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 Health and Human Services Appropriations Committee

BILL:	SB 1816
INTRODUCER:	Health Regulation Committee
SUBJECT:	Assisted Living Facilities
DATE:	April 2, 2010
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Wilson	HR	**Favorable**
2.	Hansson	Walsh	CF	**Favorable**
3.	Kynoch	Hansen	HA	**Favorable**
4.				
5.				
6.				

I. Summary:

The committee bill repeals the limited nursing services (LNS) specialty license and authorizes LNS to be provided by appropriately licensed persons in an assisted living facility (ALF) with a standard license. The per-bed fee for a standard-licensed ALF is increased by $8.50 biennially for beds that are not designated for recipients of optional state supplementation payments (OSS), to offset the revenue that is currently generated from the fees associated with the LNS specialty license. The maximum amount that an ALF is required to pay for the standard licensure fees is increased. Additional monitoring, either onsite or by a desk review, is required for an ALF that has been cited with a class I or class II deficiency. The bill repeals the requirement for additional monitoring inspections of an ALF licensed with an extended congregate care (ECC) specialty license.

The bill repeals the authority for volunteers to provide certain health-related services in an ALF. All ALFs are required to report electronically to the Agency for Health Care Administration (AHCA), at least semiannually, certain aggregated data related to the residents and staff of the facility. The bill eliminates the requirement for the Department of Elder Affairs (DOEA) to report annually to the Governor and Legislature on the status of and recommendations related to ECC services.

This bill substantially amends the following sections of the Florida Statutes: 429.07, 429.17, 429.19, 429.255, 429.41, and 429.54.

This bill repeals s. 429.28(3), Florida Statutes.

This bill is revenue neutral to the AHCA. The repeal of the LNS specialty license is projected to reduce revenues by $554,000 biennially. However, the increase in the per-bed licensure fee of $8.50 biennially for all ALF non-OSS beds is expected to offset the lost revenue. The maximum amount that an ALF is required to pay biennially for the licensure fees associated with the standard license is increased by $5,413 from the current CPI adjusted fee of $13,087 to $18,500 to accommodate the increased per-bed licensure fee increase.

II. Present Situation:

General Description

An 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, 2] A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.[3] 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 care communities, 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 Rule 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, and the Department of Health (DOH).[4] An ALF must also comply with the Uniform Fire Safety Standards for ALFs contained in Rule 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.[5]

As of December 2009, there were 2,830 ALFs licensed with a standard license by the AHCA in this state, for a total of 80,539 beds.[6] In addition to a standard license, an ALF may have specialty licenses that authorize an ALF to provide LNS, limited mental health (LMH) services,[7] and ECC services. As of September 2009, there were 475 ALFs licensed with a standard license only, for a total of 32,356 beds.[8]

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[1] s. 429.02(5), Florida Statutes (F.S.).

[2] An ALF does not include an adult family-care home or a nontransient 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.

[3] s. 429.02(16), F.S.

[4] s. 429.41(1), F.S.

[5] See Rule ch. 64E-12, ch. 64E-11, and 64E-16, F.A.C.

[6] Source: The AHCA 2010 Bill Analysis & Economic Impact Statement for SPB 7018, on file with the Senate Health Regulation Committee.

[7] 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.

[8] Source: The AHCA in an email to committee professional staff dated September 23, 2009.

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,[9] who are licensed under the nurse practice act[10] and uncompensated family members or friends may:[11]

- 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 fire safety standards.[12]

A resident who requires 24-hour nursing supervision[13] may not reside in an ALF, unless the resident is enrolled as a hospice patient. Continued residency of a hospice patient is conditioned

[9] 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.
[10] Part I of ch. 464, F.S.
[11] s. 429.255, F.S.
[12] s. 429.255, F.S., s. 429.26, F.S., and Rule 58A-5.030, F.A.C.
[13] 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

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.[14]

LNS Specialty License

An LNS 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. As of December 2009, there were 977 ALFs licensed with an LNS specialty license.[15]

The nursing services authorized to be provided with this license are limited to acts specified in administrative rules,[16] 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.[17]

The biennial fee for an LNS license is $296 per license with an additional fee of $10 per resident based on the total licensed resident capacity of the facility.[18] Ostensibly this fee covers the additional monitoring inspections currently required of facilities with an LNS license.

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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.

[14] s. 429.28, F.S.

[15] Ibid, 6. The AHCA does not track the number of LNS beds.

[16] 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.

[17] s. 429.07(3)(c), F.S.

[18] s. 429.07(4)(c), F.S., as adjusted per s. 408.805(2), F.S.

ECC Specialty License

An ECC specialty license enables an ALF to provide, directly or through contract, services performed by licensed nurses and supportive services[19] to persons who otherwise would be disqualified from continued residence in an ALF.[20] As of December 2009, there were 311 ALFs licensed with an ECC specialty license.[21]

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 plan[22] 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, 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.[23]

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[19] 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.
[20] s. 429.07(3)(b), F.S., and Rule 58A-5.030, F.A.C.
[21] Ibid 6.
[22] s. 429.02(21), F.S.
[23] Rule 58A-5.030, F.A.C.

Persons under contract to the ECC, employees, or volunteers,[24] who are licensed under the nurse practice act,[25] including certified nursing assistants, may perform all duties within the scope of their license or certification, as approved by the facility administrator.[26] 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.[27]

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.

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	$356
Standard ALF Per-Bed Fee (non-OSS)	$ 50	$ 59
Total Licensure fee for Standard ALF	$10,000	$13,087
ECC Application Fee	$400	$501
ECC Per-Bed Fee (licensed capacity)	$ 10	$ 10
LNS Application Fee	$250	$296
LNS Per-Bed Fee (licensed capacity)	$ 10	$ 10

Inspections and Resident Attributes

There is no mechanism for identifying resident population and characteristics in ALFs. Currently, ALFs are not required to submit resident population data. However, as a result of legislation passed in 2009, they are required to submit disaster/emergency information electronically to the AHCA via its Emergency Status System.[29]

[24] Ibid 9.
[25] Part I of ch. 464, F.S.
[26] s. 429.255(2), F.S.
[27] Rule 58A-5.030(8)(c), 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 3, 2010).
[29] Ibid 6.

The AHCA is authorized to use an abbreviated biennial standard licensure inspection that consists of a review of key quality-of-care standards in lieu of a full inspection in facilities that have a good record of past performance.[30] The AHCA has not implemented this abbreviated licensure process due to quality-of-care concerns. Primarily, the AHCA is concerned that the inspection process is currently the only mechanism for identifying the mental and physical attributes of the residents and the ability of the ALF to provide the services needed by those residents.

The LNS license and the ECC license require additional monitoring inspections, even if the facility does not have residents who require or are receiving the additional LNS or ECC services. The AHCA has explained that frequently this results in unnecessary additional site visits that could be avoided if the AHCA had information concerning the resident population before conducting the inspection.

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 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.

When committee professional staff presented the proposed committee bill to the committee, staff indicated that ongoing discussions with stakeholders was producing potential enhancements to the proposed committee bill. At that time, staff provided the committee with the conceptual modifications that were being discussed. This bill reflects the committee's instruction to file a committee bill that is consistent with the conceptual modifications that were presented to the committee.

III. Effect of Proposed Changes:

Section 1. Amends s. 429.07, F.S., to repeal the LNS specialty license and its requirements and the quarterly monitoring requirements related to ALFs that are licensed to provide ECC services. The bill requires an ALF that has been cited within the previous 24 months for a class I or class II violation to be subject to unannounced monitoring. This monitoring may occur through a desk review or onsite, unless a cited violation relates to providing or failing to provide nursing care. In that case, a registered nurse is required to participate in at least two onsite monitoring visits within a 12-month period. The monitoring requirement applies regardless of the status of the enforcement or disciplinary action for the cited violation.

[30] s. 429.41(5), F.S.

The biennial per-bed licensure fee for a standard license is increased by $8.50 to $67.50 from the current per-bed licensure fee (CPI adjusted) of $59. The other licensure fees in this section are amended to reflect the current CPI adjusted fee, only. The total standard licensure fee is increased from the current fee (CPI adjusted) of $13,087 to $18,500.

The bill eliminates the requirement for the DOEA to report annually to the Governor and Legislature on the status of and recommendations related to ECC services. A provision requiring the AHCA to determine whether the ALF licensee is adequately protecting residents' rights in its biennial survey is transferred from s. 429.28(3), F.S.

Section 2. Amends s. 429.17, F.S., to conform provisions related to the ALF licenses to the repeal of the LNS specialty license.

Section 3. Amends s. 429.19, F.S., to clarify that a monitoring fee may be assessed in addition to an administrative fine.

Section 4. Amends s. 429.255, F.S., to eliminate the authorization for an ALF to use volunteers to provide certain health-related services, including: administering medications, taking residents' vital signs, managing individual pill organizers for residents who self-administer medication, giving prepackaged enemas, observing residents and documenting observations on the resident's record or reporting observations to the resident's physician, and performing all duties within the scope of their license or certification in a facility licensed to provide ECC services.

In addition, this section authorizes contracted personnel or facility staff who are licensed under the nurse practice act to provide LNS to residents in a standard-licensed ALF. The licensee is responsible for maintaining documentation of health-related services provided as required by rule and ensuring that staff are adequately trained to monitor residents who have received these health-related services.

Section 5. Repeals s. 429.28(3), F.S., to eliminate duplicative provisions related to inspections and monitoring facilities that have been cited with violations. The provision requiring the AHCA to determine whether the ALF licensee is adequately protecting residents' rights in its biennial survey is transferred to s. 429.07, in section 1 of this bill.

Section 6. Amends s. 429.41, F.S., to conform provisions related to rulemaking to changes made in this bill.

Section 7. Amends s. 429.54, F.S., to require licensed ALFs to report electronically to the AHCA semiannually, or more frequently if required by rule, certain data related to the facility's residents and staffing. This data includes, but is not limited to the:

- Number of residents;
- Number of residents receiving LMH services;
- Number of residents receiving ECC services;
- Number of residents receiving LNS;
- Funding sources of the residents; and
- Professional personnel providing resident services.

The DOEA, in consultation with the AHCA, is required to adopt rules related to these reporting requirements.

Section 8. Provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill authorizes an ALF to provide LNS without obtaining an additional specialty license at a fee of $296 plus $10 per-bed fee based on the total licensed resident capacity of the facility. The per-bed licensure fee for all ALFs is increased $8.50 biennially for non-OSS beds. This increased fee offsets the revenue generated from the LNS license and will be used to fund monitoring of any ALF that has been cited with a class I or class II deficiency. The maximum amount that an ALF is required to pay biennially for the licensure fees associated with the standard license is increased by $5,413 to accommodate the increased per-bed licensure fee increase.

B. Private Sector Impact:

The bill does not require an ALF to provide LNS, but an ALF may choose to do so with appropriate nursing personnel without the requirement to obtain an additional specialty license. All ALFs are required to report electronically, at least semiannually, certain information about the facility's residents and professional staffing. Monitoring inspections will be tied to performance rather than requiring a set number of monitoring inspections for each specialty license.

C. Government Sector Impact:

The AHCA will be able to target its monitoring resources on facilities that have been cited for certain violations rather than whether a facility has a particular type of specialty

license. This should generate efficiencies and focus resources on resident protection activities.

This bill is revenue neutral to the AHCA. The repeal of the LNS specialty license is projected to reduce revenues by $554,000 biennially. However, the increase in the per-bed licensure fee of $8.50 biennially for all ALF non-OSS beds is expected to offset the lost revenue. The maximum amount that an ALF is required to pay biennially for the licensure fees associated with the standard license is increased by $5,413 from the current CPI adjusted fee of $13,087 to $18,500 to accommodate the increased per-bed licensure fee increase.

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.