aware of the general health, safety, and physical and emotional well-being of the resident; and recording significant changes, illnesses, incidents, and other changes which resulted in the provision of additional services;
- Contacting appropriate persons upon a significant change in the resident or if the resident is discharged or moves out;
- Providing and coordinating social and leisure activities in keeping with each resident's needs, abilities, and interests;
- Arranging for health care by assisting in making appointments, reminding residents about scheduled appointments, and providing or arranging for transportation as needed; and
- Providing to the resident a copy of, and adhering to, the Resident Bill of Rights.

An unlicensed person who has received the appropriate training may assist a resident in an ALF with the self-administration of medication. Persons under contract to the ALF, employees, or volunteers,⁷ who are licensed under the nurse practice act⁸ and uncompensated family members or friends may:⁹

- Administer medications to residents;
- Take a resident's vital signs;
- Manage individual weekly pill organizers for residents who self-administer medication;
- Give prepackaged enemas ordered by a physician; and
- Observe residents, document observations on the appropriate resident's record, and report observations to the resident's physician.

Additionally, in an emergency situation, persons licensed under the nurse practice act may carry out their professional duties until emergency medical personnel assume responsibility for care. A resident may independently arrange, contract, and pay for additional services provided by a third party of the resident's choice.

The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on an assessment of the strengths, needs, and preferences of the individual; the health assessment; the preliminary service plan; the facility's residency criteria; services offered or arranged for by the facility to meet resident needs; and the ability of the facility to meet the uniform firesafety standards.¹⁰

⁷ An association spokesperson stated in an e-mail to Senate Health Regulation Committee professional staff that ALFs do not currently use volunteers for these purposes due to liability issues.

⁸ Part I of ch. 464, F.S.

⁹ Section 429.255, F.S.

¹⁰ Section 429.255, F.S., s. 429.26, F.S., and Rule 58A-5.030, F.A.C.

A resident who requires 24-hour nursing supervision¹¹ may not reside in an ALF, unless the resident is enrolled as a hospice patient. Continued residency of a hospice patient is conditioned upon a mutual agreement between the resident and the facility, additional care being rendered through a licensed hospice, and the resident being under the care of a physician who agrees that the physical needs of the resident are being met.

If a resident no longer meets the criteria for continued residency, or the facility is unable to meet the resident's needs, as determined by the facility administrator or health care provider, the resident must be discharged in accordance with the Resident Bill of Rights.¹²

Limited Nursing Services Specialty License

A limited nursing services (LNS) specialty license enables an ALF to provide, directly or through contract, a select number of nursing services in addition to the personal services that are authorized under the standard license.

The nursing services authorized to be provided with this license are limited to acts specified in administrative rules,¹³ may only be provided as authorized by a health care provider's order, and must be conducted and supervised in accordance with ch. 464, F.S., relating to nursing, and the prevailing standard of practice in the nursing community. A nursing assessment, that describes the type, amount, duration, scope, and outcomes or services that are rendered and the general status of the resident's health, is required to be conducted at least monthly on each resident who receives a limited nursing service.

An LNS licensee is subject to monitoring inspections by the AHCA or its agents at least twice a year. At least one registered nurse must be included in the inspection team to monitor residents receiving LNS and to determine if the facility is complying with applicable regulatory requirements.¹⁴

¹¹ Twenty-four-hour nursing supervision means services that are ordered by a physician for a resident whose condition requires the supervision of a physician and continued monitoring of vital signs and physical status. Such services must be: medically complex enough to require constant supervision, assessment, planning, or intervention by a nurse; required to be performed by or under the direct supervision of licensed nursing personnel or other professional personnel for safe and effective performance; required on a daily basis; and consistent with the nature and severity of the resident's condition or disease state or stage. Definition found at s. 429.02(26), F.S.

¹² Section 429.28, F.S.

¹³ Rule 58A-5.031, F.A.C. The additional nursing services that might be performed pursuant to the LNS license include: conducting passive range of motion exercises; applying ice caps or collars; applying heat, including dry heat, hot water bottle, heating pad, aquathermia, moist heat, hot compresses, sitz bath and hot soaks; cutting the toenails of diabetic residents or residents with a documented circulatory problem if the written approval of the resident's health care provider has been obtained; performing ear and eye irrigations; conducting a urine dipstick test; replacing an established self-maintained indwelling urinary catheter, or performing an intermittent urinary catheterization; performing digital stool removal therapies; applying and changing routine dressings that do not require packing or irrigation, but are for abrasions, skin tears and closed surgical wounds; caring for stage 2 pressure sores, (care for stage 3 or 4 pressure sores are not permitted); caring for casts, braces and splints, (care for head braces, such as a halo, is not permitted); assisting, applying, caring for, and monitoring the application of anti-embolism stockings or hosiery; administering and regulating portable oxygen; applying, caring for, and monitoring a transcutaneous electric nerve stimulator (TENS); performing catheter, colostomy, and ileostomy care and maintenance; conducting nursing assessments; and, for hospice patients, providing any nursing service permitted within the scope of the nurse's license, including 24-hour nursing supervision.

¹⁴ Section 429.07(3)(c), F.S.

The biennial fee for an LNS license is \$304 per license with an additional fee of \$10 per resident based on the total licensed resident capacity of the facility.¹⁵ Ostensibly this fee covers the additional monitoring inspections currently required of facilities with an LNS license.

Extended Congregate Care Specialty License

An extended congregate care (ECC) specialty license enables an ALF to provide, directly or through contract, services performed by licensed nurses and supportive services¹⁶ to persons who otherwise would be disqualified from continued residence in an ALF.¹⁷

The primary purpose of ECC services is to allow residents, as they become more impaired with physical or mental limitations, to remain in a familiar setting. An ALF licensed to provide ECC services may also admit an individual who exceeds the admission criteria for a facility with a standard license, if the individual is determined appropriate for admission to the ECC facility. Facilities licensed to provide ECC services may adopt their own criteria and requirements for admission and continued residency in addition to the minimum criteria specified in law.

An ECC program may provide additional services, such as:

- Total help with bathing, dressing, grooming, and toileting;
- Nursing assessments conducted more frequently than monthly;
- Measuring and recording basic vital functions and weight;
- Dietary management, including providing special diets, monitoring nutrition, and observing the resident's food and fluid intake and output;
- Administering medications and treatments pursuant to a health care provider's order;
- Supervising residents with dementia and cognitive impairments;
- Health education, counseling, and implementing health-promoting programs;
- Rehabilitative services; and
- Escort services to health-related appointments.

An individual must undergo a medical examination before admission to an ALF with the intention of receiving ECC services or upon transfer within the same facility to that portion of the facility licensed to provide ECC services. The ALF must develop a service plan¹⁸ that sets forth how the facility will meet the resident's needs and must maintain a written progress report on each resident who receives ECC services.

A supervisor, who may also be the administrator, must be designated to be responsible for the day-to-day management of the ECC program and ECC resident service planning. A nurse,

¹⁵ Section 429.07(4)(c), F.S., as adjusted per s. 408.805(2), F.S.

¹⁶ Supportive services include social service needs, counseling, emotional support, networking, assistance with securing social and leisure services, shopping service, escort service, companionship, family support, information and referral, assistance in developing and implementing self-directed activities, and volunteer services. See Rule 58A-5.030(8), F.A.C.

¹⁷ Section 429.07(3)(b), F.S., and Rule 58A-5.030, F.A.C. See also AHCA, 2011 Bill Analysis & Economic Impact Statement for SB 1458, on file with the committee.

¹⁸ Section 429.02(21), F.S.

provided as staff or by contract, must be available to provide nursing services as needed by ECC residents, participate in the development of resident service plans, and perform the monthly nursing assessment for each resident receiving ECC services. The ECC licensed ALF must provide awake staff to meet resident scheduled and unscheduled night needs.¹⁹

Persons under contract to the ECC, employees, or volunteers, who are licensed under the nurse practice act,²⁰ including certified nursing assistants, may perform all duties within the scope of their license or certification, as approved by the facility administrator.²¹ These nursing services must be authorized by a health care provider's order and pursuant to a plan of care; medically necessary and appropriate treatment for the condition; in accordance with the prevailing standard of practice in the nursing community and the resident's service plan; a service that can be safely, effectively, and efficiently provided in the facility; and recorded in nursing progress notes.²²

An ECC licensee is subject to quarterly monitoring inspections by the AHCA or its agents. At least one registered nurse must be included in the inspection team. The AHCA may waive one of the required yearly monitoring visits for an ECC facility that has been licensed for at least 24 months, if the registered nurse who participated in the monitoring inspections determines that the ECC services are being provided appropriately, and there are no serious violations or substantiated complaints about the quality of service or care.

Limited Mental Health Specialty License

An ALF that serves three or more mental health residents must obtain a limited mental health (LMH) specialty license.²³

A mental health resident is an individual who receives social security disability income (SSDI) due to a mental disorder or supplemental security income (SSI) due to a mental disorder, and receives optional state supplementation (OSS).²⁴ The DCF is responsible for ensuring that a mental health resident is assessed and determined able to live in the community in an ALF with an LMH license.²⁵

An ALF licensed to provide LMH services must assist the mental health resident in carrying out the activities in the resident's community living support plan. The mental health resident's community living support plan, which is updated annually, includes:²⁶

- The specific needs of the resident which must be met for the resident to live in the ALF and community;

¹⁹ Rule 58A-5.030, F.A.C.

²⁰ Part I of ch. 464, F.S.

²¹ Section 429.255(2), F.S.

²² Rule 58A-5.030(8)(c), F.A.C.

²³ Section 429.075, F.S.

²⁴ Section 429.02(15), F.S.

²⁵ Section 394.4574, F.S., requires a mental health resident to be assessed by a psychiatrist, clinical psychologist, clinical social worker, psychiatric nurse, or an individual who is supervised by one of these professionals to determine whether it is appropriate for the person to reside in an ALF.

²⁶ Rule 58A-5.029, F.A.C.

- The clinical mental health services to be provided by the mental health care provider to help meet the resident’s needs;
- Any other services and activities to be provided by or arranged for by the mental health care provider or mental health case manager to meet the resident’s needs;
- Obligations of the ALF to facilitate and assist the resident in attending appointments and arranging transportation to appointments for the services and activities identified in the plan;
- A description of other services to be provided or arranged by the ALF; and
- A list of factors pertinent to the care, safety, and welfare of the mental health resident and a description of the signs and symptoms particular to the resident that indicates the immediate need for professional mental health services.

The LMH licensee must execute a cooperative agreement between the ALF and the mental health care services provider. The cooperative agreement specifies, among other things, directions for the ALF accessing emergency and after-hours care for the mental health resident. The administrator, manager, and staff in direct contact with mental health residents in an LMH licensed facility must complete LMH training provided or approved by the DCF.²⁷

Licensure Fees

The biennial licensure fees for the ALF standard license and specialty licenses are found in s. 429.07(4), F.S. This section refers to the general health care licensure provisions in part II of ch. 408, F.S. Section 408.805, F.S., provides for licensure fees to be adjusted annually by not more than the change in the Consumer Price Index (CPI) based on the 12 months immediately preceding the increase. The following chart reflects the licensure fees contained in s. 429.07(4), F.S., and the adjusted licensure fees based on the CPI that are currently in effect.²⁸

Fee Description	Per s. 429.07(4), F.S.	CPI adjusted (current fee)
Standard ALF Application Fee	\$300	\$366
Standard ALF Per-Bed Fee (non-OSS)	\$ 50	\$ 61
Total Licensure fee for Standard ALF	\$10,000	\$13,443
ECC Application Fee	\$400	\$515
ECC Per-Bed Fee (licensed capacity)	\$ 10	\$ 10
LNS Application Fee	\$250	\$304
LNS Per-Bed Fee (licensed capacity)	\$ 10	\$ 10

Senate Interim Project Report 2010-118

During the 2009-2010 interim, professional staff of the Senate Committee on Health Regulation reviewed the licensure structure for ALFs. The recommendations in the resulting report are to repeal the LNS specialty license and authorize a standard-licensed ALF to provide the nursing services currently authorized under the LNS license; require an additional inspection fee, adjusted for inflation, for a facility that indicates that it intends to provide LNS; require each

²⁷ Rule 58A-5.0191(8), F.A.C.

²⁸ Found on the AHCA website at:

http://ahca.myflorida.com/MCHQ/LONG_TERM_CARE/Assisted_living/alf/ALF_fee_increase.pdf, (Last visited on March 25, 2011).

ALF to periodically report electronically information, as determined by rule, related to resident population, characteristics, and attributes; authorize the AHCA to determine the number of additional monitoring inspections required for an ALF that provides LNS based on the type of nursing services provided and the number of residents who received LNS as reported by the ALF; and repeal the requirement for the AHCA to inspect *all* the ECC licensees quarterly, instead targeting monitoring inspections for those facilities with residents receiving ECC services.

III. Effect of Proposed Changes:

This bill makes substantial changes to part I of ch. 429, F.S., the Assisted Living Facilities Act. Under this bill, the responsibilities currently assigned to the facility or owner of an assisted living facility (ALF) are reassigned to the administrator. Also, several reporting requirements are repealed and the limited nursing services (LNS) license is repealed, thereby authorizing limited nursing services to be performed in an ALF with a standard license under certain conditions.

Section 1 amends s. 400.141, F.S., to remove the requirement that a registered pharmacist licensed in Florida, who is under contract with a facility licensed under ch. 429, F.S., (ALFs, adult family-care homes, and adult day care centers) repackage a resident's bulk prescription medication into a unit dose system compatible with the system used by the assisted living facility, adult family-care home, or adult day care center, if requested. However, section 19 of the bill allows a facility to require standard medication dispensing systems for residents' prescriptions.

Section 2 amends s. 408.820, F.S., to exempt ALFs from classifications of violations, which is provided for in section 14 of the bill.

Section 3 amends s. 409.912, F.S., to expand the demonstration project in Miami-Dade County to include a licensed psychiatric facility to improve access to health care for a predominantly minority, medically underserved, and medically complex population and to evaluate alternatives to nursing home care and general acute care for this population. The project is to be located in a health care condominium and collocated with licensed facilities providing a continuum of care. The project is not subject to a certificate of need review process.

Section 4 amends s. 429.01, F.S., to provide that the Legislature recognizes that ALFs are an important part of the continuum of long-term care in Florida as community-based social models with a health component and not as medical or nursing facilities and therefore, ALFs should not be subject to the same regulations as medical or nursing facilities but instead be regulated in a less restrictive manner that is appropriate for a residential, nonmedical setting.

Section 5 amends s. 429.02, F.S., to amend the definitions for the following terms: "administrator," "aging in place," "assisted living facility," and "supervision." This section also creates new definitions for the following terms: "arbitration," "licensed facility," and "person."

Section 6 amends s. 429.04, F.S., to clarify that a facility certified under ch. 651, F.S., or a retirement community, may provide ALF services, but not home health agency services (those services authorized under part III of ch. 400, F.S.), in order to be exempt from licensure.

Section 7 amends s. 429.07, F.S., to remove the LNS license from the list of licenses that may be issued by the Agency for Health Care Administration (AHCA) to an ALF. This section also removes the authority for ALFs to employ or contract with a licensed nurse to administer medications and perform other tasks and removes certain requirements an existing ALF must meet to qualify for an extended congregate care (ECC) services license. The bill removes certain reasons that a facility could be sanctioned for when trying to qualify to provide ECC services.

In addition, this section removes the requirement that a registered nurse monitor residents receiving ECC services and the potential waiver of one of the required monitoring visits if the residence meets certain requirements. This section removes the penalty associated with failing to provide extended congregate care services.

This section also removes the procedures and qualifications for AHCA to issue a LNS license and the recording and reporting requirement by residences that have obtained a LNS license. The admission requirements of a person receiving LNS are also deleted. The fee requirement for residences providing limited nursing services is deleted.

This section provides that the per bed fee for an ALF is \$71 (up from \$50) per resident and the total fee for standard licensure may not exceed \$13,443 (up from \$10,000). However, based on adjustments due to the consumer price index,²⁹ the per resident fee is only being increased \$10.

This section requires the AHCA's standard license survey to include private informal conversations with a sample of residents and consultation with the ombudsman council in the planning and service area in which the facility is located, to discuss the residents' experiences within the facility, in order to determine whether the facility is adequately protecting residents' rights under the Resident Bill of Rights. This language is moved from s. 429.28(3)(b), F.S.

This section also provides that an ALF that has been cited for certain violations within the previous 24 month period is subject to periodic unannounced monitoring, which may occur through a desk review or an onsite assessment. If the violation relates to providing or failing to provide nursing care, a registered nurse is required to participate in the monitoring visits within a 12-month period following the violation.

Section 8 amends s. 429.08, F.S., to require not only a health care practitioner, but also an emergency medical technician or paramedic, who is aware of the operation of an unlicensed ALF to report that facility to AHCA.

Section 9 amends s. 429.11, F.S., to require AHCA to develop an abbreviated form for the submission of proof of financial ability to operate that is specific to applicants for an ALF license. The form must request information that demonstrates the applicant has adequate resources to sustain operation and sufficient assets, credit, and projected revenues to cover liabilities and expenses of the facility based on the number of beds and services the applicant will provide.

²⁹ See chart under the Licensure Fees heading in the Present Situation of this bill analysis.

Section 10 amends s. 429.12, F.S., to remove the requirement that when there is a change of ownership a plan of correction must be submitted by the transferee and approved by AHCA at least seven days before the change of ownership and a failure to correct a condition, which resulted in a moratorium or denial of licensure, is grounds for denial of the transferee's license.

Section 11 amends s. 429.14, F.S., to remove administrative penalties for the failure to follow the criteria and procedures required by law relating to the transportation, voluntary admission, and involuntary examination of a facility resident.

This section removes the requirement that AHCA must deny or revoke the license of a residence if it has two or more class I violations that are similar or identical to violations identified by the AHCA during a survey, inspection, monitoring visit, or complaint investigation occurring within the previous two years.

This section also removes the requirement that AHCA provide to the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, on a monthly basis, a list of those residences that have had their licenses denied, suspended, or revoked or that are involved in an appellate proceeding related to the denial, suspension, or revocation of a license.

Section 12 amends s. 429.17, F.S., to delete the requirement that an LNS license must expire at the same time as the residence's license to conform to the repeal of the LNS license. This section also deletes the requirement that a conditional license be accompanied by an AHCA-approved plan of correction.

Section 13 amends s. 429.178, F.S., deleting the requirement that a facility must have an awake staff member on duty at all hours of the day and night or have mechanisms in place to monitor and ensure the safety of the residents if the residence has fewer than 17 residents. However, this section requires instead that a residence of any size have an awake staff member on duty at all hours of the day and night for each secured unit of the residence that houses any residents with Alzheimer's disease or other related disorders.

This section also provides that for the safety and protection of residents with Alzheimer's disease, related disorders, or dementia, a secured locked unit may be designated. The unit may consist of the entire building or a distinct part of the building. Exit doors must be equipped with an operating alarm system that releases upon activation of the fire alarm. These units are exempt from specific life safety requirements to which ALFs are normally subject. A staff member must be awake and present in the secured unit at all times.

This section requires the Department of Elderly Affairs (DOEA) to maintain and post on its website a current list of providers who are approved to provide initial and continuing education for staff and direct care members of ALFs that provide special care for persons with Alzheimer's disease or other related disorders.

This section removes the provisions that a facility having more than 90 percent of residents who receive monthly optional supplementation payments is not required to pay for the required training and education programs and a facility that has one or more such residents is required to pay a reduced fee that is proportional to the percentage of such residents in the facility. This

section also removes the requirement that a facility that does not have any residents who receive monthly optional supplementation payments must pay a reasonable fee, as established by DOEA for such training and education programs.

Section 14 amends s. 429.19, F.S., to remove the requirement that AHCA impose an administrative fine for any violation committed by a facility employee. This section also defines a “class I,” “class II,” “class III,” and “class IV” violation, which mirrors the current definitions for these terms in s. 408.813, F.S. The section deletes AHCA’s authority to assess a survey fee to cover the cost of monitoring visits to verify a correction of a violation.

This section also deletes the requirement that AHCA develop and disseminate an annual list of all facilities sanctioned or fined for violations of state standards, the number and class of violations involved, the penalties imposed, and the current status of cases to specified entities at no charge. Also deleted is the requirement that the Department of Children and Family Services (DCF) disseminate the list to service providers under contract to DOEA who are responsible for referring persons to a facility for residency.

Section 15 amends s. 429.195, F.S., to exempt from the prohibition against referrals for compensation, any individual with whom the facility employs or contracts with to market the facility; a referral service that provides information, consultation, or referrals to consumers to assist them in finding appropriate care or housing options if such consumers are not Medicaid recipients; or residents of an ALF who refer friends, family members, or other individuals with whom they have a personal relationship. This allows the licensee of the ALF to provide a monetary reward to the resident for making a referral to the residence.

Section 16 amends s. 429.20, F.S., to remove the specific administrative penalties providing for the denial, suspension, or revocation of a license for the unlawful solicitation or receipt of contributions by an ALF. The general administrative penalties in s. 429.19, F.S., will apply to these activities.

Section 17 amends s. 429.23, F.S., to clarify that a proceeding under part I of ch. 394, F.S., does not constitute an adverse health incident that must be reported.

This section deletes the one-day reporting requirement of an adverse incident and the follow-up, if the event is not determined to be an adverse incident. Instead, this section requires reporting within 15 business days after the occurrence of an adverse incident. The section also deletes the reporting requirement by the ALFs to AHCA when a liability claim has been filed against the residence.

Section 18 amends s. 429.255, F.S., to remove the ability of volunteers, who are licensed nurses, to administer medications to residents, take residents’ vital signs, manage individual weekly pill organizers for residents, give prepackaged enemas, observe residents, document observations, or report observations to the resident’s physician. This section provides that persons under contract to the residence or residence staff who are licensed nurses may provide limited nursing services.

This section requires staff in residences to report observations of a resident to the administrator or the administrator’s designee instead of to the resident’s physician.

This section removes the authority of licensed nurses to carry out their professional duties when an emergency situation arises until emergency medical personnel assume responsibility for care.

Section 19 amends s. 429.256, F.S., to authorize a facility to require standard medication dispensing systems for residents' prescriptions to minimize the potential risk for improper dosage administration of prescription drugs. This section also includes in the list of self-administered medications, continuous positive airway pressure machines.

This bill adds to the list of activities that may be considered assistance with self-administration of medication to include assisting a resident in holding a nebulizer, using a glucometer to perform blood glucose checks, assisting with the putting on and taking off anti-embolism stockings (ted hose), and assisting with applying and removing an oxygen cannula.

Section 20 amends s. 429.26, F.S., to remove the requirement that a facility notify a licensed physician within 30 days when a resident exhibits signs of dementia or cognitive impairment or has a change of condition in order to rule out the presence of an underlying physiological condition that may be contributing to the dementia or impairment. Also deleted is the requirement that if an underlying condition is determined to exist, the facility must arrange, along with the appropriate health care provider, the necessary care and services to treat the condition.

Section 21 amends s. 429.27, F.S., to authorize the facility's licensee, owner, administrator, or staff, or other representative to execute a surety bond. The bond must be conditioned upon the faithful compliance of such persons and must run to AHCA for the benefit of a resident who suffers a financial loss as a result of the misuse or misappropriation of funds by such persons.

This section provides that a facility administrator may only provide for the safekeeping in the facility of personal effects, including funds not in excess of \$500. The amount that may be held is increased from \$200.

This section removes the authority of a governmental agency or private charitable agency contributing funds or other property to the account of a resident to obtain a financial statement of the account.

The bill removes the provision prohibiting a facility from levying an additional charge to an individual for supplies or services that the facility has agreed by contract to provide as part of the standard monthly rate.

Section 22 repeals s. 429.275(4), F.S., relating to the rulemaking authority for DOEA to clarify terms, establish requirements for financial records, accounting procedures, personnel procedures, insurance coverage, and reporting procedures, and specify documentation as necessary.

Section 23 amends s. 429.28, F.S., relating to the Resident Bill of Rights, to reduce the number of days from 45 days to 30 days that notice of relocation or termination of residence from the ALF must be provided to a resident or legal guardian. This section also deletes the requirement

that the facility must show good cause in a court in order for the facility to terminate the residency of an individual without notice.

This section deletes the requirement that AHCA must conduct a survey to determine general compliance with facility standards and compliance with residents' rights, or when no survey is conducted, a monitoring visit. This section also removes the authority of AHCA to conduct periodic follow-up inspections or complaint investigations. However, section 7 of the bill provides for the surveying of a sample of residents and unannounced monitoring visits under certain circumstances.

This section removes the prohibition that a staff member or employee of a facility may not serve notice upon a resident to leave the facility or take other retaliatory action against a person who notifies a state attorney or the Attorney General of a possible violation of the Assisted Living Facilities Act.

Section 24 amends s. 429.41, F.S., to provide that in order to ensure that inspections are not duplicative, the rules adopted regarding inspections must clearly delineate the responsibilities of AHCA regarding AHCA's licensure and survey inspections, the county health departments regarding food safety and sanitary inspections, and the local fire marshal regarding fire safety inspections. This section also deletes the requirement that AHCA collect fees for food service inspections conducted by the county health departments and transfer such fees to the Department of Health (DOH). The bill removes the authority for DOEA and DOH to cooperate in the establishment and enforcement of fire safety standards.

This section removes the requirement that rules adopted to provide for the care of residents must include internal risk management and quality assurance.

This section removes the rulemaking requirement to establish specific policies and procedures on resident elopement, including the requirement that a facility conduct a minimum of two elopement drills each year.

This section requires AHCA, beginning January 1, 2012, to use an abbreviated biennial standard licensure inspection in a facility that has a good record of past performance. The AHCA is required to develop, maintain, and update, in consultation with DOEA, the key quality-of-care standards with input from the State Long-Term Care Ombudsman Council and representatives of associations and organizations representing ALFs.

Section 25 amends s. 429.42, F.S., to delete the requirement that an ALF develop and implement a corrective action plan for deficiencies related to assistance with the self-administration of medication or the administration of medication within 48 hours after notification of such deficiency, or sooner if the deficiency is determined by AHCA to be life-threatening. This section also deletes the requirement that AHCA must employ at least two licensed pharmacists among its personnel who biennially inspect ALFs, to participate in biennial inspections or consult with AHCA regarding deficiencies relating to medicinal drugs or over-the-counter preparations.

Section 26 amends s. 429.445, F.S., deleting the requirement that a licensed ALF must submit to the AHCA proof that construction to expand the facility is in compliance with applicable local zoning requirements prior to commencing the construction.

Section 27 amends s. 429.47, F.S., to delete the requirement that a freestanding facility may not advertise or imply that any part of it is a nursing home. The bill also deletes the definition of “freestanding facility and the penalty for violating the advertisement requirement. This section also authorizes the use of the abbreviation “ALF” before the license number in an advertisement in lieu of the full term “assisted living facility.”

Section 28 amends s. 429.49, F.S., to make a technical change.

Section 29 amends s. 429.52, F.S., to remove the rulemaking authority for DOEA to exempt certain licensed professionals from certain training and education requirements.

This section requires staff, who are involved with the management of medications and assisting with the self-administration of medications, to complete two hours of continuing education training annually.

This section requires DOEA to consult with associations and organizations representing ALFs when developing a training curriculum for residence staff.

This section also requires a training provider certified by DOEA to continue to meet continuing education requirements and other standards as set forth in rules adopted by DOEA. Noncompliance with the standards set forth in the rules may result in sanctions that may be progressive in nature and may consist of corrective action measures; suspension or termination from participation as an approved training provider or trainee, including sitting for any required examination; and administrative fines not to exceed \$1,000 per incident. One or more sanctions may be levied per incident.

Section 30 amends s. 429.53, F.S., to redefine the term “consultation” to no longer include the provision of a checklist of general local and state approvals required prior to constructing or developing a facility and a listing of the types of agencies responsible for such approvals, an explanation of benefits and financial assistance available to a recipient of supplemental security income residing in a facility, and a preconstruction review of a facility to ensure compliance with AHCA’s rules and the Assisted Living Facilities Act, because these areas are beyond AHCA’s jurisdiction and expertise.

Section 31 repeals s. 429.54, F.S., which enables DOEA to collect the information requested by the Legislature regarding the actual cost of providing room, board, and personal care in facilities, by conducting field visits and audits of facilities as necessary. Section 429.54, F.S., also requires owners of randomly sampled facilities to submit such reports, audits, and accountings of cost as the department may require by rule and any facility selected to participate in the study must cooperate with the department by providing cost of operation information to interviewers. Section 429.54, F.S., also authorizes local governments or organizations to contribute to the cost of care of local facility residents by further subsidizing the rate of state-authorized payment to

such facilities, but implementation of local subsidy requires departmental approval and must not result in reductions in the state supplement.

Section 32 amends s. 429.71, F.S., to delete the authority of AHCA to request a plan of corrective action from a licensee of an adult family-care home that demonstrates a good faith effort to remedy each violation by a specific date as an alternative to, or in conjunction with, an administrative action against the licensee, since this authority is included in the general licensing provisions in part II of ch. 408, F.S.

Section 33 amends s. 429.81, F.S., to require each residency agreement to specify that the resident must give the provider a 30 days' written notice of intent to terminate his or her residency from the adult family-care home.

Section 34 creates s. 430.081, F.S., to authorize DOEA to sanction training providers and trainees for infractions involving any required training that DOEA has the authority to regulate in order to ensure that such training providers and trainees satisfy specific qualification requirements and adhere to training curricula that is approved by DOEA.

This section specifies that training infractions include, but are not limited to, falsification of training records, falsification of training certificates, falsification of a trainer's qualifications, failure to adhere to the required number of training hours, failure to use the required curriculum, failure to maintain the continuing education for the trainer's recertification, failure to obtain reapproval of a curriculum when required, providing false or inaccurate information, misrepresentation of the required materials, and use of a false identification as a training provider or trainee.

Sanctions may be progressive in nature and may consist of corrective action measures; suspension or termination from participation as an approved training provider or trainee, including sitting for any required examination; and administrative fines not to exceed \$1,000 per incident. One or more sanctions may be levied per incident.

Section 35 amends s. 817.505, F.S., to conform to other changes made by the bill that allow ALFs to receive and pay for certain referrals.

Section 36 creates an undesignated section of the Florida Statutes to provide that licensure fees adjusted by consumer price index increases prior to this act are not intended to be reset by this act and may continue to accrue as authorized in law.

Section 37 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The bill continues the fees for standard licensure and for extended congregate care licensure at the amount currently assessed by AHCA. However, the per bed fee for standard licensure is increased \$10 to offset the elimination of the LNS license.

B. Private Sector Impact:

Residents would be eligible under the provisions of the bill to refer friends and family members to the assisted living facility (ALF) for a monetary award. Additionally, individuals hired by an ALF to market the ALF or referral service businesses are authorized under the bill to make referrals for compensation.

C. Government Sector Impact:

According to AHCA, fees for ALFs will be reduced due to the elimination of the limited nursing services (LNS) license fees. Based on the number of LNS specialty licenses in January 2011 (1,038), the LNS specialty license generates approximately \$586,762 biennially based upon \$309 per license ($1,038 \times \$309 = \$320,742$) and \$10 per bed ($\$10 \times 26,602 \text{ beds} = \$266,020$).³⁰ The bill provides an increase in the per bed fee in order to offset the losses from the LNS license fees.

VI. Technical Deficiencies:

On line 2078 of the bill, the catch line should replace the term “deficiencies” with the term “violations” to conform to other changes in the bill.

VII. Related Issues:

None.

³⁰ Agency for Health Care Admin., *2011 Bill Analysis & Economic Impact Statement for SB 1458* (on file with the Senate Committee on Children, Families, and Elder Affairs).

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Health Regulation on April 4, 2011:**

The committee substitute:

- Keeps the general licensing requirements for ALFs in part II of ch. 408, F.S.
- Reinstates the current definition of the term “controlling interest” at 5 percent or greater ownership interest.
- Expands the demonstration project in Miami-Dade County to include a psychiatric facility to improve access to health care for a predominantly minority, medically underserved, and medically complex population.
- Reinstates the current standard license and ECC license fees, increases the standard license per resident fee \$10 to offset the elimination of the LNS license, and caps the total standard licensure fee at \$13,443.
- Requires AHCA to develop an abbreviated form based on the number of beds and services the applicant will provide for applicants for licensure as an ALF to prove their financial ability to operate.
- Allows an ALF to employ or contract with an individual to market the ALF or contract with a referral service, but the referral service cannot be used for Medicaid recipients.
- Revises the types of medication that an unlicensed person may assist a resident with under the assistance with the self-administration of medication provision.
- Removes the requirement that a freestanding facility may not advertise or imply that any part of it is a nursing home, while keeping in place some advertising protections.
- Requires ALF staff to complete certain training and continuing education requirements and provides sanctions for violating such requirements.
- Allows ALFs to advertise using the abbreviation “ALF” with the license number of the ALF in lieu of using the full term “assisted living facility.”
- Clarifies that the purpose of surveying a sample of residents during AHCA’s standard licensure survey is to determine whether the ALF is adequately protecting resident’s rights.
- Removes several tort reform measures.

B. Amendments:

None.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 1362

INTRODUCER: Senator Garcia

SUBJECT: Department of Children and Family Services Employee

DATE: April 8, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	Pre-meeting
2.			GO	
3.			JU	
4.				
5.				
6.				

I. Summary:

The bill removes the provision that prevents DCF’s employment of a federal, state, county, or municipal officer and that prohibits DCF employees from seeking public office or serving as a local official.

This bill substantially amends. 402.35 of the Florida Statutes:

II. Present Situation:

Background

In 1969, the Legislature established the nine-member State Board of Social Services (Board),¹ one of a number of predecessors to the Department of Health and Human Services (HRS) and now the Department of Children and Families (DCF). The law contained a sentence that prohibited a federal, state, county or municipal officer from serving as a member of the Board. The exact reason those public officers were not allowed to serve is unknown.² However, through the agency’s many legislative reorganizations, the prohibition has remained in statute.

¹ Chapter 69-268, L.O.F.

² Department of Children and Families, Staff Analysis and Economic Impact. SB 1362, January 26, 2011.

III. Effect of Proposed Changes:

The bill removes the provision that prevents DCF's employment of a federal, state, county, or municipal officer and that prohibits DCF employees from seeking public office or serving as a local official.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

CBC Information Summary

AGENCY	CEO Salary (Benefits)	% Public Funding	Amount of DCF Contract	Insurance Costs (% of Contract Amount)	Carry Forward FY 2009/2010 (% of Contract)
Lakeview Center, Inc.			\$37,820,378		\$3,062,601 (8.10%)
Big Bend Community Based Care, Inc.	\$138,176	99.53%	\$32,266,329	\$41,219 (.127%)	\$1,363,785 (4.38%)
Partnership for Strong Families, Inc.	\$108,392 (\$14,344) \$87,784 (\$7,708)	99.88%	\$27,548,628	\$68,905 (.250%)	1,556,928 (5.65%)
Family Support Services of North Florida, Inc.	\$149,787	99.93%	\$44,991,265	\$247,208 (.550%)	\$2,305,297 (5.12%)
Community Partnership for Children, Inc.	\$117,860 (\$11,987)	99.80%	\$27,620,036	\$83,383 (.302%)	\$1,998,125 (7.23%)
St. Johns County Board of County Commissioners			\$4,881,130		\$594,533 (12.18%)
Clay and Baker Kids, Inc.	None reported on 990	99.96%	\$6,123,654	\$90,432 (1.48%)	\$489,923 (8.00%)
Sarasota Family YMCA, Inc.	\$96,787 (\$6,239)	99.64%	\$23,944,094	\$330,070 (1.38%)	\$1,065,014 (4.45%)
Eckerd Youth Alternatives			\$51,847,537	\$114,924 (.222%)	\$433,028 (0.84%)
Hillsborough Kids, Inc.	\$169,752 (\$13,914)	99.87%	\$66,539,081	\$202,107 (.331%)	\$2,454,010 (3.69%)
Children's Network of Southwest Florida			\$24,612,016	\$238,261 (.968%)	\$1,823,453 (7.40%)
Community Based Care of Seminole, Inc.	\$157,668 (\$30,582)	99.94%	\$12,396,084	\$53,049 (.428%)	\$38,620 (0.31%)

Community Based Care of Brevard, Inc.	\$184,425 (\$21,255)	99.59%	\$21,982,538	\$34,028 (.155%)	\$388,600 (1.77%)
Family Services of Metro Orlando			\$48,437,890		\$80,783 (0.17%)
Kids Central, Inc.	\$161,183 (\$23,782)	99.98%	\$46,878,851	\$132,620 (.283%)	\$2,819,446 (6.01%)
Heartland for Children	\$81,566 (\$3,500) (CFO receives higher salary and benefits)		\$42,665,911	\$145,324 (.304%)	\$2,042,767 (4.79%)
United for Families, Inc.	\$150,157 (\$5,987)	99.86%	\$24,701,003	\$14,352 (.058%)	\$1,233,820 (4.99%)
Child and Family Connections, Inc.	\$91,062 (CFO receives higher salary and benefits)	99.94%	\$37,199,131	\$89,385 (.240%)	\$538,868 (1.45%)
ChildNet, Inc.	\$175,000 (\$20,500)	100%	\$66,982,597	\$453,434 (.667%)	\$4,651,511 (6.84%)
Our Kids of Miami Dade	\$203,086	99.96%	\$99,956,738	\$123,802 (.124%)	\$3,760,785 (3.76%)

- CEO compensation amounts from most recent IRS Form 990.
- CBC contract amounts from Senate Appropriations staff.
- Insurance costs include general liability, professional liability, auto, and umbrella. Information provided by the Senate Committee on Banking and Insurance.
- Carry forward amounts from Senate Appropriations staff.

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STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Kurt S. Browning, Secretary of State,
do hereby certify that

David E. Wilkins

is duly appointed

Secretary,
Department of Children and Family Services

for a term beginning on the
Twenty-Fourth day of January, A.D., 2011,
to serve at the pleasure of the Governor
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital,
this the Seventh day of February, A.D., 2011.*



A handwritten signature in black ink, appearing to read "Kurt Browning", written over a horizontal line.

Secretary of State



RICK SCOTT
GOVERNOR

RECEIVED
2011 JAN 28 PM 1:25
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

January 24, 2011

Mr. Kurt S. Browning, Secretary
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Browning:

Please be advised I have made the following appointment under the provisions of Section 20.19(a), Florida Statutes :

Mr. David E. Wilkins
3927 West Millers Bridge Road
Tallahassee, Florida 32312

as Secretary of the Department of Children and Family Services, succeeding George H. Sheldon, subject to confirmation by the Senate. This appointment is effective January 24, 2011, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/jlw

QUESTIONNAIRE FOR GUBERNATORIAL APPOINTMENTS

The information from this questionnaire will be used by the Governor's office and, where applicable, The Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate. Please type or print in black ink.

1/20/11

Date Completed

1. Name: Mr WILKINS DAVID Edward
MR./MRS./MS. LAST FIRST MIDDLE/MAIDEN

2. Business Address: ~~3927~~ N/A
STREET OFFICE # CITY

3. Residence Address: 3927 West Milling Br Tallahassee Leon
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER
STREET CITY COUNTY
FL 32312 850-893-8410

Specify the preferred mailing address: Business Residence Fax # 850-894-1847
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER
 (optional)

4. A. List all your places of residence for the last five (5) years.

ADDRESS	CITY & STATE	FROM	TO
<u>3927 W. Milling Br</u>	<u>Tallahassee FL</u>	<u>7/05</u>	<u>Present</u>

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

ADDRESS	CITY & STATE	FROM	TO
<u>6113 Belle River Dr</u>	<u>Brentwood TN</u>	<u>97</u>	<u>95</u>
<u>West End Ave Condo</u>	<u>Nashville TN</u>	<u>90</u>	<u>92</u>
<u>2nd Ave Apts #1010</u>	<u>Nashville TN</u>	<u>87</u>	<u>90</u>
<u>Alexandria VA</u>	<u>Alexandria VA</u>	<u>83</u>	<u>87</u>
<u>Washville TN</u>	<u>Washville TN</u>	<u>82</u>	<u>83</u>

5. Date of Birth: 9-23-60 Apts Washville TN Place of Birth: Provesh KY

6. Social Security Number: _____

7. Driver License Number: _____ Issuing State: FL

8. Have you ever used or been known by any other legal name? Yes No If "Yes" Explain

9. Are you a United States citizen? Yes No If "No" explain:

If you are a naturalized citizen, date of naturalization: _____

10. Since what year have you been a continuous resident of Florida? 1996

11. Are you a registered Florida voter? Yes No If "Yes" list:

A. County of registration: Leon B. Current party affiliation: Republican

12. Education

A. High School: LONE OAK - PADUCAH KY Year Graduated: 1978
(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATE/DEGREE RECEIVED
<u>Lynchburg University</u>	<u>78-82</u>	<u>BS - Mgt Info Systems</u>

13. Are you or have you ever been a member of the armed forces of the United States? Yes No If "Yes" list:

A. Dates of service: _____
B. Branch or component: _____
C. Date & type of discharge: _____

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) If "Yes" give details:

DATE	PLACE	NATURE	DISPOSITION
<u>NA</u>			

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
<u>Accenture</u> <u>SUITE 6-45, 3007 Old St. Augustine Rd, TLL FL 32201</u>	<u>Consultant</u>	<u>Senior Executive</u>	<u>82-10</u>

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes No If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: _____

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

<u>MEETINGS ATTENDED</u>	<u>MEETINGS MISSED</u>	<u>REASON FOR ABSENCE</u>

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes No If "Yes", give details:

<u>DATE</u>	<u>NATURE OF VIOLATION</u>	<u>DISPOSITION</u>

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes No If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated Removed Resigned

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes No If "Yes", list:

A. Title of Office: _____

B. Term of Appointment: _____

C. Confirmation results: _____

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes No If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes No If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

<u>LICENSE/CERTIFICATE TITLE & NUMBER</u>	<u>ORIGINAL ISSUE DATE</u>	<u>ISSUING AUTHORITY</u>	<u>DISCIPLINARY ACTION/DATE</u>

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes No If "Yes", explain:

<u>NAME OF BUSINESS</u>	<u>YOUR RELATIONSHIP TO BUSINESS</u>	<u>BUSINESS' RELATIONSHIP TO AGENCY</u>

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes No If "Yes", explain:

NAME OF BUSINESS	FAMILY MEMBER'S RELATIONSHIP TO YOU	FAMILY MEMBER'S RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes No

A. Did you receive any compensation other than reimbursement for expenses? Yes No

B. Name of agency or entity you lobbied and the principal(s) you represented:

AGENCY LOBBIED	PRINCIPAL REPRESENTED
Governors Agencies Cabinet Agencies	Accenture

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
DAVID RAMSEY			
DANNY LANGSTON			
BOB GARNER			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
FL Baptist Childrens here	PO Box 8190	Board member	04-11
	Wakeland FL 33502	Finance chair, zone committee	
Friends of Missionary Schools	2100 W. TN	Board member	10-11

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes No If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes No

CERTIFICATION

STATE OF FLORIDA, COUNTY OF Leon

Before me, the undersigned Notary Public of Florida, personally appeared

David E. Wilkins

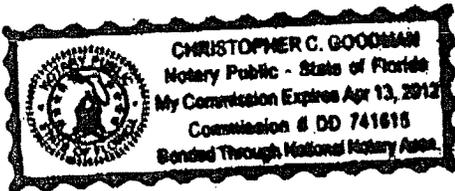
, who, after being duly sworn, says: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

SIGNATURE OF APPLICANT-AFFIANT

Sworn to and subscribed before me

this 16th day of March, 2011

SIGNATURE OF NOTARY PUBLIC-STATE OF FLORIDA



Christopher C. Goodman

(PRINT, TYPE OR STAMP COMMISSIONED NAME OF NOTARY PUBLIC)

My commission expires: April 13, 2012

Personally Known OR Produced Identification

Type of Identification Produced _____

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

11 FEB -7 AM 11:06

STATE OF FLORIDA

County of Leon

DIVISION OF ELECTIONS
SECRETARY OF STATE

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary - Department of Children & Families
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

David Wilkins

Signature

Sworn to and subscribed before me this 4th day of February, 2011.

Debbie Smith

Signature of Officer Administering Oath or of Notary Public



Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

3977 West Millers Br Rd
Street or Post Office Box

Tallahassee FL 32312
City, State, Zip Code

DAVID E. WILKINS
Print name as you desire commission issued

David Wilkins
Signature

Secretary David Wilkins

Secretary David Wilkins brings decades of experience in business and charitable leadership to the Florida Department of Children and Families.

Secretary Wilkins retired recently from Accenture after a 29-year career with the company. Accenture is a global management, consulting, technology and business operations company with annual revenues of more than \$6 billion and more than 200,000 employees. Promoted to partner at the age of 32, Wilkins served in numerous management roles. His work included overseeing local offices, directing the Human Services and Global Industry programs, leading government strategic planning and corporate acquisitions, and running business units. For the past five years, he was in charge of the global sales organization of the Accenture Health and Public Service business, which operates in more than 25 countries and generated sales of near \$4 billion.

Secretary Wilkins has been an active volunteer at the Florida Baptist Children's Homes for the past 14 years. The charity operates residential care, emergency shelter, adult development services, adoption assistance and foster care on more than 15 campuses across Florida. He currently serves on the Board of Trustees for this organization and has been its finance chairman for the past three years. During his tenure, the number of children in care increased by 350 percent and the endowment tripled. He also helped launch "Orphan's Heart," a successful international child care services program and was co-leader of the CEO Children's Council, a support organization of business professionals, civic leaders and professional athletes. He and his wife Tanya were honored with the "Volunteer of the Year" award in 2006.

Secretary Wilkins graduated Magna Cum Laude from Lambuth University in 1982 with a B.S. degree in Management Information Systems. He was president of the student body and his fraternity. He was a varsity scholarship athlete in basketball and tennis.

A native of Kentucky, Secretary Wilkins, his wife and their three daughters have lived in Tallahassee for more than a decade. They are active in numerous charitable and community organizations, including the United Way, Florida Baptist Children's Homes, Orphan's Heart International, Mission San Luis and Bradfordville Baptist Church.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 694

INTRODUCER: Senator Richter

SUBJECT: Assisted Living Facilities

DATE: April 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.			HR	
3.			BI	
4.				
5.				
6.				

I. Summary:

This bill removes the statutory requirement that all assisted living facilities report monthly to the Agency for Health Care Administration any liability claim filed against it.

This bill substantially amends section 429.23, Florida Statutes.

II. Present Situation:

An Assisted Living Facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.¹ A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.² Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks. An ALF may be operated for profit or not-for-profit, and can range from small houses resembling private homes to larger developments with hundreds of residential beds.

Assisted living facilities are currently licensed by the Agency for Health Care Administration (AHCA) pursuant to part I of ch. 429, F.S., relating to assisted care communities and part II of ch.408, F.S., relating to the general licensing provisions for health care facilities. Assisted living facilities are also subject to regulation under chapter 58A-5 of the Florida Administrative Code. These rules are adopted by the Department of Elder Affairs (DOEA or department) in

¹ Section 429.02(5), F.S.

² Section 429.02(16), F.S.

consultation with AHCA, the Department of Children and Family Services, and the Department of Health.

There are currently 2,947 ALFs licensed in Florida.³ The licensure process requires that each ALF maintain liability insurance coverage at all times.⁴ Assisted living facilities are required to submit a monthly report to AHCA that includes any liability claim filed against it.⁵ The report must include the name of the resident, the dates of the incident leading to the claim, and the type of injury or violation of rights alleged to have occurred.⁶ The report is not discoverable in any civil or administrative proceeding, except in cases brought by AHCA to enforce ch. 429, F.S.⁷

In addition to the monthly report to AHCA, all ALFs are required to maintain adverse incident reports. An adverse incident is defined in statute to mean “an event over which facility personnel could exercise control rather than as a result of the resident’s condition and results in:

- Death;
- Brain or spinal damage;
- Permanent disfigurement;
- Fracture or dislocation of bones or joints;
- Any condition that required medical attention to which the resident has not given his or her consent;
- Any condition that requires the transfer of the resident from the facility to a unit providing more acute care due to the incident rather than the resident’s condition before the incident; or
- An event that is reported to law enforcement or its personnel for investigation.⁸

Liability claims can also be made for alleged violation of rights. There are 11 specific rights guaranteed to residents of ALFs, such as the right to unrestricted private communication, sharing a room with a spouse if both are residents of the facility; and the right to present grievances and recommend changes.⁹

The agency publishes a report on its website providing monthly, quarterly, and annual aggregate data of the number of liability claims intended to be filed against ALFs licensed in the state.¹⁰

The agency produces two reports: one that shows the number of intended liability claim reports by fiscal year, broken down by quarter from 2001 through 2011, and one that shows the number of intended claims filed from March 2010 to February 2011. See charts below.¹¹

³ Agency for Health Care Admin., *2011 Bill Analysis and Economic Impact Statement SB 694* (received Mar. 8, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁴ Section 429.275, F.S.

⁵ Section 429.23(5), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ Section 429.23(2), F.S. Resident elopement, if the elopement places the resident at risk of harm or injury is also included in the definition of “adverse incident.”

⁹ See s. 429.28, F.S.

¹⁰ Agency for Health Care Admin., *supra* note 3.

¹¹ Agency for Health Care Admin.,

http://ahca.myflorida.com/MCHQ/Long_Term_Care/FDAU/docs/LiabilityClaims/ALF_Chart.pdf (last visited Mar. 29, 2011).

**Assisted Living Facility Notices of Intent
Number Received by Fiscal Year and Quarter**

	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11
Qtr 1	11	8	12	4	6	3	1	3	8	5
Qtr 2	32	9	9	4	6	5	5	4	3	2
Qtr 3	22	19	3	7	9	4	8	3	1	n/a
Qtr 4	15	10	5	7	9	12	8	2	4	n/a

**Assisted Living Facility Notices of Intent
March 2010 – February 2011**

	3/10	4/10	5/10	6/10	7/10	8/10	9/10	10/10	11/10	12/10	1/11	2/11
NOIs Rec'd by month	0	3	0	1	0	3	2	0	2	0	2	2

The information reported to AHCA is not used in any regulatory manner.¹²

III. Effect of Proposed Changes:

This bill amends s. 429.23, F.S., to remove the requirement that all assisted living facilities report monthly to the Agency for Health Care Administration any liability claim filed against it.

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹² Agency for Health Care Admin., *supra* note 3.

B. Private Sector Impact:

This bill amends s. 429.23, F.S., to remove the requirement that all assisted living facilities (ALFs) report monthly to the Agency for Health Care Administration any liability claim filed against it. This bill may reduce reporting costs to ALFs associated with submitting the data.¹³

C. Government Sector Impact:

According to the Agency for Health Care Administration (AHCA or agency), duties associated with collecting and posting the information relating to liability claims are minimal and eliminating the requirement that ALFs report monthly to AHCA would have a neutral effect on the agency.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹³ *Id.*

¹⁴ *Id.*