The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

HEALTH REGULATION
Senator Garcia, Chair
Senator Sobel, Vice Chair

MEETING DATE: Thursday, January 19, 2012
TIME: 10:15 a.m.—12:15 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Garcia, Chair; Senator Sobel, Vice Chair; Senators Diaz de la Portilla, Fasano, Gaetz, Jones, and Norman

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 746** Hays (Compare H 143)	Florida Clean Indoor Air Act; Authorizing municipalities and counties to restrict smoking on certain properties, etc. HR 01/19/2012 Favorable CA	Favorable Yeas 7 Nays 0
2	**SB 774** Hays (Compare CS/H 363)	Physician Assistants; Revising the membership of the Board of Medicine within the Department of Health to include a member who is a certified physician assistant; providing for the initial appointment of the certified physician assistant; deleting the department's requirement to issue a license authorizing a physician assistant to prescribe or dispense certain medication; deleting a fee to fund the licensing of a physician assistant who is authorized to prescribe or dispense certain medication; revising the membership of the Board of Osteopathic Medicine within the department to include a member who is a certified physician assistant; deleting the department's requirement to issue a license to a physician assistant who is authorized to prescribe or dispense certain medication, etc. HR 01/19/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0
3	**SB 1040** Bogdanoff (Compare H 1313)	Dental Hygienists; Authorizing a dental hygienist, under the supervision of a dentist, to administer local anesthesia to certain patients if the hygienist meets certain criteria; providing the criteria that a dental hygienist must meet in order to administer local anesthesia; authorizing a dental hygienist to apply for certification to administer local anesthesia; requiring the Department of Health to issue the certificate under certain circumstances; authorizing the board to charge a fee, not to exceed a specified amount, to defray the cost of verifying criteria and issuing a certificate; providing that the certificate is part of the dental hygienist's permanent record; requiring that the certificate be prominently displayed; authorizing a dental hygienist to administer local anesthesia, etc. HR 01/19/2012 Favorable BC	Favorable Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 482** Latvala (Identical H 621, Compare H 787, H 1419, S 1292, S 1884)	Nursing Homes and Related Health Care Facilities; Clarifying that the transfer and discharge of facility residents are governed by nursing home law; deleting a requirement that a resident care plan be signed by certain persons; deleting provisions requiring a license applicant to submit a signed affidavit relating to financial or ownership interests, the number of beds, copies of civil verdicts or judgments involving the applicant, and a plan for quality assurance and risk management; providing that a licensee must provide certain information relating to financial or ownership interests if requested by the Agency for Health Care Administration; revising provisions relating to the provision of respite care in a facility; deleting requirements for the submission of certain reports to the agency relating to ownership interests, staffing ratios, and bankruptcy; repealing provisions relating to the Medicaid "Up-or-Out" Quality of Care Contract Management Program, etc. HR 01/19/2012 Fav/1 Amendment BC	Fav/1 Amendment (540674) Yeas 7 Nays 0
5	**SB 730** Flores (Identical H 727)	Medicaid Managed Care Plans; Requiring the Agency for Health Care Administration to establish per-member, per-month payments; substituting the Medicare Advantage Coordinated Care Plan for the Medicare Advantage Special Needs Plan; revising the definition of "eligible plan" to include certain Medicare plans; limiting the penalty that a plan must pay if it leaves a region before the end of the contract term; providing that certain Medicare plans are not subject to procurement requirements or plan limits; requiring dually eligible Medicaid recipients to be enrolled in the Medicare plan in which they are already enrolled; revising the list of Medicare plans that are not subject to procurement requirements for long-term plans; revising the list of Medicare plans in which dually eligible Medicaid recipients are enrolled in order to receive long-term care, etc. HR 01/19/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	**SB 1568** Gaetz / Garcia (Compare CS/H 711, H 895, S 464)	Sale or Lease of a County, District, or Municipal Hospital; Requiring the governing board of a county, district, or municipal hospital to evaluate the possible benefits to an affected community from the sale or lease of a hospital facility owned by the board to a not-for-profit or for-profit entity within a specified time period; specifying the factors that must be considered by the governing board before accepting a proposal to sell or lease the hospital; providing that the purposes for which a special taxing district may appropriate funds from the sale or lease of a hospital include the promotion and support of economic growth in the district and county in which the taxing district is located and the furthering of the purposes of the taxing district, etc. HR 01/19/2012 Fav/CS CA BC	Fav/CS Yeas 7 Nays 0

Consideration of proposed committee bill (Interim Project 2012-128 - Review Regulatory Oversight of Assisted Living Facilities in Florida):

7	**SPB 7174**	Assisted Living Facilities; Revising the duties of the case manager for, and the community living support plan of, a mental health resident of an assisted living facility; increasing the biennial license fee required for a facility that has certain violations within the 2 years preceding license renewal; requiring that a mental health professional be part of the team inspecting a facility that holds a limited mental health license; requiring the revocation of a facility license for certain violations that result in the death of a resident; revising training and continuing education requirements for facility staff other than administrators; providing training requirements for certain staff of facilities that hold an extended congregate care, limited nursing, and limited mental health license, etc.	Submitted as Committee Bill

(Preliminary Draft Available - final draft will be made available at least 48 hours prior to the meeting)

Other Related Meeting Documents

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 Regulation Committee

BILL:	SB 746
INTRODUCER:	Senator Hays
SUBJECT:	Florida Clean Indoor Air Act
DATE:	January 19, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Steele	Stovall	HR	**Favorable**
2.			CA	
3.				
4.				
5.				
6.				

I. Summary:

This bill enables municipalities to place restrictions on outdoor smoking on municipal property, and counties to place restrictions on outdoor smoking on county property.

This bill substantially amends the following sections of the Florida Statutes: 386.209.

II. Present Situation:

The Florida Clean Indoor Air Act (FCIAA) was first enacted into law in 1985. As currently written, the stated purpose of the FCIAA is to protect people from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X, of the Florida Constitution.[1] Despite the title of the FCIAA indicating that the act applies solely to "indoor" smoking, the act regulates both indoor and outdoor smoking, because the Florida Legislature (Legislature) has preempted the regulation of smoking to the state.[2]

In 1996, the Legislature authorized local law enforcement officers to issue citations to persons under the age of 18 for smoking in, on, or within 1000 feet of school property.[3] The 2003 Legislature amended the FCIAA in part II of ch. 386, F.S., as a result of passage of a citizens' initiative in 2002 that became s. 20, Art. X of the State Constitution. In 2011, the Legislature enacted an exception to the state preemption to allow school districts to further restrict smoking by persons on school property.[4]

[1] Section 386.202, F.S.
[2] Section 386.209, F.S.; Also see, AGO 2005-63; AGO 2010-53; and AGO 2011-15.
[3] Section 386.212, F.S.
[4] Section 386.209, F.S.; ch. 2011-108, L.O.F.

The Department of Health (DOH), or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation (DBPR) is responsible for enforcement of the FCIAA.[5] Enforcement of the FCIAA by these agencies is complaint driven through a toll free telephone number.[6] Civil penalties for individuals who violate the act may be imposed up to $100 for the first violation and up to $500 for any subsequent violations.[7] School districts are able to enforce any further restrictions on smoking enacted by a School Board, because of each school board's inherent authority to discipline employees and control visitors.[8] However, school boards cannot impose penalties for violations of their restrictions beyond those contained in the FCIAA.[9]

Section 386.209, F.S., preempts regulation of smoking to the state, and supersedes any municipal or county ordinance.[10] The preemption precludes both local regulation and local enforcement that falls outside the provisions of the FCIAA.[11] Absent legislative authority the FCIAA appears to preclude a county or municipality from otherwise regulating smoking on their respective properties.[12] Though municipalities have broad "home rule" powers, that power is limited by the Florida Constitution or by general law.[13] Neither municipalities, nor counties, may act in an area preempted by the Legislature.[14]

III. Effect of Proposed Changes:

This bill amends s. 386.209, F.S., adding an exception to state preemption of smoking regulation by allowing municipalities to further restrict outdoor smoking on municipal property and allowing counties to further restrict outdoor smoking on county property. This bill provides an effective date of July 1, 2012.

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[5] Section 386.207, F.S.

[6] The hotline number is (800) 337-3724. Found at: <http://www.doh.state.fl.us/environment/community/indoor-air/> (last visited Jan. 17, 2012).

[7] Section 386.208, F.S.

[8] Florida Senate, Committee on Regulated Industries, Senate Bill 1430 Analysis, 2 (Mar. 25, 2011) (on file with the Senate Committee on Health Regulation); Also see, AGO 2011-15.

[9] See generally, Thomas v. State, 614 So.2d 468, 470 (Fla. 1993); Also see, AGO 2010-53 (noting 'the "home-rule" power granted to district school boards has been analogized to the grant of home rule powers to municipalities…').

[10] Section 386.209, F.S.; AGO 92-89; AGO 2010-53; AGO 2011-15; Also see generally, Florida Power Corp. v. Seminole County, 579 So.2d 105, 107 (Fla. 1991).

[11] AGO 92-89.

[12] See generally, AGO 2010-53.

[13] See Art. VIII, § 2, Fla. Const.; Section 166.021(1), F.S.; City of Boca Raton v. State, 595 So.2d 25, 27 (Fla. 1992); Florida Power Corp. at 107; AGO 89-24.

[14] Tribune Co. v. Cannella, 458 So.2d 1075, 1077 (Fla. 1984); AGO 81-76; Judge James R. Wolf, Sarah Harley Bolinder, The Effectiveness of Home Rule: A Preemption and Conflict Analysis, Fla. B.J., June 2009, at 92.

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 the 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:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is not apparent whether municipalities and counties have enforcement authority for any restrictions on outdoor smoking on municipal or county property. Section 386.207, F.S., assigns responsibility to the DOH or the DBPR to enforce part II of ch. 386, F.S., based upon each department's specific areas of regulatory authority. Section 386.212, F.S., provides explicit authority for enforcement of that section to a law enforcement officer. Although section 901.15(1), F.S., authorizes a law enforcement officer to enforce a municipal or county ordinance, the preemption to regulating smoking might apply to enforcement as well.

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.

By Senator Hays

20-00454-12 2012746__

A bill to be entitled

An act relating to the Florida Clean Indoor Air Act; amending s. 386.209, F.S.; authorizing municipalities and counties to restrict smoking on certain properties; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 386.209, Florida Statutes, is amended to read:

386.209 Regulation of smoking preempted to state.—This part expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject, except that:~~; however,~~

(1) School districts may further restrict smoking by persons on school district property.

(2) Municipalities may further restrict outdoor smoking on municipal property.

(3) Counties may further restrict outdoor smoking on county property.

Section 2. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Budget - Subcommittee on General Government Appropriations, *Chair*
Agriculture
Banking and Insurance
Budget
Budget - Subcommittee on Higher Education Appropriations
Criminal Justice
Reapportionment

JOINT COMMITTEE:
Administrative Procedures

SENATOR D. ALAN HAYS
20th District

November 18, 2011

Senator Rene Garcia, Chair
Health Regulation Committee
530 Knott Building
310 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RE: SB 746 Florida Clean Indoor Air Act

Dear Chairman Garcia :

I respectfully request my above bill be heard before your committee. I feel this bill will benefit the citizens of our state.

Thank you in advance for your consideration, and please contact me if you have any questions.

Sincerely,

D. Alan Hays, DMD

Senator D. Alan Hays, DMD
District 20

CC: **Sandra R. Stovall,** *Staff Director*
Celia Georgiades, *Committee Administrative Assistant*

ENTERED

REPLY TO:
☐ 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19
Meeting Date

Topic _____ Bill Number 746 *(if applicable)*

Name Susan Harbin Amendment Barcode _____ *(if applicable)*

Job Title Leg. Coordinator

Address 115 S. Andrews Ave. Phone 954-599-8088
Street

Ft. Land E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Broward County

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/12
Meeting Date

Topic FLORIDA CLEAN INDOOR AIR ACT Bill Number 746 *(if applicable)*

Name PAUL HULL Amendment Barcode *(if applicable)*

Job Title VP, ADVOCACY + PUBLIC POLICY

Address 3709 W. JETTON AVE. Phone 813-382-9235
Street

TAMPA, FL 33629 E-mail PAUL.HULL@CANCER.ORG
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing AMERICAN CANCER SOCIETY, FLORIDA DIVISION

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

19 Jan 12
Meeting Date

Topic Clean Indoor Air Act

Bill Number SB 746 *(if applicable)*

Name James Mostellar

Amendment Barcode _____ *(if applicable)*

Job Title Government Relations Director

Address 2851 Remington Green Circle, Ste C
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 850/727-3712

E-mail James.Mostellar@heart.org

Speaking: ☒ For ☐ Against ☐ Information

Representing American Heart Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/12
Meeting Date

Topic SB 746 Florida Clean Indoor Air Act

Bill Number SB 746 *(if applicable)*

Name Rachel Busick

Amendment Barcode _____ *(if applicable)*

Job Title ~~Legislative Asst.~~/Leg. Advocate

Address 1905 Faulk Drive
Street

Phone (850) 701-3603

Tallahassee FL 32303
City *State* *Zip*

E-mail rbusick@flcities.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/2012
Meeting Date

Topic Clean Indoor Air Act

Bill Number 746 *(if applicable)*

Name Heather Wildermuth

Amendment Barcode _____ *(if applicable)*

Job Title Legislative Advocate

Address 100 S. Monroe
Street
Tallahassee FL 32301
City *State* *Zip*

Phone _____

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Assn of Counties

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Jan 19, 2012
Meeting Date

Topic Florida Clean Indoor Air Act

Bill Number SB 746 *(if applicable)*

Name Richard Polanglin

Amendment Barcode *(if applicable)*

Job Title Government Affairs Director - FIAHD
Health Care Policy Coordinator - FL PIRG

Address 1300 N Duval St
Street
Tallahassee FL 32303
City *State* *Zip*

Phone 850 224-4206

E-mail richardpolanglin@hotmail.com

Speaking: [X] For [ ] Against [ ] Information

Representing Florida Alliance for Retired Americans, Florida Public Interest Research Group

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/12
Meeting Date

Topic Local Jurisdictions

Bill Number 746 *(if applicable)*

Name Tobacco Prevention Network of FL

Amendment Barcode *(if applicable)*

Job Title Director, Thomas Harrington

Address [redacted] 3324 W. Univ. Ave #347
Street

Phone 904-607-3387

Gainesville FL 32607
City *State* *Zip*

E-mail tjharrington@tpnf.net

Speaking: ☑ For ☐ Against ☐ Information

Representing TPNF

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Regulation Committee

BILL:	SB 774
INTRODUCER:	Senator Hays
SUBJECT:	Physician Assistants
DATE:	January 12, 2012
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HR	**Pre-meeting**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

This bill alters the composition of the Board of Medicine and the Board of Osteopathic Medicine (the boards) to each include one physician assistant member (PA). It also eliminates the requirement that PAs who have been delegated prescribing authority by their supervising physicians must obtain special licensure from the Department of Health (the department).

The department will experience a negative fiscal impact as it must continue to process applications and notifications concerning prescribing authority for PAs but is no longer authorized to collect corresponding fees.

This bill substantially amends ss. 458.307, 458.347, 459.004, and 459.022, F.S.

II. Present Situation:

Board of Medicine and Board of Osteopathic Medicine

The Board of Medicine and the Board of Osteopathic Medicine are established within the department by ss. 458.307 and 459.004, F.S., respectively, to regulate physicians and other allied health professionals. Both boards are composed of licensed physicians who have been actively practicing medicine for at least the preceding 4 years as well as non-physician state citizens. At least one member of each board must be older than 60 years of age. Members are appointed by the Governor with confirmation from the Senate and serve for 4-year terms.

The Board of Medicine is a fifteen-member body composed of twelve allopathic physicians and three members who have never been licensed health care practitioners. At least one of the physicians must be on the full-time faculty of a Florida medical school, one must be in private

practice and on the full-time staff of a statutory teaching hospital, and one must be a graduate of a foreign medical school. One member of the board must also be a licensed health care risk manager. The board regulates physicians, physician assistants, anesthesiologist assistants, advanced registered nurse practitioners, dietitians, nutritionists, nutrition counselors, electrologists, respiratory therapists, and respiratory therapy technicians.

The Board of Osteopathic Medicine is a seven-member body composed of five osteopathic physicians and two members who have never been licensed health care practitioners. The board regulates osteopathic physicians, osteopathic physician assistants, and osteopathic anesthesiologist assistants.

Prescribing Authority of Physician Assistants

According to s. 458.347(2)(e), F.S.,[1] a PA is a practitioner who is a graduate of an approved program or its equivalent or meets standards approved by the boards and is licensed to perform medical services delegated by the supervising physician. The supervising physician may only delegate tasks which are within his or her scope of practice; that is, those tasks which the physician is qualified by training or experience to perform.[2] The supervising physician is liable for any acts or omissions of the PA.[3]

Although the delegation of tasks to a PA occurs principally at the physician's discretion, there are certain tasks which are restricted by rule. PAs are never allowed to make the final diagnosis for a patient and are not allowed to perform specific invasive therapeutic procedures without direct supervision.[4,5]

A physician may delegate to a PA the authority to prescribe or dispense any medication used in his or her practice, as long as that physician is registered as a dispensing practitioner under s. 465.0276, F.S., and the practice is not located in a facility licensed under ch. 395, F.S.[6] PAs are prohibited from prescribing controlled substances, general anesthetics, or radiographic contrast materials under any circumstances.

PAs who have been given prescribing authority must obtain a special license and a prescribing number from the department; the PA does not independently register as a dispensing practitioner under s. 465.0276, F.S. [7] Currently, 4,235 PAs have department-approved prescribing authority.[8] To be licensed as a prescribing PA, the PA and his or her supervising physician must jointly submit an application form to the department and pay a $400 fee. A separate form is submitted for each specialty area or practice setting for which the PA desires prescribing authority,

[1] An identical definition for physician assistants is found in s. 459.022(2)(e), F.S.
[2] Rule 64B-30.012, F.A.C. Identical provisions are found in Rule 64B15-6.010, F.A.C.
[3] Section 458.347(3), F.S. Identical provisions are found in s. 459.022(3), F.S.
[4] *Supra* fn. 2.
[5] Direct supervision refers to the physical presence of the supervising physician on the premises (Rules 64B9-30.001(5) and identical 64B15-6.001(5), F.A.C.). Specific tasks a PA may only perform under direct supervision include insertion of chest tubes, removal of pacer wires or left atrial monitoring lines, performance of cardiac stress testing, insertion of central venous catheters, administration of spinal or epidural anesthetics, and interpretation of laboratory tests or imaging studies.
[6] Facilities licensed under chapter 395, F.S., are hospitals, ambulatory surgical centers, and mobile surgical facilities.
[7] Section 458.347(4), F.S. Identical provisions are found in s. 459.022(4), F.S.
[8] Department of Health, *2012 Bill Analysis, Economic Statement, and Fiscal Note for SB 774*. A copy is on file with the Senate Health Regulation Committee.

although only one fee is required. The applying PA must also complete a 3-hour course in prescriptive practice approved by either board. For prescribing licensure renewal, which occurs biennially, a PA must pay a $150 fee and complete 10 hours of continuing medical education in each specialty area in which he or she has prescribing authority.[9]

A PA and his or her supervising physician must also enter into a written agreement outlining which drugs the physician has authorized the PA to prescribe. This agreement must be maintained at the physician's office for at least 5 years and provided to the department or the Florida Council of Physician Assistants upon request.[10]

In clinic, a PA with prescribing authority must clearly identify himself or herself to the patient as a PA and permit the patient to see the supervising physician, if desired, before any medication is dispensed or prescribed. Each prescription written by a PA must contain the PA's prescriber number in addition to the supervisory physician's name, address, and telephone number.[11]

III. Effect of Proposed Changes:

Section 1 amends s. 458.307, F.S., relating to the composition of the Board of Medicine. The board will remain a fifteen-member body, but instead of including three non-health care practitioner members, the board will consist of two such members and one licensed PA. The PA must have prescribing privileges and must have been practicing in Florida for at least 4 years.

The Governor shall appoint the first PA to the board when the term of one of the non-health care practitioner members expires or such a member vacates his or her position, whichever occurs earliest after July 1, 2012.

Section 2 amends s. 458.347, F.S., relating to the prescribing abilities of PAs. PAs who have been delegated prescribing authority by their supervising physicians are not required to obtain a special license from the department. However, PAs must still be granted a prescribing number by the department, supervising physicians must still notify the department of their intent to delegate prescribing authority to PAs, and PAs are still required to demonstrate to the department the completion of continuing medical education relating to prescriptive practice and to the specialty in which the PA has prescribing authority upon general licensure renewal.

The bill conforms language related to the formulary that identifies drugs a PA with prescribing authority may not prescribe to language used elsewhere in the bill. It also deletes language requiring the department to establish a fee relating to special prescribing licenses for PAs.

Section 3 amends s. 459.004, F.S., relating to the composition of the Board of Osteopathic Medicine. The board will remain a seven-member body, but instead of including two non-health care practitioner members, the board will consist of one such member and a licensed PA. The PA must have prescribing privileges and must have been practicing in Florida for at least 4 years.

[9] Rule 64B8-30.003(5), 64B8-30.005(6), and 64B8-30.019(4), F.A.C. Identical provisions are found in Rule 64B15-6, F.A.C.
[10] Rule 64B8-30.007, F.A.C. Identical provisions are found in Rule 64B15-6.0037, F.A.C. The Florida Council of Physician Assistants is part of the department and manages licensing of PAs.
[11] *Supra* fn. 7.

The Governor shall appoint the first PA to the board when the term of one of the non-health care practitioner members expires or such a member vacates his or her position, whichever occurs earliest after July 1, 2012.

Section 4 amends s. 459.022, F.S., relating to the prescribing abilities of PAs. PAs who have been delegated prescribing authority by their supervising physicians are not required to obtain a special license from the department. However, PAs must still be granted a prescribing number by the department, supervising physicians must still notify the department of their intent to delegate prescribing authority to PAs, and PAs are still required to demonstrate to the department the completion of continuing medical education relating to prescriptive practice and to the specialty in which the PA has prescribing authority upon general licensure renewal.

Section 5 provides an effective date of July 1, 2012.

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:

Licensure and relicensure fees for PAs seeking prescribing authority would be eliminated.

B. Private Sector Impact:

PAs would no longer be required to obtain special licensure from the department before being allowed to prescribe medications. However, they are still required to obtain a prescribing number.

C. Government Sector Impact:

The department will incur non-recurring costs for rulemaking and modification of licensure databases, the fiscal impact of which will be negligible. The department will

also experience a loss of revenue relating to the elimination of special licensure requirements and corresponding application fees for PAs with prescribing authority but will retain other administrative responsibilities related to such PAs. Revenues are expected to decrease by $170,936 in fiscal year 2012-2013 and $755,366 in fiscal year 2013-2014.[12]

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.

[12] *Supra* fn. 8.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (2) of section 458.307, Florida Statutes, is amended to read:

458.307 Board of Medicine.—

(2) Twelve members of the board must be licensed physicians in good standing in this state who are residents of the state and who have been engaged in the active practice or teaching of medicine for at least 4 years immediately preceding their appointment. One of the physicians must be on the full-time

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faculty of a medical school in this state, and one of the physicians must be in private practice and on the full-time staff of a statutory teaching hospital in this state as defined in s. 408.07. At least one of the physicians must be a graduate of a foreign medical school. One member must be a physician assistant licensed under this chapter who has prescribing authority and who has worked in the state for at least 4 years. The remaining two ~~three~~ members must be residents of the state who are not, and never have been, licensed health care practitioners. One member must be a health care risk manager licensed under s. 395.10974. At least one member of the board must be 60 years of age or older.

Section 2. Paragraphs (e) and (f) of subsection (4) and paragraphs (a) and (c) of subsection (7) of section 458.347, Florida Statutes, are amended to read:

458.347 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(e) A supervisory physician may delegate to a fully licensed physician assistant the authority to prescribe or dispense any medication used in the supervisory physician's practice unless such medication is listed on the formulary created pursuant to paragraph (f). A fully licensed physician assistant may only prescribe or dispense such medication under the following circumstances:

1. A physician assistant must clearly identify to the patient that he or she is a physician assistant. Furthermore, the physician assistant must inform the patient that the patient has the right to see the physician prior to any prescription being prescribed or dispensed by the physician assistant.

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2. The supervisory physician must notify the department of his or her intent to delegate, on a department-approved form, before delegating such authority and notify the department of any change in prescriptive privileges of the physician assistant. Authority to dispense may be delegated only by a supervising physician who is registered as a dispensing practitioner in compliance with s. 465.0276.

3. The physician assistant must file with the department, at the time of initial application ~~before commencing to prescribe or dispense~~, evidence that he or she has completed a ~~continuing medical education~~ course in pharmacotherapeutics, to include the initiation, selection, and modification of selected medications, and the limitations, responsibilities, and privileges involved in prescribing medicinal drugs. The course must have been ~~of at least 3 classroom hours in prescriptive practice,~~ conducted by a ~~an accredited~~ program accredited by the Commission on Accreditation of Allied Health Programs or its successor organization. The department shall issue a prescriber number if the evidence submitted meets the requirements. The physician assistant must receive a prescriber number before commencing to prescribe or dispense medicinal drugs ~~approved by the boards, which course covers the limitations, responsibilities, and privileges involved in prescribing medicinal drugs, or evidence that he or she has received education comparable to the continuing education course as part of an accredited physician assistant training program~~.

4. The physician assistant must file with the department a signed affidavit that he or she has completed a minimum of 10 continuing medical education hours in the specialty practice in

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which the physician assistant has prescriptive privileges with each licensure renewal application.

5. The department shall issue ~~a license and~~ a prescriber number to the physician assistant granting authority for the prescribing of medicinal drugs authorized within this paragraph upon completion of the foregoing requirements. The physician assistant shall not be required to independently register pursuant to s. 465.0276.

6. The prescription must be written in a form that complies with chapter 499 and must contain, in addition to the supervisory physician's name, address, and telephone number, the physician assistant's prescriber number. Unless it is a drug or drug sample dispensed by the physician assistant, the prescription must be filled in a pharmacy permitted under chapter 465 and must be dispensed in that pharmacy by a pharmacist licensed under chapter 465. The appearance of the prescriber number creates a presumption that the physician assistant is authorized to prescribe the medicinal drug and the prescription is valid.

7. The physician assistant must note the prescription or dispensing of medication in the appropriate medical record.

8. This paragraph does not prohibit a supervisory physician from delegating to a physician assistant the authority to order medication for a hospitalized patient of the supervisory physician.

This paragraph does not apply to facilities licensed pursuant to chapter 395.

(f)1. The council shall establish a formulary of medicinal

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drugs that a fully licensed physician assistant having prescribing authority~~, licensed~~ under this section or s. 459.022~~,~~ may not prescribe. The formulary must include controlled substances as defined in chapter 893, general anesthetics, and radiographic contrast materials.

2. In establishing the formulary, the council shall consult with a pharmacist licensed under chapter 465, but not licensed under this chapter or chapter 459, who shall be selected by the State Surgeon General.

3. Only the council shall add to, delete from, or modify the formulary. Any person who requests an addition, deletion, or modification of a medicinal drug listed on such formulary has the burden of proof to show cause why such addition, deletion, or modification should be made.

4. The boards shall adopt the formulary required by this paragraph, and each addition, deletion, or modification to the formulary, by rule. Notwithstanding any provision of chapter 120 to the contrary, the formulary rule shall be effective 60 days after the date it is filed with the Secretary of State. Upon adoption of the formulary, the department shall mail a copy of such formulary to each fully licensed physician assistant having prescribing authority~~, licensed~~ under this section or s. 459.022, and to each pharmacy licensed by the state. ~~The boards shall establish, by rule, a fee not to exceed $200 to fund the provisions of this paragraph and paragraph (e).~~

(7) PHYSICIAN ASSISTANT LICENSURE.—

(a) Any person desiring to be licensed as a physician assistant must apply to the department. The department shall issue a license to any person certified by the council as having

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met the following requirements:

1. Is at least 18 years of age.

2. Has satisfactorily passed a proficiency examination by an acceptable score established by the National Commission on Certification of Physician Assistants. If an applicant does not hold a current certificate issued by the National Commission on Certification of Physician Assistants and has not actively practiced as a physician assistant within the immediately preceding 4 years, the applicant must retake and successfully complete the entry-level examination of the National Commission on Certification of Physician Assistants to be eligible for licensure.

3. Has completed the application form and remitted an application fee not to exceed $300 as set by the boards. An application for licensure made by a physician assistant must include:

a. A certificate of completion of a physician assistant training program specified in subsection (6).

b. A sworn statement of any prior felony convictions.

c. A sworn statement of any previous revocation or denial of licensure or certification in any state.

d. Two letters of recommendation.

e. A copy of course transcripts and a copy of the course description from a physician assistant training program describing a pharmacotherapy course pursuant to subparagraph (4)(e)3., if the applicant wishes to apply for a prescriber number. These documents must meet the evidence requirements for prescribing authority.

(c) The license must be renewed biennially. Each renewal

must include:

1. A renewal fee not to exceed $500 as set by the boards.

2. A sworn statement of no felony convictions in the previous 2 years.

A licensed physician assistant without prescribing authority may request a prescriber number upon biennial licensure renewal under this paragraph by submitting evidence that he or she has completed a continuing medical education course of at least 3 classroom hours in prescriptive practice, covering the limitations, responsibilities, and privileges involved in prescribing medicinal drugs. The course must be conducted by an accredited program approved by the boards. The physician assistant must receive a prescriber number before commencing to prescribe or dispense medicinal drugs.

Section 3. Subsection (2) of section 459.004, Florida Statutes, is amended to read:

459.004 Board of Osteopathic Medicine.—

(2) Five members of the board must be licensed osteopathic physicians in good standing in this state who are residents of this state and who have been engaged in the practice of osteopathic medicine for at least 4 years immediately prior to their appointment. One member must be a physician assistant licensed under this chapter who has prescribing authority and who has worked in the state for at least 4 years. The remaining member ~~two members~~ must be a citizen ~~citizens~~ of the state who is ~~are~~ not, and has ~~have~~ never been, a licensed health care practitioner ~~practitioners~~. At least one member of the board must be 60 years of age or older.

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Section 4. Paragraph (e) of subsection (4) and paragraphs (a) and (b) of subsection (7) of section 459.022, Florida Statutes, are amended to read:

459.022 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(e) A supervisory physician may delegate to a fully licensed physician assistant the authority to prescribe or dispense any medication used in the supervisory physician's practice unless such medication is listed on the formulary created pursuant to s. 458.347. A fully licensed physician assistant may only prescribe or dispense such medication under the following circumstances:

1. A physician assistant must clearly identify to the patient that she or he is a physician assistant. Furthermore, the physician assistant must inform the patient that the patient has the right to see the physician prior to any prescription being prescribed or dispensed by the physician assistant.

2. The supervisory physician must notify the department of her or his intent to delegate, on a department-approved form, before delegating such authority and notify the department of any change in prescriptive privileges of the physician assistant. Authority to dispense may be delegated only by a supervisory physician who is registered as a dispensing practitioner in compliance with s. 465.0276.

3. The physician assistant must file with the department, at the time of the initial application ~~before commencing to prescribe or dispense~~, evidence that she or he has completed a ~~continuing medical education~~ course in pharmacotherapeutics, to include the initiation, selection, and modification of selected

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medications, and the limitations, responsibilities, and privileges involved in prescribing medicinal drugs. The course must have been ~~of at least 3 classroom hours in prescriptive practice,~~ conducted by a ~~an accredited~~ program accredited by the Commission on Accreditation of Allied Health Programs or its successor organization. The department shall issue a prescriber number if the evidence submitted meets the requirements. The physician assistant must receive a prescriber number before commencing to prescribe or dispense medicinal drugs ~~approved by the boards, which course covers the limitations, responsibilities, and privileges involved in prescribing medicinal drugs, or evidence that she or he has received education comparable to the continuing education course as part of an accredited physician assistant training program~~.

4. The physician assistant must file with the department a signed affidavit that she or he has completed a minimum of 10 continuing medical education hours in the specialty practice in which the physician assistant has prescriptive privileges with each licensure renewal application.

5. The department shall issue ~~a license and~~ a prescriber number to the physician assistant granting authority for the prescribing of medicinal drugs authorized within this paragraph upon completion of the foregoing requirements. The physician assistant shall not be required to independently register pursuant to s. 465.0276.

6. The prescription must be written in a form that complies with chapter 499 and must contain, in addition to the supervisory physician’s name, address, and telephone number, the physician assistant’s prescriber number. Unless it is a drug or

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drug sample dispensed by the physician assistant, the prescription must be filled in a pharmacy permitted under chapter 465, and must be dispensed in that pharmacy by a pharmacist licensed under chapter 465. The appearance of the prescriber number creates a presumption that the physician assistant is authorized to prescribe the medicinal drug and the prescription is valid.

7. The physician assistant must note the prescription or dispensing of medication in the appropriate medical record.

8. This paragraph does not prohibit a supervisory physician from delegating to a physician assistant the authority to order medication for a hospitalized patient of the supervisory physician.

This paragraph does not apply to facilities licensed pursuant to chapter 395.

(7) PHYSICIAN ASSISTANT LICENSURE.—

(a) Any person desiring to be licensed as a physician assistant must apply to the department. The department shall issue a license to any person certified by the council as having met the following requirements:

1. Is at least 18 years of age.

2. Has satisfactorily passed a proficiency examination by an acceptable score established by the National Commission on Certification of Physician Assistants. If an applicant does not hold a current certificate issued by the National Commission on Certification of Physician Assistants and has not actively practiced as a physician assistant within the immediately preceding 4 years, the applicant must retake and successfully

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complete the entry-level examination of the National Commission on Certification of Physician Assistants to be eligible for licensure.

3. Has completed the application form and remitted an application fee not to exceed $300 as set by the boards. An application for licensure made by a physician assistant must include:

a. A certificate of completion of a physician assistant training program specified in subsection (6).

b. A sworn statement of any prior felony convictions.

c. A sworn statement of any previous revocation or denial of licensure or certification in any state.

d. Two letters of recommendation.

e. A copy of course transcripts and a copy of the course description from a physician assistant training program describing a pharmacotherapy course pursuant to subparagraph (4)(e)3., if the applicant wishes to apply for a prescriber number. These documents must meet the evidence requirements for prescribing authority.

(b) The licensure must be renewed biennially. Each renewal must include:

1. A renewal fee not to exceed $500 as set by the boards.

2. A sworn statement of no felony convictions in the previous 2 years.

A licensed physician assistant without prescribing authority may request a prescriber number upon biennial licensure renewal under this paragraph by submitting evidence that she or he has completed a continuing medical education course of at least 3

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classroom hours in prescriptive practice, covering the limitations, responsibilities, and privileges involved in prescribing medicinal drugs. The course must be conducted by an accredited program approved by the boards. The physician assistant must receive a prescriber number before commencing to prescribe or dispense medicinal drugs.

Section 5. The amendment of sections 458.307 and 459.004, Florida Statutes, made by this act to change the composition of the membership on the Board of Medicine and the Board of Osteopathic Medicine shall be implemented as vacancies on those boards occur and allow.

Section 6. This act shall take effect July 1, 2012.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to physician assistants; amending ss. 458.307 and 459.004, F.S.; revising the composition of the membership on the Board of Medicine and the Board of Osteopathic Medicine; providing for the appointment of new members as vacancies occur and allow; amending ss. 458.347 and 459.022, F.S.; deleting the requirement that the Department of Health issue a license to a physician assistant to prescribe medicinal drugs and requiring only a prescription number; requiring that a physician assistant seeking to prescribe medicinal drugs submit certain evidence


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at the time of initial licensure of completion of a course in pharmacotherapeutics from an accredited program; providing that a physician assistant wishing to apply for a prescriber number must submit course transcripts and a copy of the course description in addition to other licensure application requirements; requiring that a physician assistant seeking to apply for a prescriber number upon biennial licensure renewal submit evidence of completion of at least a certain number of classroom hours in an approved program that covers prescribing limitations, responsibilities, and privileges involved in prescribing medicinal drugs; conforming provisions to changes made by the act; providing an effective date.

By Senator Hays

20-00416A-12 2012774__

A bill to be entitled

An act relating to physician assistants; amending s. 458.307, F.S.; revising the membership of the Board of Medicine within the Department of Health to include a member who is a certified physician assistant; providing for the initial appointment of the certified physician assistant; amending s. 458.347, F.S.; deleting the department's requirement to issue a license authorizing a physician assistant to prescribe or dispense certain medication; conforming provisions to changes made by the act; deleting a fee to fund the licensing of a physician assistant who is authorized to prescribe or dispense certain medication; amending s. 459.004, F.S.; revising the membership of the Board of Osteopathic Medicine within the department to include a member who is a certified physician assistant; providing for the initial appointment of the certified physician assistant; amending s. 459.022, F.S.; deleting the department's requirement to issue a license to a physician assistant who is authorized to prescribe or dispense certain medication; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2) and (3) of section 458.307, Florida Statutes, are amended to read:

458.307 Board of Medicine.—

(2) Twelve members of the board must be licensed physicians

20-00416A-12 2012774__

in good standing in this state who are residents of the state and who have been engaged in the active practice or teaching of medicine for at least 4 years immediately preceding their appointment. One of the physicians must be on the full-time faculty of a medical school in this state, and one of the physicians must be in private practice and on the full-time staff of a statutory teaching hospital in this state as defined in s. 408.07. At least one of the physicians must be a graduate of a foreign medical school. One member must be a certified physician assistant who has prescribing privileges and has worked in this state for at least 4 years. The remaining two ~~three~~ members must be residents of the state who are not, and never have been, licensed health care practitioners. One member must be a health care risk manager licensed under s. 395.10974. At least one member of the board must be 60 years of age or older.

(3)(a) As the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed.

(b) After July 1, 2012, the Governor shall initially appoint the certified physician assistant to the board when:

1. A member who is not a licensed health care practitioner vacates his or her position on the board; or

2. The term of a member who is not a licensed health care practitioner expires,

whichever occurs first.

Section 2. Paragraphs (e) and (f) of subsection (4) of section 458.347, Florida Statutes, are amended to read:

458.347 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(e) A supervisory physician may delegate to a fully licensed physician assistant the authority to prescribe or dispense any medication used in the supervisory physician's practice unless such medication is listed on the formulary created pursuant to paragraph (f). A fully licensed physician assistant may ~~only~~ prescribe or dispense such medication only under the following circumstances:

1. A physician assistant must clearly identify to the patient that he or she is a physician assistant. Furthermore, the physician assistant must inform the patient that the patient has the right to see the physician before ~~prior to~~ any prescription is ~~being~~ prescribed or dispensed by the physician assistant.

2. The supervisory physician must notify the department of his or her intent to delegate, on a department-approved form, before delegating such authority and notify the department of any change in prescriptive privileges of the physician assistant. Authority to dispense may be delegated only by a supervising physician who is registered as a dispensing practitioner in compliance with s. 465.0276.

3. The physician assistant must file with the department, before commencing to prescribe or dispense, evidence that he or she has completed a continuing medical education course of at least 3 classroom hours in prescriptive practice, conducted by an accredited program approved by the boards, which course covers the limitations, responsibilities, and privileges involved in prescribing medicinal drugs, or evidence that he or

she has received education comparable to the continuing education course as part of an accredited physician assistant training program.

4. The physician assistant must file with the department a signed affidavit that he or she has completed a minimum of 10 continuing medical education hours in the specialty practice in which the physician assistant has prescriptive privileges with each licensure renewal application.

5. The department shall issue a ~~license and a~~ prescriber number to the physician assistant granting authority for the prescribing of medicinal drugs authorized within this paragraph upon completion of the foregoing requirements. The physician assistant is ~~shall~~ not ~~be~~ required to independently register pursuant to s. 465.0276.

6. The prescription must be written in a form that complies with chapter 499 and must contain, in addition to the supervisory physician's name, address, and telephone number, the physician assistant's prescriber number. Unless it is a drug or drug sample dispensed by the physician assistant, the prescription must be filled in a pharmacy permitted under chapter 465 and must be dispensed in that pharmacy by a pharmacist licensed under chapter 465. The appearance of the prescriber number creates a presumption that the physician assistant is authorized to prescribe the medicinal drug and the prescription is valid.

7. The physician assistant must note the prescription or dispensing of medication in the appropriate medical record.

8. This paragraph does not prohibit a supervisory physician from delegating to a physician assistant the authority to order

medication for a hospitalized patient of the supervisory physician.

This paragraph does not apply to facilities licensed pursuant to chapter 395.

(f)1. The council shall establish a formulary of medicinal drugs that a fully licensed physician assistant who has prescribing authority~~, licensed~~ under this section or s. 459.022~~,~~ may not prescribe. The formulary must include controlled substances as defined in chapter 893, general anesthetics, and radiographic contrast materials.

2. In establishing the formulary, the council shall consult with a pharmacist licensed under chapter 465, but not licensed under this chapter or chapter 459, who shall be selected by the State Surgeon General.

3. Only the council shall add to, delete from, or modify the formulary. Any person who requests an addition, deletion, or modification of a medicinal drug listed on such formulary has the burden of proof to show cause why such addition, deletion, or modification should be made.

4. The boards shall adopt the formulary required by this paragraph, and each addition, deletion, or modification to the formulary, by rule. Notwithstanding any provision of chapter 120 to the contrary, the formulary rule shall be effective 60 days after the date it is filed with the Secretary of State. Upon adoption of the formulary, the department shall mail a copy of such formulary to each fully licensed physician assistant who has prescribing authority~~, licensed~~ under this section or s. 459.022~~,~~ and to each pharmacy licensed by the state. ~~The boards~~

~~shall establish, by rule, a fee not to exceed $200 to fund the provisions of this paragraph and paragraph (e).~~

Section 3. Subsections (2) and (3) of section 459.004, Florida Statutes, are amended to read:

459.004 Board of Osteopathic Medicine.—

(2) Five members of the board must be licensed osteopathic physicians in good standing in this state who are residents of this state and who have been engaged in the practice of osteopathic medicine for at least 4 years immediately before ~~prior to~~ their appointment. One member must be a certified physician assistant who has prescribing privileges and has worked in this state for at least 4 years. The remaining member ~~two members~~ must be a citizen ~~citizens~~ of the state who is ~~are~~ not, and ~~have~~ never has been, a licensed health care practitioner ~~practitioners~~. At least one member of the board must be 60 years of age or older.

(3)(a) As the terms of the members expire, the Governor shall appoint successors for terms of 4 years, and such members shall serve until their successors are appointed.

(b) After July 1, 2012, the Governor shall initially appoint the certified physician assistant to the board when:

1. A member who is not a licensed health care practitioner vacates his or her position on the board; or

2. The term of a member who is not a licensed health care practitioner expires,

whichever occurs first.

Section 4. Paragraph (e) of subsection (4) of section 459.022, Florida Statutes, is amended to read:

459.022 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(e) A supervisory physician may delegate to a fully licensed physician assistant the authority to prescribe or dispense any medication used in the supervisory physician's practice unless such medication is listed on the formulary created pursuant to s. 458.347. A fully licensed physician assistant may ~~only~~ prescribe or dispense such medication only under the following circumstances:

1. A physician assistant must clearly identify to the patient that she or he is a physician assistant. Furthermore, the physician assistant must inform the patient that the patient has the right to see the physician before ~~prior to~~ any prescription is ~~being~~ prescribed or dispensed by the physician assistant.

2. The supervisory physician must notify the department of her or his intent to delegate, on a department-approved form, before delegating such authority and notify the department of any change in prescriptive privileges of the physician assistant. Authority to dispense may be delegated only by a supervisory physician who is registered as a dispensing practitioner in compliance with s. 465.0276.

3. The physician assistant must file with the department, before commencing to prescribe or dispense, evidence that she or he has completed a continuing medical education course of at least 3 classroom hours in prescriptive practice, conducted by an accredited program approved by the boards, which course covers the limitations, responsibilities, and privileges involved in prescribing medicinal drugs, or evidence that she or

he has received education comparable to the continuing education course as part of an accredited physician assistant training program.

4. The physician assistant must file with the department a signed affidavit that she or he has completed a minimum of 10 continuing medical education hours in the specialty practice in which the physician assistant has prescriptive privileges with each licensure renewal application.

5. The department shall issue a ~~license and a~~ prescriber number to the physician assistant granting authority for the prescribing of medicinal drugs authorized within this paragraph upon completion of the foregoing requirements. The physician assistant is ~~shall~~ not ~~be~~ required to independently register pursuant to s. 465.0276.

6. The prescription must be written in a form that complies with chapter 499 and must contain, in addition to the supervisory physician's name, address, and telephone number, the physician assistant's prescriber number. Unless it is a drug or drug sample dispensed by the physician assistant, the prescription must be filled in a pharmacy permitted under chapter 465, and must be dispensed in that pharmacy by a pharmacist licensed under chapter 465. The appearance of the prescriber number creates a presumption that the physician assistant is authorized to prescribe the medicinal drug and the prescription is valid.

7. The physician assistant must note the prescription or dispensing of medication in the appropriate medical record.

8. This paragraph does not prohibit a supervisory physician from delegating to a physician assistant the authority to order

medication for a hospitalized patient of the supervisory physician.

This paragraph does not apply to facilities licensed under ~~pursuant to~~ chapter 395.

Section 5. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Budget - Subcommittee on General Government Appropriations, *Chair*
Agriculture
Banking and Insurance
Budget
Budget - Subcommittee on Higher Education Appropriations
Criminal Justice
Reapportionment

JOINT COMMITTEE:
Administrative Procedures

SENATOR D. ALAN HAYS
20th District

November 18, 2011

Senator Rene Garcia, Chair
Committee on Health Regulation
530 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

RE: SB 774 – Physicians Assistants

Dear Chairman Garcia:

I respectfully request my above referenced bill be heard before your committee.

Thank you in advance for your consideration, and please contact me if you have any questions.

Sincerely,

D. Alan Hays, DMD
State Senator, District 20

CC: Sandra Stovall, Staff Director

ENTERED

REPLY TO:
☐ 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/18/12
Meeting Date

Topic Physician Assistants

Bill Number 774
(if applicable)

Name M Susan Mixon

Amendment Barcode
(if applicable)

Job Title Consultant

Address 119 E PARK
Street
Tall FL
City *State* *Zip*

Phone 5284441

E-mail

Speaking: [X] For [ ] Against [ ] Information

Representing Fla Academy of Physician Assistants

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Regulation Committee

BILL:	SB 1040
INTRODUCER:	Senator Bogdanoff
SUBJECT:	Dental Hygienists
DATE:	January 18, 2012
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HR	**Favorable**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill authorizes dental hygienists to administer local anesthesia to nonsedated adult patients under the direct supervision of a licensed dentist. Dental hygienists desiring this privilege must be certified by the Department of Health (DOH) or its designee, complete an approved course in the administration of local anesthesia, and have current training in basic or advanced cardiac life support. The DOH may charge a certification fee of up to $35. Certification never expires, and no continuing education is required.

This bill substantially amends ss. 466.017 and 466.023, F.S.

II. Present Situation:

Scope of Practice of Dental Hygienists

A dental hygienist is a person licensed by the DOH to render educational, preventive, and therapeutic dental services and any related extra-oral procedures required in the performance of such services.[1] Dental hygienists practice under the supervision of dentists[2] and may be delegated various remediable tasks – intraoral treatment tasks which are reversible and do not cause an increased risk to the patient. Dental hygienists may not perform any irremediable tasks – intraoral treatment tasks which are irreversible or cause an increased risk to the patient. The administration of anesthetics other than topical anesthetics is considered to be an irremediable task.[3] Dentists remain primarily responsible for any procedures they delegate.[4]

[1] Section 466.003(4) and (5), F.S.
[2] Section 466.023(1), F.S. Supervision may be direct, indirect, or general.
[3] Section 466.003, F.S.

Tasks dental hygienists may perform under supervision include:[5]

- Removing calculus deposits, accretions, and stains from exposed surfaces of the teeth and gingival sulcus,
- Exposing dental x-ray films,
- Applying topical preventive or prophylactic agents,
- Taking impressions for study casts but not for the purpose of fabricating any intraoral restorations or orthodontic appliance,
- Placing periodontal dressings,
- Removing sutures,
- Placing or removing rubber dams,
- Applying cavity liners, varnishes, or bases,
- Polishing clinical crowns of the teeth for the purpose of removing stains but not changing the existing contour of the tooth, and
- Obtaining bacteriological cytological specimens not involving cutting of the tissue.

Dental hygienists may perform the following services without supervision:

- Providing educational or training programs to faculty or staff,
- Applying fluorides,
- Instructing and supervising a patient in oral hygiene care,[6]
- Dental charting,[7]
- Other services which do not involve diagnosis or treatment of dental conditions, and[8]
- Certain diagnostic and treatment procedures, in emergency situations.[9]

Dental hygienists may perform certain additional tasks, including recording patient histories, measuring blood pressure and oral temperature, and applying dental sealants, without the supervision of a dentist when practicing in a health access setting.[10] Certain disclaimers and other conditions are required.[11]

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[4] Section 466.024(9), F.S.

[5] Section 466.023(1), F.S. A full list tasks which may be performed by dental hygienists is found in Rule 64B5-16.006, F.A.C.

[6] Sections 466.023(3) and 466.024(1), F.S.

[7] Per s. 466.025, F.S., dental charting refers to recording visual observations of clinical conditions of the oral cavity without the use of X-rays, laboratory tests, or other diagnostic methods of equipment, except the instruments necessary to record visual restoration, missing teeth, suspicious areas, and periodontal pockets. Dental charting does not constitute a patient of record or a medical record.

[8] Rule 64B5-16.007(4), F.A.C.

[9] Rule 64B5-16.008, F.A.C. The service may only be provided by a dental hygienist who is currently certified in cardiopulmonary resuscitation (CPR), and the patient must seen by a dentist within 3 days.

[10] A health access setting is defined in s. 466.003(14), F.S., as a program or an institution of the Department of Children and Family Services, the Department of Health, the Department of Juvenile Justice, a nonprofit community health center, a Head Start center, a federally qualified health center or look-alike as defined by federal law, a school-based prevention program, a clinic operated by an accredited college of dentistry, or an accredited dental hygiene program in this state if such community service program or institution immediately reports to the Board of Dentistry all violations of s. 466.027, F.S., s. 466.028, F.S., or other practice act or standard of care violations related to the actions or inactions of a dentist, dental hygienist, or dental assistant engaged in the delivery of dental care in such setting.

[11] Section 466.024(2)- (5), F.S.

Hygienists must undergo training before performing most remediable tasks. This training may be completed via a DOH-approved course or may have been part of the hygienist's initial training program.[12] Certain other remediable tasks require at least 6 months of on-the-job training provided by a licensed dentist.[13] Dental hygienists practicing prior to April 30, 1980 who were at that time authorized to perform tasks set forth by Board of Dentistry (board) rule may continue to perform those tasks without any additional training.[14]

Dental hygienists are never allowed to prescribe medications, make diagnoses, or conduct treatment planning.[15]

Anesthesia in Dentistry

Currently, only licensed dentists may administer general or local anesthetics within the practice of dentistry.[16] The primary anesthesia modalities used in dentistry are local anesthesia, general anesthesia, conscious sedation, and nitrous-oxide inhalation analgesia. Local anesthesia leads to diminished pain sensation in a specific area of the body without loss of consciousness, usually achieved with a topically-applied or superficially-injected numbing agent. General anesthesia refers to a controlled state of pharmacologically-induced unconsciousness accompanied by a partial or complete loss of protective reflexes. Conscious sedation means a depressed level of consciousness produced by a pharmacologic substance in which the patient's ability to independently maintain an airway and respond appropriately to physical and verbal stimulation is retained. Nitrous-oxide inhalation anesthesia is produced by the inhalation of a combination of nitrous-oxide and oxygen and causes an altered level of consciousness while retaining the patient's ability to independently maintain an airway and respond appropriately to physical stimulation or verbal command.[17]

Dentists are automatically authorized to administer local anesthesia and may perform general anesthesia, conscious sedation, or pediatric conscious sedation after obtaining the appropriate permit. Dentists may use nitrous-oxide inhalation analgesia after complying with certain rules. Oral medications may not be used for sedation unless the dentist holds a conscious sedation permit, and the administration of propofol, methohexital, thiopental, or etomidate is prohibited without a general anesthesia permit.[18]

An applicant for any type of anesthesia permit must demonstrate training and competency in the desired anesthesia modality, including documentation of administration of that type of anesthetic to twenty actual patients within 2 years prior to application and direct observation of the applicant in various simulated emergency situations by a board-appointed consultant.[19,20] The office and staff of the office in which anesthesia will be administered must also be inspected by

[12] Rule 64B5-16.002(1), F.A.C.
[13] Rule 64B5-16.002(4), F.A.C.
[14] Rule 64B5-16.010, F.A.C.
[15] Section 466.024(8), F.S.
[16] Section 466.017(1), F.S.
[17] Rule 64B5-14.001, F.A.C.
[18] Rule 64B5-14.002, F.A.C.
[19] Rule 64B5-14.005(2) , (3), and (8), F.A.C.
[20] Rule 64B514.007(2), F.A.C.

the board to ensure that conditions are adequate for maximizing patient safety and managing any anesthesia emergencies.[21]

Anesthesia permits initially cost $300 and must be renewed biennially for $200.[22] Dentists must complete 4 hours of continuing education to be eligible for renewal, including 2 hours dealing with the management of medical emergencies.[23] The board reserves the right to re-evaluate the dentist's office and credentials before renewing a permit.[24] Once granted, permits only authorize anesthesia administration at the location or locations previously inspected by the board.[25]

To perform nitrous-oxide inhalation anesthesia, a dentist must complete a 2-day training course described in the American Dental Association's "Guidelines for Teaching and Comprehensive Control of Pain and Anxiety in Dentistry" or its equivalent (with special exceptions for dentists practicing before January 1, 1986) and have adequate equipment with fail-safe features and a 25 percent minimum oxygen flow. Alternatively, a dentist who holds any type of anesthesia permit is also authorized to perform nitrous-oxide inhalation anesthesia.

All dentists using conscious sedation, general anesthesia, or nitrous-oxide inhalation anesthesia must be currently certified in cardiopulmonary resuscitation (CPR) and either Advanced Cardiac Life Support (ACLS) or Advanced Trauma Life Support. Dentists using pediatric conscious sedation must be certified in ACLS, Pediatric Advanced Life Support (for pediatric conscious sedation), or a similar life support program approved by the board.[26] Dentists using local anesthesia must be currently certified in either basic CPR for health professionals or ACLS.[27]

Current Role of Dental Hygienists in Anesthesia

The presence of at least one assistant is required for all general anesthesia, conscious sedation, and pediatric conscious sedation procedures. Dental hygienists may assist with such procedures under the direct supervision of a permitted dentist if they are CPR-certified at the basic life support level.[28] Dental hygienists may monitor nitrous-oxide inhalation analgesia under the direct supervision of a permitted dentist if they additionally complete at least a 2-day training course as described in the American Dental Association's "Guidelines for Teaching and Comprehensive Control of Pain and Anxiety in Dentistry" or an equivalent.[29]

III. Effect of Proposed Changes:

Section 1 amends s. 466.017, F.S., to allow dental hygienists to administer local anesthesia to nonsedated adult patients under the direct supervision of a dentist, notwithstanding

[21] Specific guidelines regarding required equipment, medication, training, and records for facilities in which anesthesia is used can be found in Rule 64B5-14.008, 64B5-14.009, and 64B5-14.010, F.A.C., concerning general anesthesia, conscious sedation, and pediatric conscious sedation, respectively.
[22] Rules 64B5-15.017, 64B5-15.018, and 64B5-15.019, F.A.C.
[23] Rule 64B5-14.004(6), F.A.C.
[24] Rule 64B5-14.005(7), F.A.C.
[25] Rule 64B5-14.005(2) , (3), and (8), F.A.C.
[26] Rule 64B5-14.003, F.A.C.
[27] Section 466.017(4), F.S.
[28] Rule 64B5-14.003, F.A.C.
[29] Rule 64B5-14.004(2), F.A.C.

s. 466.003(11), F.S., which states that the administration of any anesthesia other than topical anesthesia is an irremediable task. Such hygienists must complete a course in the administration of local anesthesia offered by a dental or dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association or approved by the board. The course must contain 30 hours each of didactic and clinical instruction and must cover the following topics:

- Theory of pain control,
- Selection-of-pain-control modalities,
- Anatomy,
- Neurophysiology,
- Pharmacology of local anesthetics,
- Pharmacology of vasoconstrictors,
- Psychological aspects of pain control,
- Systemic complications,
- Techniques of maxillary anesthesia,
- Techniques of mandibular anesthesia,
- Infection control, and
- Medical emergencies involving local anesthesia.

Dental hygienists must also be currently certified in basic or advanced cardiac life support.

After completing these two requirements, hygienists can apply for local anesthesia certification from the DOH or its designee. A certification fee, if any, may not exceed $35 and will be used to defray the cost of validating applications and printing certificates. Once granted, local anesthesia certification never has to be renewed but must be prominently displayed at every location at which the hygienist performs local anesthesia.

Section 2 amends s. 466.023, F.S., to add administration of local anesthesia to the list of tasks within a dental hygienist's scope of practice.

Section 3 provides an effective date of July 1, 2012.

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 the 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:

Up to a $35 fee may be levied by the DOH for providing local anesthesia certification to dental hygienists.

B. Private Sector Impact:

Dental hygienists will be able to perform local anesthesia procedures on adult patients under the direct supervision of a licensed dentist.

C. Government Sector Impact:

The DOH will experience a non-recurring increase in workload for rulemaking and updating its practitioner licensing system, the impact of which should be negligible.

There will be a recurring increase in workload relating to processing of local anesthesia certifications for dental hygienists as well as in investigating hygienists who are noncompliant with the bill's provisions, which current resources are adequate to absorb.

The DOH will also experience a positive fiscal impact from the collection of corresponding certification fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 54-55 of the bill state that dental hygienists seeking local anesthesia certification must show evidence of basic or advanced cardiac life support certification. However, the bill does not provide any guidance as to which organizations are authorized to provide this certification nor to whom hygienists must show evidence of their certification. Subsection (4) of s. 466.017, F.S., the section which these lines are amending, provides that dentists who administer anesthesia must be certified in basic CPR for health professionals or ACLS approved by the American Red Cross, the American Heart Association, or a similar course with recertification every 2 years.

The bill does not require dental hygienists to complete any continuing education to maintain anesthesia certification. However, some level of continuing education might be advisable to ensure that hygienists are up to date with current anesthesia modalities.

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.

By Senator Bogdanoff

25-00525B-12 20121040__

A bill to be entitled

An act relating to dental hygienists; amending s. 466.017, F.S.; authorizing a dental hygienist, under the supervision of a dentist, to administer local anesthesia to certain patients if the hygienist meets certain criteria; providing the criteria that a dental hygienist must meet in order to administer local anesthesia; authorizing a dental hygienist to apply for certification to administer local anesthesia; requiring the Department of Health to issue the certificate under certain circumstances; authorizing the board to charge a fee, not to exceed a specified amount, to defray the cost of verifying criteria and issuing a certificate; providing that the certificate is part of the dental hygienist's permanent record; requiring that the certificate be prominently displayed; amending s. 466.023, F.S.; authorizing a dental hygienist to administer local anesthesia; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (5) and (6) of section 466.017, Florida Statutes, are renumbered as subsections (7) and (8), respectively, and new subsections (5) and (6) are added to that section, to read:

466.017 Prescription of drugs; anesthesia.—

(5) Notwithstanding s. 466.003(11), a dental hygienist under the direct supervision of a dentist may administer local

Florida Senate - 2012 **SB 1040**

25-00525B-12 20121040__

anesthesia, including both intraoral block and soft tissue infiltration anesthesia, to a nonsedated patient who is 18 years of age or older, if the following criteria are met:

(a) The dental hygienist has successfully completed a course in the administration of local anesthesia which is offered by a dental or dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association or approved by the board. A course involving the administration of local anesthesia must contain a minimum of 30 hours of didactic instruction and 30 hours of clinical experience. This course involving the administration of local anesthesia must include instruction in:

1. Theory of pain control.
2. Selection-of-pain-control modalities.
3. Anatomy.
4. Neurophysiology.
5. Pharmacology of local anesthetics.
6. Pharmacology of vasoconstrictors.
7. Psychological aspects of pain control.
8. Systemic complications.
9. Techniques of maxillary anesthesia.
10. Techniques of mandibular anesthesia.
11. Infection control.
12. Medical emergencies involving local anesthesia.

(b) The dental hygienist maintains and shows evidence of current certification in basic or advanced cardiac life support.

(c) The dental hygienist holds a certificate issued under subsection (6).

(6) An individual dental hygienist may apply for

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

certification to administer local anesthesia under subsection (5). According to rules adopted by the board, the department or its designee shall issue a certificate to a dental hygienist who proves that he or she has met the criteria in paragraphs (5)(a) and (b). The board may charge a fee, not to exceed $35, to defray the cost of verifying that the dental hygienist has met the criteria in paragraphs (5)(a) and (b) and issuing the certificate. The certificate is not subject to renewal but is part of the dental hygienist's permanent record and must be prominently displayed at the location where the dental hygienist is authorized to administer local anesthesia.

Section 2. Subsection (7) is added to section 466.023, Florida Statutes, to read:

466.023 Dental hygienists; scope and area of practice.—

(7) A dental hygienist may administer local anesthesia as provided in s. 466.017.

Section 3. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ELLYN SETNOR BOGDANOFF
25th District

COMMITTEES:
Budget - Subcommittee on Finance and Tax, *Chair*
Budget
Budget - Subcommittee on Transportation, Tourism, and Economic Development
Appropriations
Communications, Energy, and Public Utilities
Education Pre-K - 12
Governmental Oversight and Accountability
Regulated Industries

JOINT COMMITTEE:
Administrative Procedures, *Alternating Chair*

December 22, 2011

Senator Rene Garcia, Chair
Senate Committee on Health Regulation
530 Knott Building
Tallahassee, FL 32399

Re: SB 1040, Relating to Dental Hygienists

Chair Garcia:

I am writing to request that you place **SB 1040, Relating to Dental Hygienists** on the agenda of your Committee on Health Regulation at your earliest convenience.

Feel free to contact me with any questions or concerns about this legislation.

Sincerely,

Senator Ellyn Setnor Bogdanoff
Florida Senate –District 25

cc: Sandra R. Stovall, Staff Director

ENTERED

REPLY TO:
❒ 312 Clematis Street, Suite 403, West Palm Beach, FL 33401 (561) 650-6833
❒ 1845 Cordova Road, Suite 202, Fort Lauderdale, Florida 33316 (954) 467-4205
❒ 212 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5100

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/12
Meeting Date

Topic Dental Hygienists / Local Anesthesia

Bill Number SB 1040 *(if applicable)*

Name JoeAnne Hart

Amendment Barcode _____ *(if applicable)*

Job Title Director of Governmental Affairs

Address 118 E. Jefferson Street
Street
Tallahassee, FL 32301
City *State* *Zip*

Phone (850) 224-1089

E-mail jahart@floridadental.org

Speaking: [X] For [ ] Against [ ] Information

Representing Florida Dental Association

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-19-12
Meeting Date

Topic Dental Hygienist

Bill Number 1040 *(if applicable)*

Name TREVOR MASK

Amendment Barcode _____ *(if applicable)*

Job Title Attorney

Address 215 S Monroe ST
Street

Phone 850-345-8169

Tallahassee FL 32301
City *State* *Zip*

E-mail tmask@ecfthw.com

Speaking: ☐ For ☐ Against ☐ Information

Representing FLORIDA DENTAL HYGIENE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Regulation Committee

BILL:	SB 482
INTRODUCER:	Senators Latvala and Bennett
SUBJECT:	Nursing Homes and Related Health Care Facilities
DATE:	January 17, 2012 REVISED: 01/19/2012

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HR	**Fav/1 amendment**
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	☐	Statement of Substantial Changes
B. AMENDMENTS.....	☐	Technical amendments were recommended
	☒	Amendments were recommended
	☐	Significant amendments were recommended

I. Summary:

The focus of this bill is to eliminate duplicative and obsolete statutory language concerning nursing homes and to streamline certain reporting and administrative requirements. The bill also establishes minimum staffing requirements for nursing homes that serve persons under 21 years of age, establishes standards for providing short-term respite care, authorizes the Agency for Health Care Administration (AHCA) to certify correction of certain deficiencies based on written documentation from the facility, and authorizes home health agencies and nurse registries to provide small token items of minimum value (up to $15 individually) to referring entities without penalty.

This bill substantially amends the following sections of the Florida Statutes: 83.42, 400.021 , 400.0234, 400.0239, 400.0255, 400.063, 400.071, 400.0712, 400.111, 400.1183, 400.141, 400.142, 400.147, 400.19, 400.191, 400.23, 400.462, 429.294, 430.80, 430.81, and 651.118.

The bill repeals sections 400.145 and 400.148, Florida Statutes.

II. Present Situation:

Nursing Homes

Nursing homes provide long-term and sub-acute care to persons in need of 24-hour nursing services or significant supportive services. Nursing home residents are generally frail, physically and psychosocially compromised, heavily dependent upon others for basic care and sustenance, and in some cases near the end of their lives. Such residents who live in an environment where they are totally dependent on others are especially vulnerable to abuse, neglect, and exploitation.

Nursing homes are subject to regulation under part II of ch. 400, F.S., the general licensing provisions of part II, ch. 408, F.S., and the minimum standards for nursing homes found in Rule chapter 59A-4, F.A.C. In addition, nursing homes that receive funding from Medicare or Medicaid are subject to federal standards and conditions of participation as certified Medicare or Medicaid providers.

Nursing homes are required to report adverse incidents to the AHCA within 1 day (initial report) and 15 days (final report) after the incident. In addition, federal requirements for participation in Medicaid or Medicare require facilities to report abuse, neglect, and exploitation immediately (initial report) and within 5 days (full report). An adverse incident is an event over which facility personnel could exercise control and which is associated in whole or in part with the facility's intervention, rather than the condition for which the intervention occurred, and which results in one of the following:

- Death;
- Brain or spinal damage;
- Permanent disfigurement;
- Fracture or dislocation of bones or joints;
- A limitation of neurological, physical, or sensory function;
- Any condition that required medical attention for which the resident has not given his or her informed consent, including failure to honor advanced directives;
- Any condition that required the transfer of the resident, within or outside the facility, to a unit providing a more acute level of care due to the adverse incident, rather than the resident's condition prior to the adverse incident; or
- An event that is reported to law enforcement or its personnel for investigation.

In addition, an adverse incident includes resident elopement, if the elopement places the resident at risk of harm or injury.[1]

Home Health Agencies and Nurse Registries

Home health agencies and nurse registries are regulated under part III of ch. 400, F.S., the general licensing provisions of part II, ch. 408, F.S., and applicable rules found in Rule chapters 59A-8 and 59A-18, F.A.C.

[1] Section 400.147(5), F.S.

Home health agencies are organizations that are licensed by the AHCA to provide home health services and staffing services. Home health services are health and medical services and medical supplies furnished to an individual in the individual's home or place of residence. The services include:

- Nursing care;
- Physical, occupational, respiratory, or speech therapy;
- Home health aide services (assistance with daily living activities, such as bathing, dressing, eating, personal hygiene, and ambulation);
- Dietetics and nutrition practice and nutrition counseling; and
- Medical supplies, restricted to drugs and biologicals prescribed by a physician.[2]

A home health agency may also provide homemaker and companion services without additional licensing or registration. These services do not involve hands-on personal care to a client and typically include housekeeping, meal planning and preparation, shopping assistance, routine household activities, and accompanying the client on outings.

A nurse registry procures, offers, promises, or attempts to secure health care-related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, companions, or homemakers. Such personnel are compensated by fees as independent contractors. The contracts for services might include providing services to patients as well as providing private duty or staffing services to health care facilities or other business entities.[3]

III. Effect of Proposed Changes:

Section 1 amends s. 83.42, F.S., relating to the Florida Residential Landlord and Tenant Act, to clarify that state law on evictions under this act does not apply to nursing home transfers and discharges. Instead, transfers and discharges related to residents of a nursing home are governed by s. 400.0255, F.S.

Section 2 amends s. 400.021, F.S., to remove the requirement that the resident care plan be signed by the director of nursing or alternate and the resident or the resident's designee or legal representative. In addition, the prohibition on a facility using an agency or temporary registered nurse to complete the resident care plan is removed.

Section 3 amends s. 400.0234, F.S., to eliminate a cross-reference to s. 400.145, F.S., to conform to the repeal of that section in this bill.

Section 4 amends s. 400.0239, F.S., to delete an obsolete reference to the Medicaid "Up or Out" Quality of Care Contract Management Program.

Section 5 amends s. 400.0255. F.S., to correct an obsolete cross-reference to a rule concerning fair hearings that might be requested by nursing home residents. This correction was requested by the Joint Administrative Procedures Committee.

[2] Section 400.462(14), F.S.
[3] Section 400.462(21), F.S.

Section 6 amends s. 400.063, F.S., to eliminate a cross-reference in the procedures for resident protection and relocation accounts, since the section of law that is referenced has been repealed. The Division of Statutory Revision requested clarification of this provision.

Section 7 amends s. 400.071, F.S., to repeal the requirement for certain information to be submitted when a nursing home applies for a license. The information eliminated in this section includes:

- Certain information related to the closure of other licensed facilities in which the nursing home licensure applicant held a controlling interest. The bill amends s. 400.111, F.S., to require this disclosure if requested by the AHCA,
- The number of beds and the number of Medicare- and Medicaid-certified beds. The general licensing provisions in s. 408.806(1)(d), F.S., require the disclosure of the total number of beds requested, and
- Copies of any civil verdicts or judgments involving the applicant rendered within the preceding 10 years which pertain to medical negligence, violation of residents' rights, or wrongful death. In addition, the provision requiring, as a condition of licensure, that the licensee agree to provide to the AHCA copies of any new verdicts or judgments is repealed. Under current law, the AHCA is required to maintain this information in the facility's licensure file and in a database which is available as a public record.

Section 8 amends s. 400.0712, F.S., to make technical changes to move into another subsection the authority for a nursing home to request an inactive license for a portion of its beds and to provide a cross-reference to the general licensure provisions in part II of ch. 408, F.S.

Section 9 amends s. 400.111, F.S., to require disclosure of certain information concerning other licenses that a controlling interest has held when requested by the AHCA, instead of requiring submission of this information as a part of all nursing home licensure applications.

Section 10 amends s. 400.1183, F.S., to repeal the requirement for a nursing home to report to the AHCA upon relicensure information concerning grievances received by the facility. The information that is reported at relicensure is requested and presented at an aggregate level. Instead, the bill requires the nursing home to maintain records of the grievances, and these records are to be made available to the AHCA during inspections.

Section 11 amends s. 400.141, F.S., to authorize a nursing home with standard licensure status to provide respite care pursuant to standards set out in law without obtaining additional licensure. The requirements to provide respite care under these standards include, but are not limited to, a detailed contract, an abbreviated plan of care, the resident providing certain medical information to the facility, and the facility releasing the respite resident to his or her designated caregiver. A person receiving respite care may live in the facility for a total of 60 days within a 12-month period. If a single stay exceeds 14 consecutive days, the facility must comply with all assessment and care planning requirements applicable to nursing home residents. Certain residents' rights apply to the person receiving respite care.

The bill requires a nursing home to maintain clinical records on each resident in accordance with accepted professional standards and practices. Records must be complete, accurately documented, readily accessible, and systematically organized.

The bill eliminates the requirement for a licensed facility to disclose, within 30 days after the nursing home executes an agreement with a company to manage the nursing home, certain information related to the closure of other licensed facilities in which the management company held a controlling interest.

The bill eliminates the nursing home reporting requirements pertaining to average staffing ratios, staff turnover, and staff stability. Detailed records must be maintained by the facility, and these records are reviewed during inspections.

The penalty for a facility that does not comply with the requirement to impose a moratorium on accepting new admissions when the minimum-staffing requirements for two consecutive days are not met is reduced to a $1,000 fine. Currently, a nursing home's failure to impose the admissions moratorium is a class II deficiency, which is subject to a civil penalty of $2,500 for an isolated deficiency, $5,000 for a patterned deficiency, and $7,500 for a widespread deficiency. In addition, the law authorizes the fine amount for a class II deficiency to be doubled in certain situations.

The bill repeals the requirement for a licensed nursing home to report to the AHCA information concerning a filing for bankruptcy, divestiture of assets, or corporate reorganization.

The bill removes obsolete language concerning the initial implementation of a requirement to vaccinate residents for pneumococcal polysaccharide (PPV). Current law requires new residents to be assessed for pneumococcal polysaccharide within five working days after admission and to be vaccinated, if indicated.

A provision concerning the AHCA's ability to impose a deficiency or take other action if a facility does not have enough staff to meet residents' needs is relocated within this section.

Section 12 amends s. 400.142, F.S., to remove references to rules adopted by the AHCA concerning do not resuscitate orders (DNR). Section 401.45, F.S., addresses procedures and authorization for withholding or withdrawing resuscitation from a patient when presented with a DNR.

Section 13 repeals s. 400.145, F.S., relating to a nursing home providing copies of a resident's medical records to certain individuals. The federal Health Insurance Portability and Accountability Act (HIPAA) governs release of medical records. The provision concerning the amount that a facility may charge for copying residents' records is moved in this bill to s. 400.191, F.S.

Section 14 amends s. 400.147, F.S., to remove the one-day notification requirement to the AHCA when a risk manager in a nursing home receives an incident report and the corresponding requirement to report findings about the incident to the AHCA within 15 days after the occurrence of the incident. Under the bill, the risk manager for the nursing home is only required to report to the AHCA if, after the investigation, it is determined that the incident was an adverse incident. That report is due to the AHCA within 15 days after the investigation is completed.

The bill also deletes duplicative language in subsection (8) concerning the AHCA's review of the adverse incident report to determine whether the incident potentially involved conduct by a health care professional. This requirement remains in subsection (7).

This section repeals the requirement for a licensed nursing home to report to the AHCA, monthly, any notice of claims against the facility for violation of a resident's rights or for negligence. This information has been required to be submitted since 2001. Currently, this information is published in the aggregate on the AHCA's website.[4]

Section 15 repeals s. 400.148, F.S., relating to the Medicaid "Up-or-Out" Quality of Care Contract Management Program. This program was not implemented due to a lack of funding.[5]

Section 16 amends s. 400.19, F.S., to authorize the AHCA to certify correction of a class III or class IV deficiency related to resident rights or resident care based on written documentation from the facility.

Section 17 amends s. 400.191, F.S., to reinsert into this part the authority for a nursing home to charge a reasonable fee for copying resident records. This language was included in s. 400.145, F.S., which is repealed by this bill. The fee remains unchanged.

Section 18 amends s. 400.23, F.S., to establish in statute minimum staffing requirements for a nursing home that serves persons under 21 years of age. For persons who require skilled care, the minimum combined average is 3.9 hours of direct care per resident per day, provided by licensed nurses, respiratory therapists, respiratory care practitioners, and certified nursing assistants. For persons who are medically fragile, the minimum combined average is 5 hours.

Section 19 amends s. 400.462, F.S., to revise the definition of remuneration as it applies to home health agencies and nurse registries to authorize them to provide items with an individual value of up to $15 to referring entities without penalty. Examples of such items which are included in the bill are plaques, certificates, trophies, or novelty items that are intended solely for presentation or are customarily given away solely for promotional, recognition, or advertising purposes.

Section 20 amends s. 429.294. F.S., to remove a cross-reference to a section of law that is repealed in this bill.

Sections 21, 22, and 23 amend ss. 430.80, 430.81, and 651.118, F.S., respectively, to conform statutory cross-references to other changes made in this bill.

Section 24 provides an effective date for the bill of July 1, 2012.

[4] *See*: http://www.fdhc.state.fl.us/MCHQ/Long_Term_Care/FDAU/docs/LiabilityClaims/ALF_Chart.pdf (Last visited on January 17, 2012).
[5] AHCA 2012 Bill Analysis and Economic Impact Statement for SB 482, which is on file with the Health Regulation Committee.

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:

None.

B. Private Sector Impact:

Nursing homes may be favorably impacted due to the elimination of certain reporting and administrative requirements and the ability to provide short-term respite services under abbreviated plans of care.

C. Government Sector Impact:

The AHCA should experience a slight favorable fiscal impact due to the reductions in this bill.

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:

Barcode 540674 by Health Regulation on January 19, 2012:
This amendment deletes the repeal of s. 400.145, F.S., related to a nursing home providing copies of records of care and treatment concerning a nursing home resident to certain individuals. It also deletes other amendments in the bill that conformed those sections of law to the repeal of s. 400.145, F.S.

540674

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/19/2012	.	
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	.	
	.	

The Committee on Health Regulation (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete lines 86 - 97.

Delete line 636.

Delete lines 791 - 802.

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

And the title is amended as follows:

Delete lines 7 - 8

and insert:

540674

be signed by certain persons; amending s. 400.0239, F.S.; conforming provisions to changes

Delete lines 33 - 34

and insert:

amending s. 400.147, F.S.; revising

Delete line 47

and insert:

ss. 430.80, 430.81, and 651.118, F.S.;

By Senator Latvala

16-00183C-12 2012482__

A bill to be entitled

An act relating to nursing homes and related health care facilities; amending s. 83.42, F.S.; clarifying that the transfer and discharge of facility residents are governed by nursing home law; amending s. 400.021, F.S.; deleting a requirement that a resident care plan be signed by certain persons; amending ss. 400.0234 and 400.0239, F.S.; conforming provisions to changes made by the act; amending s. 400.0255, F.S.; revising provisions relating to hearings on resident transfer or discharge; amending s. 400.063, F.S.; deleting an obsolete cross-reference; amending s. 400.071, F.S.; deleting provisions requiring a license applicant to submit a signed affidavit relating to financial or ownership interests, the number of beds, copies of civil verdicts or judgments involving the applicant, and a plan for quality assurance and risk management; amending s. 400.0712, F.S.; revising provisions relating to the issuance of inactive licenses; amending s. 400.111, F.S.; providing that a licensee must provide certain information relating to financial or ownership interests if requested by the Agency for Health Care Administration; amending s. 400.1183, F.S.; revising requirements relating to facility grievance reports; amending s. 400.141, F.S.; revising provisions relating to the provision of respite care in a facility; deleting requirements for the submission of certain reports to the agency relating to ownership interests, staffing ratios, and

16-00183C-12 2012482__

bankruptcy; deleting an obsolete provision; amending s. 400.142, F.S.; deleting the agency's authority to adopt rules relating to orders not to resuscitate; repealing s. 400.145, F.S., relating to resident records; amending s. 400.147, F.S.; revising provisions relating to incident reports; deleting certain reporting requirements; repealing s. 400.148, F.S., relating to the Medicaid "Up-or-Out" Quality of Care Contract Management Program; amending s. 400.19, F.S.; revising provisions relating to agency inspections; amending s. 400.191, F.S.; authorizing the facility to charge a fee for copies of resident records; amending s. 400.23, F.S.; specifying the content of rules relating to staffing requirements for residents under 21 years of age; amending s. 400.462, F.S.; revising the definition of "remuneration" to exclude items having a value of $10 or less; amending ss. 429.294, 430.80, 430.81, and 651.118, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 83.42, Florida Statutes, is amended to read:

83.42 Exclusions from application of part.—This part does not apply to:

(1) Residency or detention in a facility, whether public or private, where ~~when~~ residence or detention is incidental to the

provision of medical, geriatric, educational, counseling, religious, or similar services. For residents of a facility licensed under part II of chapter 400, the procedures provided under s. 400.0255 govern all transfers or discharges from such facilities.

Section 2. Subsection (16) of section 400.021, Florida Statutes, is amended to read:

400.021 Definitions.—When used in this part, unless the context otherwise requires, the term:

(16) "Resident care plan" means a written plan developed, maintained, and reviewed at least ~~not less than~~ quarterly by a registered nurse, with participation from other facility staff and the resident or his or her designee or legal representative, which includes a comprehensive assessment of the needs of an individual resident; the type and frequency of services required to provide the necessary care for the resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being; a listing of services provided within or outside the facility to meet those needs; and an explanation of service goals. ~~The resident care plan must be signed by the director of nursing or another registered nurse employed by the facility to whom institutional responsibilities have been delegated and by the resident, the resident's designee, or the resident's legal representative. The facility may not use an agency or temporary registered nurse to satisfy the foregoing requirement and must document the institutional responsibilities that have been delegated to the registered nurse.~~

Section 3. Subsection (1) of section 400.0234, Florida Statutes, is amended to read:

400.0234 Availability of facility records for investigation of resident's rights violations and defenses; penalty.—

(1) Failure to provide complete copies of a resident's records, including, but not limited to, all medical records and the resident's chart, within the control or possession of the facility is ~~in accordance with s. 400.145 shall constitute~~ evidence of failure of that party to comply with good faith discovery requirements and waives ~~shall waive~~ the good faith certificate and presuit notice requirements under this part by the requesting party.

Section 4. Paragraph (g) of subsection (2) of section 400.0239, Florida Statutes, is amended to read:

400.0239 Quality of Long-Term Care Facility Improvement Trust Fund.—

(2) Expenditures from the trust fund shall be allowable for direct support of the following:

(g) Other initiatives authorized by the Centers for Medicare and Medicaid Services for the use of federal civil monetary penalties~~, including projects recommended through the Medicaid "Up-or-Out" Quality of Care Contract Management Program pursuant to s. 400.148~~.

Section 5. Subsection (15) of section 400.0255, Florida Statutes, is amended to read:

400.0255 Resident transfer or discharge; requirements and procedures; hearings.—

(15)~~(a)~~ The department's Office of Appeals Hearings shall conduct hearings requested under this section.

(a) The office shall notify the facility of a resident's request for a hearing.

(b) The department shall, by rule, establish procedures to be used for ~~fair~~ hearings requested by residents. The ~~These~~ procedures must ~~shall~~ be equivalent to the procedures used for ~~fair~~ hearings for other Medicaid cases brought pursuant to s. 409.285 and applicable rules~~, chapter 10-2, part VI, Florida Administrative Code~~. The burden of proof must be clear and convincing evidence. A hearing decision must be rendered within 90 days after receipt of the request for hearing.

(c) If the hearing decision is favorable to the resident who has been transferred or discharged, the resident must be readmitted to the facility's first available bed.

(d) The decision of the hearing officer is ~~shall be~~ final. Any aggrieved party may appeal the decision to the district court of appeal in the appellate district where the facility is located. Review procedures shall be conducted in accordance with the Florida Rules of Appellate Procedure.

Section 6. Subsection (2) of section 400.063, Florida Statutes, is amended to read:

400.063 Resident protection.—

(2) The agency ~~is authorized to establish for each facility~~, subject to intervention by the agency, may establish a separate bank account for the deposit to the credit of the agency of any moneys received from the Health Care Trust Fund or any other moneys received for the maintenance and care of residents in the facility, and may ~~the agency is authorized to~~ disburse moneys from such account to pay obligations incurred for the purposes of this section. The agency may ~~is authorized to~~ requisition moneys from the Health Care Trust Fund in advance of an actual need for cash on the basis of an estimate by the

agency of moneys to be spent under the authority of this section. A ~~Any~~ bank account established under this section need not be approved in advance of its creation as required by s. 17.58, but must ~~shall~~ be secured by depository insurance equal to or greater than the balance of such account or by the pledge of collateral security ~~in conformance with criteria established in s. 18.11~~. The agency shall notify the Chief Financial Officer of an ~~any such~~ account so established and ~~shall~~ make a quarterly accounting to the Chief Financial Officer for all moneys deposited in such account.

Section 7. Subsections (1) and (5) of section 400.071, Florida Statutes, are amended to read:

400.071 Application for license.—

(1) In addition to the requirements of part II of chapter 408, the application for a license must ~~shall~~ be under oath and ~~must~~ contain the following:

(a) The location of the facility for which a license is sought and an indication, as in the original application, that such location conforms to ~~the~~ local zoning ordinances.

~~(b) A signed affidavit disclosing any financial or ownership interest that a controlling interest as defined in part II of chapter 408 has held in the last 5 years in any entity licensed by this state or any other state to provide health or residential care which has closed voluntarily or involuntarily; has filed for bankruptcy; has had a receiver appointed; has had a license denied, suspended, or revoked; or has had an injunction issued against it which was initiated by a regulatory agency. The affidavit must disclose the reason any such entity was closed, whether voluntarily or involuntarily.~~

~~(c) The total number of beds and the total number of Medicare and Medicaid certified beds.~~

(b)~~(d)~~ Information relating to the applicant and employees which the agency requires by rule. The applicant must demonstrate that sufficient numbers of qualified staff, by training or experience, will be employed to properly care for the type and number of residents who will reside in the facility.

~~(c) Copies of any civil verdict or judgment involving the applicant rendered within the 10 years preceding the application, relating to medical negligence, violation of residents' rights, or wrongful death. As a condition of licensure, the licensee agrees to provide to the agency copies of any new verdict or judgment involving the applicant, relating to such matters, within 30 days after filing with the clerk of the court. The information required in this paragraph shall be maintained in the facility's licensure file and in an agency database which is available as a public record.~~

(5) As a condition of licensure, each facility must establish ~~and submit with its application~~ a plan for quality assurance and for conducting risk management.

Section 8. Section 400.0712, Florida Statutes, is amended to read:

400.0712 ~~Application for~~ Inactive license.—

~~(1) As specified in this section, the agency may issue an inactive license to a nursing home facility for all or a portion of its beds. Any request by a licensee that a nursing home or portion of a nursing home become inactive must be submitted to the agency in the approved format. The facility may not initiate~~

~~any suspension of services, notify residents, or initiate inactivity before receiving approval from the agency; and a licensee that violates this provision may not be issued an inactive license.~~

(1)~~(2)~~ In addition to the powers granted under part II of chapter 408, the agency may issue an inactive license for a portion of the total beds of ~~to~~ a nursing home facility that chooses to use an unoccupied contiguous portion of the facility for an alternative use to meet the needs of elderly persons through the use of less restrictive, less institutional services.

(a) The ~~An~~ inactive license ~~issued under this subsection~~ may be granted for a period not to exceed the current licensure expiration date but may be renewed by the agency at the time of licensure renewal.

(b) A request to extend the inactive license must be submitted to the agency in the approved format and approved by the agency in writing.

(c) A facility ~~Nursing homes~~ that receives ~~receive~~ an inactive license to provide alternative services may ~~shall~~ not be given ~~receive~~ preference for participation in the Assisted Living for the Elderly Medicaid waiver.

(2)~~(3)~~ The agency shall adopt rules ~~pursuant to ss. 120.536(1) and 120.54~~ necessary to administer ~~implement~~ this section.

Section 9. Section 400.111, Florida Statutes, is amended to read:

400.111 Disclosure of controlling interest.—In addition to the requirements of part II of chapter 408, the nursing home

facility, if requested by the agency, ~~licensee~~ shall submit a signed affidavit disclosing any financial or ownership interest that a controlling interest has held within the last 5 years in any entity licensed by the state or any other state to provide health or residential care which ~~entity~~ has closed voluntarily or involuntarily; has filed for bankruptcy; has had a receiver appointed; has had a license denied, suspended, or revoked; or has had an injunction issued against it which was initiated by a regulatory agency. The affidavit must disclose the reason such entity was closed, whether voluntarily or involuntarily.

Section 10. Subsection (2) of section 400.1183, Florida Statutes, is amended to read:

400.1183 Resident grievance procedures.—

(2) Each nursing home facility shall maintain records of all grievances and a ~~shall~~ report, subject to agency inspection, of ~~to the agency at the time of relicensure~~ the total number of grievances handled ~~during the prior licensure period~~, a categorization of the cases underlying the grievances, and the final disposition of the grievances.

Section 11. Section 400.141, Florida Statutes, is amended to read:

400.141 Administration and management of nursing home facilities.—

(1) A nursing home facility must ~~Every licensed facility shall~~ comply with all applicable standards and rules of the agency and must ~~shall~~:

(a) Be under the administrative direction and charge of a licensed administrator.

(b) Appoint a medical director licensed pursuant to chapter

458 or chapter 459. The agency may establish by rule more specific criteria for the appointment of a medical director.

(c) Have available the regular, consultative, and emergency services of state licensed physicians ~~licensed by the state~~.

(d) Provide for resident use of a community pharmacy as specified in s. 400.022(1)(q). ~~Any other law to the contrary~~ Notwithstanding any other law, a registered pharmacist licensed in this state who ~~in Florida, that~~ is under contract with a facility licensed under this chapter or chapter 429 must~~, shall~~ repackage a nursing facility resident's bulk prescription medication, which was ~~has been~~ packaged by another pharmacist licensed in any state, ~~in the United States~~ into a unit dose system compatible with the system used by the nursing home facility~~,~~ if the pharmacist is requested to offer such service.

1. In order to be eligible for the repackaging, a resident or the resident's spouse must receive prescription medication benefits provided through a former employer as part of his or her retirement benefits, a qualified pension plan as specified in s. 4972 of the Internal Revenue Code, a federal retirement program as specified under 5 C.F.R. s. 831, or a long-term care policy as defined in s. 627.9404(1).

2. A pharmacist who correctly repackages and relabels the medication and the ~~nursing~~ facility that ~~which~~ correctly administers such repackaged medication ~~under this paragraph~~ may not be held liable in any civil or administrative action arising from the repackaging.

3. In order to be eligible for the repackaging, a ~~nursing facility~~ resident for whom the medication is to be repackaged must ~~shall~~ sign an informed consent form provided by the

facility which includes an explanation of the repackaging process and ~~which~~ notifies the resident of the immunities from liability provided under ~~in~~ this paragraph.

4. A pharmacist who repackages and relabels the prescription medications~~, as authorized under this paragraph,~~ may charge a reasonable fee for costs resulting from the implementation of this provision.

(e) Provide ~~for the access of the facility~~ residents with access to dental and other health-related services, recreational services, rehabilitative services, and social work services appropriate to their needs and conditions and not directly furnished by the licensee. If ~~When~~ a geriatric outpatient nurse clinic is conducted in accordance with rules adopted by the agency, outpatients attending such clinic may ~~shall~~ not be counted as part of the general resident population of the ~~nursing home~~ facility, nor may ~~shall~~ the nursing staff of the geriatric outpatient clinic be counted as part of the nursing staff of the facility, until the outpatient clinic load exceeds 15 a day.

(f) Be allowed and encouraged by the agency to provide other needed services under certain conditions. If the facility has a standard licensure status, ~~and has had no class I or class II deficiencies during the past 2 years or has been awarded a Gold Seal under the program established in s. 400.235,~~ it may be encouraged ~~by the agency~~ to provide services, including, but not limited to, respite and adult day services, which enable individuals to move in and out of the facility. A facility is not subject to any additional licensure requirements for providing these services, under the following conditions:~~.~~

1. Respite care may be offered to persons in need of short-term or temporary nursing home services, if for each person admitted under the respite care program, the licensee:~~.~~

a. Has a contract that, at a minimum, specifies the services to be provided to the respite resident, and includes the charges for services, activities, equipment, emergency medical services, and the administration of medications. If multiple respite admissions for a single individual are anticipated, the original contract is valid for 1 year after the date of execution;

b. Has a written abbreviated plan of care that, at a minimum, includes nutritional requirements, medication orders, physician assessments and orders, nursing assessments, and dietary preferences. The physician or nursing assessments may take the place of all other assessments required for full-time residents; and

c. Ensures that each respite resident is released to his or her caregiver or an individual designated in writing by the caregiver.

2. A person admitted under a respite care program is:

a. Covered by the residents' rights set forth in s. 400.022(1)(a)-(o) and (r)-(t). Funds or property of the respite resident are not considered trust funds subject to s. 400.022(1)(h) until the resident has been in the facility for more than 14 consecutive days;

b. Allowed to use his or her personal medications for the respite stay if permitted by facility policy. The facility must obtain a physician's order for the medications. The caregiver may provide information regarding the medications as part of the

nursing assessment which must agree with the physician's order. Medications shall be released with the respite resident upon discharge in accordance with current physician's orders; and

c. Exempt from rule requirements related to discharge planning.

3. A person receiving respite care is entitled to reside in the facility for a total of 60 days within a contract year or calendar year if the contract is for less than 12 months. However, each single stay may not exceed 14 days. If a stay exceeds 14 consecutive days, the facility must comply with all assessment and care planning requirements applicable to nursing home residents.

4. The respite resident provided medical information from a physician, physician assistant, or nurse practitioner and other information from the primary caregiver as may be required by the facility before or at the time of admission. The medical information must include a physician's order for respite care and proof of a physical examination by a licensed physician, physician assistant, or nurse practitioner. The physician's order and physical examination may be used to provide intermittent respite care for up to 12 months after the date the order is written.

5. A person receiving respite care resides in a licensed nursing home bed.

6. The facility assumes the duties of the primary caregiver. To ensure continuity of care and services, the respite resident is entitled to retain his or her personal physician and must have access to medically necessary services such as physical therapy, occupational therapy, or speech

therapy, as needed. The facility must arrange for transportation to these services if necessary. ~~Respite care must be provided in accordance with this part and rules adopted by the agency. However, the agency shall, by rule, adopt modified requirements for resident assessment, resident care plans, resident contracts, physician orders, and other provisions, as appropriate, for short-term or temporary nursing home services.~~

7. The agency allows ~~shall allow~~ for shared programming and staff in a facility that ~~which~~ meets minimum standards and offers services pursuant to this paragraph, but, if the facility is cited for deficiencies in patient care, the agency may require additional staff and programs appropriate to the needs of service recipients. A person who receives respite care may not be counted as a resident of the facility for purposes of the facility's licensed capacity unless that person receives 24-hour respite care. A person receiving ~~either~~ respite care for 24 hours or longer or adult day services must be included when calculating minimum staffing for the facility. Any costs and revenues generated by a ~~nursing home~~ facility from nonresidential programs or services must ~~shall~~ be excluded from the calculations of Medicaid per diems for nursing home institutional care reimbursement.

(g) If the facility has a standard license ~~or is a Gold Seal facility~~, exceeds the minimum required hours of licensed nursing and certified nursing assistant direct care per resident per day, and is part of a continuing care facility licensed under chapter 651 or a retirement community that offers other services pursuant to part III of this chapter or part I or part III of chapter 429 on a single campus, be allowed to share

programming and staff. At the time of inspection ~~and in the semiannual report required pursuant to paragraph (o)~~, a continuing care facility or retirement community that uses this option must demonstrate through staffing records that minimum staffing requirements for the facility were met. Licensed nurses and certified nursing assistants who work in the ~~nursing home~~ facility may be used to provide services elsewhere on campus if the facility exceeds the minimum number of direct care hours required per resident per day and the total number of residents receiving direct care services from a licensed nurse or a certified nursing assistant does not cause the facility to violate the staffing ratios required under s. 400.23(3)(a). Compliance with the minimum staffing ratios must ~~shall~~ be based on the total number of residents receiving direct care services~~,~~ regardless of where they reside on campus. If the facility receives a conditional license, it may not share staff until the conditional license status ends. This paragraph does not restrict the agency's authority under federal or state law to require additional staff if a facility is cited for deficiencies in care which are caused by an insufficient number of certified nursing assistants or licensed nurses. The agency may adopt rules for the documentation necessary to determine compliance with this provision.

(h) Maintain the facility premises and equipment and conduct its operations in a safe and sanitary manner.

(i) If the licensee furnishes food service, provide a wholesome and nourishing diet sufficient to meet generally accepted standards of proper nutrition for its residents and provide such therapeutic diets as may be prescribed by attending

physicians. In adopting ~~making~~ rules to implement this paragraph, the agency shall be guided by standards recommended by nationally recognized professional groups and associations with knowledge of dietetics.

(j) Keep full records of resident admissions and discharges; medical and general health status, including medical records, personal and social history, and identity and address of next of kin or other persons who may have responsibility for the affairs of the resident ~~residents~~; and individual resident care plans, including, but not limited to, prescribed services, service frequency and duration, and service goals. The records must ~~shall~~ be open to agency inspection ~~by the agency~~. The licensee shall maintain clinical records on each resident in accordance with accepted professional standards and practices, which must be complete, accurately documented, readily accessible, and systematically organized.

(k) Keep such fiscal records of its operations and conditions as may be necessary to provide information pursuant to this part.

(l) Furnish copies of personnel records for employees affiliated with such facility~~,~~ to any other facility licensed by this state requesting this information pursuant to this part. Such information contained in the records may include, but is not limited to, disciplinary matters and reasons ~~any reason~~ for termination. A ~~Any~~ facility releasing such records pursuant to this part is ~~shall be~~ considered to be acting in good faith and may not be held liable for information contained in such records, absent a showing that the facility maliciously falsified such records.

(m) Publicly display a poster provided by the agency containing the names, addresses, and telephone numbers for the state's abuse hotline, the State Long-Term Care Ombudsman, the Agency for Health Care Administration consumer hotline, the Advocacy Center for Persons with Disabilities, the Florida Statewide Advocacy Council, and the Medicaid Fraud Control Unit, with a clear description of the assistance to be expected from each.

~~(n) Submit to the agency the information specified in s. 400.071(1)(b) for a management company within 30 days after the effective date of the management agreement.~~

~~(o)1. Submit semiannually to the agency, or more frequently if requested by the agency, information regarding facility staff-to-resident ratios, staff turnover, and staff stability, including information regarding certified nursing assistants, licensed nurses, the director of nursing, and the facility administrator. For purposes of this reporting:~~

~~a. Staff-to-resident ratios must be reported in the categories specified in s. 400.23(3)(a) and applicable rules. The ratio must be reported as an average for the most recent calendar quarter.~~

~~b. Staff turnover must be reported for the most recent 12-month period ending on the last workday of the most recent calendar quarter prior to the date the information is submitted. The turnover rate must be computed quarterly, with the annual rate being the cumulative sum of the quarterly rates. The turnover rate is the total number of terminations or separations experienced during the quarter, excluding any employee terminated during a probationary period of 3 months or less,~~

~~divided by the total number of staff employed at the end of the period for which the rate is computed, and expressed as a percentage.~~

~~c. The formula for determining staff stability is the total number of employees that have been employed for more than 12 months, divided by the total number of employees employed at the end of the most recent calendar quarter, and expressed as a percentage.~~

(n) Comply with state minimum-staffing requirements:

1.~~d.~~ A ~~nursing~~ facility that has failed to comply with state minimum-staffing requirements for 2 consecutive days is prohibited from accepting new admissions until the facility has achieved the minimum-staffing requirements for ~~a period of~~ 6 consecutive days. For the purposes of this subparagraph ~~sub-subparagraph~~, any person who was a resident of the facility and was absent from the facility for the purpose of receiving medical care at a separate location or was on a leave of absence is not considered a new admission. Failure by the facility to impose such an admissions moratorium is subject to a $1,000 fine ~~constitutes a class II deficiency~~.

2.~~c.~~ A ~~nursing~~ facility that ~~which~~ does not have a conditional license may be cited for failure to comply with the standards in s. 400.23(3)(a)1.b. and c. only if it has failed to meet those standards on 2 consecutive days or if it has failed to meet at least 97 percent of those standards on any one day.

3.~~f.~~ A facility that ~~which~~ has a conditional license must be in compliance with the standards in s. 400.23(3)(a) at all times.

~~2. This paragraph does not limit the agency's ability to~~

~~impose a deficiency or take other actions if a facility does not have enough staff to meet the residents' needs.~~

(o) ~~(p)~~ Notify a licensed physician 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 such dementia or impairment. The notification must occur within 30 days after the acknowledgment of such signs by facility staff. If an underlying condition is determined to exist, the facility shall ~~arrange~~, with the appropriate health care provider, arrange for the necessary care and services to treat the condition.

(p) ~~(q)~~ If the facility implements a dining and hospitality attendant program, ensure that the program is developed and implemented under the supervision of the facility director of nursing. A licensed nurse, licensed speech or occupational therapist, or a registered dietitian must conduct training of dining and hospitality attendants. A person employed by a facility as a dining and hospitality attendant must perform tasks under the direct supervision of a licensed nurse.

~~(r) Report to the agency any filing for bankruptcy protection by the facility or its parent corporation, divestiture or spin-off of its assets, or corporate reorganization within 30 days after the completion of such activity.~~

(q) ~~(s)~~ Maintain general and professional liability insurance coverage that is in force at all times. In lieu of such ~~general and professional liability insurance~~ coverage, a state-designated teaching nursing home and its affiliated

assisted living facilities created under s. 430.80 may demonstrate proof of financial responsibility as provided in s. 430.80(3)(g).

(r) ~~(t)~~ Maintain in the medical record for each resident a daily chart of certified nursing assistant services provided to the resident. The certified nursing assistant who is caring for the resident must complete this record by the end of his or her shift. The ~~This~~ record must indicate assistance with activities of daily living, assistance with eating, and assistance with drinking, and must record each offering of nutrition and hydration for those residents whose plan of care or assessment indicates a risk for malnutrition or dehydration.

(s) ~~(u)~~ Before November 30 of each year, subject to the availability of an adequate supply of the necessary vaccine, provide for immunizations against influenza viruses to all its consenting residents in accordance with the recommendations of the United States Centers for Disease Control and Prevention, subject to exemptions for medical contraindications and religious or personal beliefs. Subject to these exemptions, any consenting person who becomes a resident of the facility after November 30 but before March 31 of the following year must be immunized within 5 working days after becoming a resident. Immunization may ~~shall~~ not be provided to any resident who provides documentation that he or she has been immunized as required by this paragraph. This paragraph does not prohibit a resident from receiving the immunization from his or her personal physician if he or she so chooses. A resident who chooses to receive the immunization from his or her personal physician shall provide proof of immunization to the facility.

The agency may adopt and enforce any rules necessary to administer ~~comply with or implement~~ this paragraph.

(t)~~(v)~~ Assess all residents for eligibility for pneumococcal polysaccharide vaccination (PPV) ~~and vaccinate residents when indicated within 60 days after the effective date of this act in accordance with the recommendations of the United States Centers for Disease Control and Prevention, subject to exemptions for medical contraindications and religious or personal beliefs. Residents admitted after the effective date of this act shall be assessed~~ within 5 working days after ~~of~~ admission and, if ~~when~~ indicated, vaccinate such residents ~~vaccinated~~ within 60 days in accordance with the recommendations of the United States Centers for Disease Control and Prevention, subject to exemptions for medical contraindications and religious or personal beliefs. Immunization may ~~shall~~ not be provided to any resident who provides documentation that he or she has been immunized as required by this paragraph. This paragraph does not prohibit a resident from receiving the immunization from his or her personal physician if he or she so chooses. A resident who chooses to receive the immunization from his or her personal physician shall provide proof of immunization to the facility. The agency may adopt and enforce any rules necessary to administer ~~comply with or implement~~ this paragraph.

(u)~~(w)~~ Annually encourage and promote to its employees the benefits associated with immunizations against influenza viruses in accordance with the recommendations of the United States Centers for Disease Control and Prevention. The agency may adopt and enforce any rules necessary to administer ~~comply with or~~

~~implement~~ this paragraph.

This subsection does not limit the agency's ability to impose a deficiency or take other actions if a facility does not have enough staff to meet residents' needs.

(2) Facilities that have been awarded a Gold Seal under the program established in s. 400.235 may develop a plan to provide certified nursing assistant training as prescribed by federal regulations and state rules and may apply to the agency for approval of their program.

Section 12. Subsection (3) of section 400.142, Florida Statutes, is amended to read:

400.142 Emergency medication kits; orders not to resuscitate.—

(3) Facility staff may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. ~~The agency shall adopt rules providing for the implementation of such orders.~~ Facility staff and facilities are ~~shall~~ not ~~be~~ subject to criminal prosecution or civil liability, or ~~nor be~~ considered to have engaged in negligent or unprofessional conduct, for withholding or withdrawing cardiopulmonary resuscitation pursuant to such ~~an~~ order ~~and rules adopted by the agency~~. The absence of an order not to resuscitate executed pursuant to s. 401.45 does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law.

Section 13. Section 400.145, Florida Statutes, is repealed.

Section 14. Subsections (7) through (10) of section 400.147, Florida Statutes, are amended, and present subsections

(11) through (15) of that section are redesignated as subsections (9) through (13), respectively, to read:

400.147 Internal risk management and quality assurance program.—

(7) The nursing home facility shall initiate an investigation ~~and shall notify the agency~~ within 1 business day after the risk manager or his or her designee has received a report pursuant to paragraph (1)(d). The facility must complete the investigation and submit a report to the agency within 15 calendar days after an incident is determined to be an adverse incident. ~~The notification must be made in writing and be provided electronically, by facsimile device or overnight mail delivery.~~ The agency shall develop a form for the report which ~~notification~~ must include the name of the risk manager, information regarding the identity of the affected resident, the type of adverse incident, the initiation of an investigation by the facility, and whether the events causing or resulting in the adverse incident represent a potential risk to any other resident. The report ~~notification~~ is confidential as provided by law and is not discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agency or the appropriate regulatory board. The agency may investigate, as it deems appropriate, any such incident and prescribe measures that must or may be taken in response to the incident. The agency shall review each report ~~incident~~ and determine whether it potentially involved conduct by the health care professional who is subject to disciplinary action, in which case the provisions of s. 456.073 shall apply.

~~(8)(a) Each facility shall complete the investigation and~~

~~submit an adverse incident report to the agency for each adverse incident within 15 calendar days after its occurrence. If, after a complete investigation, the risk manager determines that the incident was not an adverse incident as defined in subsection (5), the facility shall include this information in the report. The agency shall develop a form for reporting this information.~~

~~(b) The information reported to the agency pursuant to paragraph (a) which relates to persons licensed under chapter 458, chapter 459, chapter 461, or chapter 466 shall be reviewed by the agency. The agency shall determine whether any of the incidents potentially involved conduct by a health care professional who is subject to disciplinary action, in which case the provisions of s. 456.073 shall apply.~~

~~(c) The report submitted to the agency must also contain the name of the risk manager of the facility.~~

~~(d) The adverse incident report is confidential as provided by law and is not discoverable or admissible in any civil or administrative action, except in disciplinary proceedings by the agency or the appropriate regulatory board.~~

(8)~~(9)~~ Abuse, neglect, or exploitation must be reported to the agency as required by 42 C.F.R. s. 483.13(c) and to the department as required by chapters 39 and 415.

~~(10) By the 10th of each month, each facility subject to this section shall report any notice received pursuant to s. 400.0233(2) and each initial complaint that was filed with the clerk of the court and served on the facility during the previous month by a resident or a resident's family member, guardian, conservator, or personal legal representative. The report must include the name of the resident, the resident's~~

~~date of birth and social security number, the Medicaid identification number for Medicaid-eligible persons, the date or dates of the incident leading to the claim or dates of residency, if applicable, and the type of injury or violation of rights alleged to have occurred. Each facility shall also submit a copy of the notices received pursuant to s. 400.0233(2) and complaints filed with the clerk of the court. This report is confidential as provided by law and is not discoverable or admissible in any civil or administrative action, except in such actions brought by the agency to enforce the provisions of this part.~~

Section 15. Section 400.148, Florida Statutes, is repealed.

Section 16. Subsection (3) of section 400.19, Florida Statutes, is amended to read:

400.19 Right of entry and inspection.—

(3) The agency shall ~~every 15 months~~ conduct at least one unannounced inspection every 15 months to determine the licensee's compliance ~~by the licensee~~ with statutes~~,~~ and related ~~with~~ rules ~~promulgated under the provisions of those statutes,~~ governing minimum standards of construction, quality and adequacy of care, and rights of residents. The survey must ~~shall~~ be conducted every 6 months for the next 2-year period if the nursing home facility has been cited for a class I deficiency, has been cited for two or more class II deficiencies arising from separate surveys or investigations within a 60-day period, or has had three or more substantiated complaints within a 6-month period, each resulting in at least one class I or class II deficiency. In addition to any other fees or fines under ~~in~~ this part, the agency shall assess a fine for each facility that is

subject to the 6-month survey cycle. The fine for the 2-year period is ~~shall be~~ $6,000, one-half to be paid at the completion of each survey. The agency may adjust this fine by the change in the Consumer Price Index, based on the 12 months immediately preceding the increase, to cover the cost of the additional surveys. The agency shall verify through subsequent inspection that any deficiency identified during inspection is corrected. However, the agency may verify the correction of a class III or class IV deficiency ~~unrelated to resident rights or resident care~~ without reinspecting the facility if adequate written documentation has been received from the facility~~,~~ which provides assurance that the deficiency has been corrected. The giving or causing to be given of advance notice of such unannounced inspections by an employee of the agency to any unauthorized person shall constitute cause for suspension of at least ~~not fewer than~~ 5 working days according to the provisions of chapter 110.

Section 17. Present subsection (6) of section 400.191, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section, to read:

400.191 Availability, distribution, and posting of reports and records.—

(6) A nursing home facility may charge a reasonable fee for copying resident records. The fee may not exceed $1 per page for the first 25 pages and 25 cents per page for each page in excess of 25 pages.

Section 18. Subsection (5) of section 400.23, Florida Statutes, is amended to read:

400.23 Rules; evaluation and deficiencies; licensure

status.—

(5) The agency, in collaboration with the Division of Children's Medical Services of the Department of Health, must~~,~~ ~~no later than December 31, 1993,~~ adopt rules for:

(a) Minimum standards of care for persons under 21 years of age who reside in nursing home facilities. ~~The rules must include a methodology for reviewing a nursing home facility under ss. 408.031-408.045 which serves only persons under 21 years of age.~~ A facility may be exempted ~~exempt~~ from these standards for specific persons between 18 and 21 years of age, if the person's physician agrees that minimum standards of care based on age are not necessary.

(b) Minimum staffing requirements for each nursing home facility that serves persons under 21 years of age, which apply in lieu of the standards contained in subsection (3).

1. For persons under 21 years of age who require skilled care, the requirements must include a minimum combined average of 3.9 hours of direct care per resident per day provided by licensed nurses, respiratory therapists, respiratory care practitioners, and certified nursing assistants.

2. For persons under 21 years of age who are medically fragile, the requirements must include a minimum combined average of 5 hours of direct care per resident per day provided by licensed nurses, respiratory therapists, respiratory care practitioners, and certified nursing assistants.

Section 19. Subsection (27) of section 400.462, Florida Statutes, is amended to read:

400.462 Definitions.—As used in this part, the term:

(27) "Remuneration" means any payment or other benefit made

directly or indirectly, overtly or covertly, in cash or in kind. However, if the term is used in any provision of law relating to health care providers, the term does not apply to an item that has an individual value of up to $15, including, but not limited to, a plaque, a certificate, a trophy, or a novelty item that is intended solely for presentation or is customarily given away solely for promotional, recognition, or advertising purposes.

Section 20. Subsection (1) of section 429.294, Florida Statutes, is amended to read:

429.294 Availability of facility records for investigation of resident's rights violations and defenses; penalty.—

(1) Failure to provide complete copies of a resident's records, including, but not limited to, all medical records and the resident's chart, within the control or possession of the facility within 10 days, is ~~in accordance with the provisions of s. 400.145, shall constitute~~ evidence of failure of that party to comply with good faith discovery requirements and waives ~~shall waive~~ the good faith certificate and presuit notice requirements under this part by the requesting party.

Section 21. Paragraph (g) of subsection (3) of section 430.80, Florida Statutes, is amended to read:

430.80 Implementation of a teaching nursing home pilot project.—

(3) To be designated as a teaching nursing home, a nursing home licensee must, at a minimum:

(g) Maintain insurance coverage pursuant to s. 400.141(1)(q) ~~400.141(1)(s)~~ or proof of financial responsibility in a minimum amount of $750,000. Such proof of financial responsibility may include:

1. Maintaining an escrow account consisting of cash or assets eligible for deposit in accordance with s. 625.52; or

2. Obtaining and maintaining pursuant to chapter 675 an unexpired, irrevocable, nontransferable and nonassignable letter of credit issued by any bank or savings association organized and existing under the laws of this state or any bank or savings association organized under the laws of the United States which ~~that~~ has its principal place of business in this state or has a branch office that ~~which~~ is authorized to receive deposits in this state. The letter of credit shall be used to satisfy the obligation of the facility to the claimant upon presentment of a final judgment indicating liability and awarding damages to be paid by the facility or upon presentment of a settlement agreement signed by all parties to the agreement if ~~when~~ such final judgment or settlement is a result of a liability claim against the facility.

Section 22. Paragraph (h) of subsection (2) of section 430.81, Florida Statutes, is amended to read:

430.81 Implementation of a teaching agency for home and community-based care.—

(2) The Department of Elderly Affairs may designate a home health agency as a teaching agency for home and community-based care if the home health agency:

(h) Maintains insurance coverage pursuant to s. 400.141(1)(q) ~~400.141(1)(s)~~ or proof of financial responsibility in a minimum amount of $750,000. Such proof of financial responsibility may include:

1. Maintaining an escrow account consisting of cash or assets eligible for deposit in accordance with s. 625.52; or

2. Obtaining and maintaining, pursuant to chapter 675, an unexpired, irrevocable, nontransferable, and nonassignable letter of credit issued by any bank or savings association authorized to do business in this state. This letter of credit shall be used to satisfy the obligation of the agency to the claimant upon presentation of a final judgment indicating liability and awarding damages to be paid by the facility or upon presentment of a settlement agreement signed by all parties to the agreement if ~~when~~ such final judgment or settlement is a result of a liability claim against the agency.

Section 23. Subsection (13) of section 651.118, Florida Statutes, is amended to read:

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

(13) Residents, as defined in this chapter, are not considered new admissions for the purpose of s. 400.141(1)(n) ~~400.141(1)(o)1.d~~.

Section 24. This act shall take effect July 1, 2012.

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Budget - Subcommittee on General Government Appropriations
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Environmental Preservation and Conservation
Governmental Oversight and Accountability
Health Regulation
Reapportionment

SENATOR JACK LATVALA
16th District

November 7, 2011

The Honorable Senator Renee Garcia, Chair
Senate Committee on Health Regulation
530 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Garcia:

I respectfully request consideration of Senate Bill 482, a bill relating to Nursing Homes and Related Health Care Facilities by the Senate Committee on Health Regulation as soon as possible. The purpose of this bill is to enhance the effectiveness of various reporting, staffing, and licensure requirements for residential health care facilities in the state of Florida.

I would appreciate the opportunity to present this legislation at your earliest convenience. If you have any questions regarding this legislation, please contact me. Thank you for your consideration.

Sincerely,

Jack Latvala
State Senator
District 16

cc: Sandra Stovall, Staff Director

REPLY TO:
❒ 12425 28th Street North, Suite 102, St. Petersburg, Florida 33716 (727) 556-6500
❒ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5075

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Nursing Homes

Bill Number SB 482 *(if applicable)*

Name Tom Randle

Amendment Barcode *(if applicable)*

Job Title Vice President of Public Policy

Address 1812 Riggins Rd *Street*

Phone 671-3700

Tallahassee *City* *State* *Zip*

E-mail TRandle@FAHCA.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Leading Age Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

Spoke

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-19-12
Meeting Date

Topic SB 482 Nursing Home

Bill Number SB 482 *(if applicable)*

Name Melvin Wright

Amendment Barcode *(if applicable)*

Job Title Attorney - Orlando

Address 2061 Roberts Point Dr
Street
Windermere FL 34786
City *State* *Zip*

Phone

E-mail mwright@floridafirm.com

Speaking: ☐ For ☑ Against ☑ Information

Representing consumers - FJA -

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/12
Meeting Date

Topic Nursing Homes

Bill Number 482 *(if applicable)*

Name Alisa Snow

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address _____ *Street*

Phone 443-8194

Tallahassee FL _____ *City* *State* *Zip*

E-mail _____

Speaking: [X] For [ ] Against [ ] Information

Representing Florida Nurses Association

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

Spoke

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/12
Meeting Date

Topic NURSING HOME REGULATION

Bill Number 4f2
(if applicable)

Name JACK McRAY

Amendment Barcode
(if applicable)

Job Title

Address 200 W. COLLEGE ST. #304
Street

TLH FL 32301
City *State* *Zip*

Phone 850-577-5187

E-mail

Speaking: ☐ For ☑ Against ☐ Information

Representing AARP

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

Spoke

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/2011
Meeting Date

Topic Pediatric Nursing Homes

Bill Number 482 Section 18
(if applicable)

Name Sylvia Smith

Amendment Barcode
(if applicable)

Job Title Director of Legislative Affairs

Address 2728 Centerview Dr.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 322-2258

E-mail sylviawsmith@comcast.net

Speaking: ☐ For ☒ Against ☐ Information

Representing Disability Rights Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic NURSING HOME

Bill Number 987 *(if applicable)*

Name GARY FARMER

Amendment Barcode *(if applicable)*

Job Title

Address *Street*

Phone 954-324-2820

City *State* *Zip*

E-mail

Speaking: ☒ For ☐ Against ☐ Information DLP amendment

Representing D

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/2012
Meeting Date

Topic NURSING HOMES

Bill Number SB 482 *(if applicable)*

Name VICTORIA FIERRO

Amendment Barcode *(if applicable)*

Job Title CPA

Address 2855 ASBURY HILL *Street*

Phone 850-386-3400

TALLAHASSEE *City* FL *State* 32312 *Zip*

E-mail

Speaking: ☐ For ☒ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

Spoke

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19
Meeting Date

Topic Doug Mannheimer

Bill Number 482 *(if applicable)*

Name

Amendment Barcode *(if applicable)*

Job Title

Address 307 W Park
Street

Tallahassee FL 32309
City *State* *Zip*

Phone 850-224-3907

E-mail

Speaking: [X] For [ ] Against [ ] Information

Representing Florida Health Care Association

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

Spoke

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/12
Meeting Date

Topic Nursing Home Regulation

Bill Number SB 482 *(if applicable)*

Name Molly McKinstry

Amendment Barcode *(if applicable)*

Job Title Dep Sec HQA AHCA

Address 2727 Mahan Dr *Street*

Phone 412-3600

Tallahassee FL 32308 *City* *State* *Zip*

E-mail Molly.McKinstry@ahca.myflorida.com

Speaking: ☐ For ☐ Against ☒ Information

Representing AHCA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Regulation Committee

BILL:	CS/SB 730
INTRODUCER:	Health Regulation Committee and Senator Flores and Others
SUBJECT:	Medicaid Managed Care Plans
DATE:	January 19, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	**Fav/CS**
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill changes the statewide Medicaid managed care program (the managed medical assistance program and the long-term care managed care program) with respect to the role that Medicare Advantage plans will play in the program, for recipients who are dually eligible for Medicaid and Medicare. The bill requires the Agency for Health Care Administration (AHCA) to establish a per-member, per-month payment for dually eligible individuals enrolled in any Medicare Advantage coordinated care plan, not just in a Medicare Advantage special needs plan.

The definition of "eligible plan" for the statewide Medicaid managed care program and various other statutory references to eligible plans in the program are amended to include additional Medicare Advantage organizations and plans, for purposes of providing coverage to individuals who are dually eligible for Medicaid and Medicare and who are to be enrolled in the managed medical assistance program and the long-term care managed care program.

The bill exempts a Medicare Advantage coordinated care plan from the procurement requirements and regional plan limits of the new Medicaid managed medical assistance program, if the plan's Medicaid enrollees in the region consist exclusively of its current Medicare enrollees who are dually eligible for Medicaid and Medicare. Also, the bill requires the AHCA to

automatically enroll Medicaid managed medical assistance program recipients who have not voluntarily selected a plan, who are dually eligible, and who are currently receiving Medicare services from a Medicare Advantage coordinated care plan to that Medicare Advantage plan, if the plan is currently under contract with the AHCA.

The bill modifies the existing exemption from the procurement requirements of the Medicaid long-term care managed care program for Medicare Advantage plans serving dually eligible recipients. The bill specifies that the exemption from the procurement requirements applies only if the Medicare Advantage plan's Medicaid enrollees consist exclusively of its current Medicare enrollees.

The bill reduces the penalty imposed on certain managed care plans that leave a region before the end of the term of their contract with the AHCA.

This bill substantially amends the following sections of the Florida Statutes: 409.9122, 409.962, 409.967, 409.974, 409.977, 409.981, and 409.984.

II. Present Situation:

Medicaid

Medicaid is the medical assistance program that provides access to health care for low-income families and individuals. Medicaid also assists aged and disabled people with the costs of nursing facility care and other medical expenses. The AHCA is responsible for administering the Medicaid program. Medicaid serves approximately 3.19 million people in Florida, with over half of those being children and adolescents 20 years of age or younger. Estimated Medicaid expenditures for FY 2011-2012 are approximately $20.3 billion.

Medicaid Managed Care

Part III of ch. 409, F.S., provides the statutory requirements for the Florida Medicaid program. Sections 409.9121 – 409.9124, F.S., contain provisions relating to managed care in Medicaid.

In 1993, the Legislature passed legislation declaring its intent that the Medicaid program require, to the maximum extent practicable and permitted by federal law, that all Medicaid recipients be enrolled in a managed care program.[1] This intent language was codified in s. 409.9121, F.S., and has remained in effect and unchanged since 1993. Section 409.9122, F.S., which was also created in 1993, set Florida on the path of mandatory enrollment of Medicaid recipients in managed care by providing for the statewide expansion of the primary care case management program known as MediPass and for the growth of health maintenance organizations and prepaid health plans for Medicaid recipients. Section 409.9122, F.S., has been amended almost every year since 1993 to expand the role of managed care in Medicaid as managed care has evolved.

In 2005, the Legislature directed the AHCA to seek federal Medicaid waivers pursuant to s. 1115 of the Social Security Act to create a Medicaid managed care pilot program in five counties in the State. Under the pilot program, most Medicaid recipients have been moved from Medicaid

[1] *See* s. 50 of ch. 93-129, L.O.F.

fee-for-service and the MediPass program into capitated managed care systems. As of December 15, 2011, the pilot program waiver was extended for three years, through June 30, 2014. This coincides with implementation of the new statewide Medicaid managed care program established in 2011 and codified in pt. IV of ch. 409, F.S. (s. 409.961 – 409.9841, F.S.).[2]

Part IV of ch. 409, F.S., requires all Medicaid recipients to enroll in a managed care plan unless they are specifically exempted. The statewide Medicaid managed care program includes the long-term care managed care program and the managed medical assistance program. The law directs the AHCA to begin implementation of the long-term care managed care program by July 1, 2012, with full implementation in all regions of the State by October 1, 2013. By January 1, 2013, the AHCA must begin implementation of the managed medical assistance program, with full implementation in all regions of the State by October 1, 2014.

The AHCA is required to separately procure long-term care managed care plans and managed medical assistance plans in each of the 11 regions of the state, which coincide with the existing Medicaid areas. The AHCA is required to select a limited number of eligible plans to participate in the program using Invitations to Negotiate. Each Medicaid recipient must have a choice of plans and may select any available plan unless that plan is restricted by contract to a specific population that does not include the recipient.

Section 409.967(4)(h)1., F.S., requires plans that reduce enrollment levels or withdraw from an area of operation before a contract term is over to reimburse the AHCA for the cost of enrollment changes and other transition activities. If more than one plan leaves an area, the plans are required to split the cost proportionate to their enrollment. In addition to payment of costs, departing provider services network plans must pay a penalty of up to 3 months' payment and departing health maintenance organization plans must pay a penalty of 25 percent of the minimum surplus which they are required to maintain under s. 641.225(1), F.S.

Dual Eligibles

Dual eligibles are persons who qualify, in some way, for both Medicare and Medicaid coverage. Medicare covers their acute care services, while Medicaid covers Medicare premiums and cost sharing, and—for those below certain income and asset thresholds—long-term care services and, until 2006, prescription drugs, among other services. The term "dual eligible" encompasses all Medicare beneficiaries who receive Medicaid assistance, including those who receive the full range of Medicaid benefits and those who receive assistance only with Medicare premiums or cost sharing.

Currently, dual eligibles cannot be mandatorily assigned to managed care. The AHCA is seeking authority to mandatorily assign dual eligibles to long-term care managed care plans and managed medical assistance plans.

[2] *See* ch. 2011-134, L.O.F.

Medicare Advantage Plans

Medicare is a federal health insurance program for people 65 or older, people under 65 with certain disabilities, and people of any age with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a kidney transplant). The program is administered by the Centers for Medicare and Medicaid Services (CMS) in the U. S. Department of Health and Human Services.

Medicare has four different parts that cover specific services.

- *Part A* (Hospital Insurance) helps cover inpatient care in hospitals and skilled nursing facilities (not custodial or long-term care). It also helps cover hospice care and some home health care.
- *Part B* (Medical Insurance) helps cover doctors' services and outpatient care. It also covers some other medical services that Part A doesn't cover, such as some of the services of physical and occupational therapists, and some home health care. Part B helps cover some preventive services that help people maintain their health and keep certain illnesses from getting worse.
- *Part C* (Medicare Advantage Plans) covers Part A, Part B, and usually Part D services provided by Medicare-approved private insurance companies.
- *Part D* (Prescription Drug Coverage) helps cover the cost of prescription drugs through Medicare-approved private insurance companies.

The Balanced Budget Act of 1997 established a new Part C of the Medicare program, known then as the Medicare+Choice program, effective January 1999. The act authorized the CMS to contract with public or private organizations to offer a variety of health plan options for beneficiaries, including coordinated care plans, Medicare Medical Savings Account plans, private-fee-for-service plans, and Religious Fraternal Benefit plans. These health plans provide all Medicare Parts A and B benefits, and most offer additional benefits beyond those covered under the original Medicare program.

The Medicare+Choice program in Part C of Medicare was renamed the Medicare Advantage Program under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, which was enacted in December 2003. This act updated and improved the choice of plans for beneficiaries under Part C. Beneficiaries may now choose from additional plan options, including regional preferred provider organization plans and special needs plans. The act also established the Medicare prescription drug benefit (Part D) program, and amended the Part C program to allow (and, for organizations offering coordinated care plans, require) most Medicare Advantage plans to offer prescription drug coverage.

Coordinated care plans are plans that include a network of providers that are under contract or arrangement with the organization to deliver the benefit package approved by the CMS. They may include mechanisms to control utilization, such as referrals from a gatekeeper for an enrollee to receive services within the plan, and financial arrangements that offer incentives to providers to furnish high quality and cost-effective care. Coordinated care plans include plans offered by any of the following:

- Health maintenance organizations (HMOs);
- Provider-sponsored organizations (PSOs);
- Regional or local preferred provider organizations (PPOs);

- Other network plans, except for private-fee-for-service plans; and
- Specialized Medicare Advantage plans for special needs individuals, which include any type of coordinated care plan that exclusively enrolls special needs individuals.[3] Special needs individuals are Medicare Advantage eligible individuals who are institutionalized, have severe or disabling chronic conditions, or qualify both for Medicare and Medicaid benefits (dual eligibles).[4]

Specialized Medicare Advantage plans for special needs individuals must provide Part D benefits. They must be designated by the CMS as meeting the requirements of a Medicare Advantage special needs plan as determined on a case-by-case basis using criteria that include the appropriateness of the target population, the existence of clinical programs or special expertise to serve the target population, and whether the proposal discriminates against sicker members of the target population.

Medicare Advantage organizations seeking to offer a special needs plan serving beneficiaries eligible for both Medicare and Medicaid must have a contract with the State Medicaid agency (the AHCA).[5] Medicare Advantage plans wishing to offer a special needs plan are required to meet additional requirements set forth by federal law, including approval by the National Commission on Quality Assurance, effective January 1, 2012.

The Medicare Advantage program also provides for a "*fully integrated* dual eligible special needs plan." The fully integrated plan is a CMS-approved Medicare Advantage/Prescription Drug dual eligible special needs plan that:

- Enrolls special needs individuals entitled to medical assistance under Medicaid;
- Provides dual eligible beneficiaries access to Medicare and Medicaid benefits under a single managed care organization;
- Has a capitated contract with a State Medicaid agency that includes coverage of specified primary, acute, and long-term care benefits and services;
- Coordinates the delivery of covered Medicare and Medicaid health and long-term care services using aligned care management and specialty network methods for high-risk beneficiaries; and
- Employs policies and procedures approved by the CMS and the State to coordinate or integrate member materials, enrollment, communications, grievance and appeals, and quality improvement.[6]

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[3] 42 C.F.R. part 422.4, Types of MA plans. Found at: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=6458b5363e3fed66ddaf309b5baa0b31&rgn=div8&view=text&node=42:3.0.1.1.9.1.5.3&idno=42> (Last visited on January 17, 2012).

[4] 42 C.F.R. part 422.2, Definitions. Found at: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=92c8e79ce6a6a52e4b60a4251b9a8745;rgn=div8;view=text;node=42%3A3.0.1.1.9.1.5.2;idno=42;cc=ecfr> (Last visited on January 17, 2012).

[5] 42 C.F.R. part 422.107, Special needs plans and dual-eligibles: Contract with State Medicaid Agency. Found at: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=92c8e79ce6a6a52e4b60a4251b9a8745;rgn=div5;view=text;node=42%3A3.0.1.1.9;idno=42;cc=ecfr#42:3.0.1.1.9.3.5.8> (Last visited on January 17, 2012).

[6] 42 C.F.R. part 422.2, Definitions. Found at: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=92c8e79ce6a6a52e4b60a4251b9a8745;rgn=div8;view=text;node=42%3A3.0.1.1.9.1.5.2;idno=42;cc=ecfr> (Last visited on January 17, 2012).

Health Maintenance Organization Minimum Surplus Requirement

Subsection 641.225(1), F.S., requires each health maintenance organization to maintain at all times a minimum surplus in an amount that is the greater of $1,500,000, 10 percent of total liabilities, or 2 percent of total annualized premium. The surplus account requirement is not specific to a certain line of business. Companies that operate or own multiple plans are only required to hold one surplus account.

III. Effect of Proposed Changes:

Section 1 amends s. 409.9122, F.S., relating to mandatory Medicaid managed care enrollment, to require, rather than to authorize, the AHCA to establish a per-member, per-month payment for enrollees of a Medicare Advantage coordinated care plan who are also eligible for Medicaid. The existing statutory provision applies only to members of Medicare Advantage special needs plans who are also eligible for Medicaid. The AHCA currently contracts with 12 Medicare Advantage special needs plans and has established a per-member, per-month payment. By using the term Medicare Advantage coordinated care plans, plans other than Medicare Advantage special needs plans would receive a per-member, per-month payment for enrollees who are dual eligibles. This will have an impact on enrollment levels of the existing contractees.

Section 2 amends s. 409.962, F.S., which provides definitions for the recently enacted Medicaid managed care program, to modify the definition of "eligible plan." The bill clarifies that, for purposes of dual eligibles, the term "eligible plan" includes all Medicare Advantage coordinated care plans. The term is also expanded to include dual eligibles enrolled in the managed medical assistance program, not just enrollees in the long-term care managed care program.

According to the AHCA,[7] there are 87,000 Medicaid recipients residing in a nursing home or participating in a waiver program who will be required to participate in the long-term care managed care program. Of these, 82,000 are dual eligibles who are eligible for full Medicaid services and Medicare services. The AHCA does not currently know the number of these individuals who are enrolled in Medicare Advantage plans or the Medicare Advantage plans in which they are enrolled. In order to implement this provision, the AHCA may need to obtain information from Medicare Advantage plans and may need to make systems changes.

There will be 5,000 who are not dual eligibles who will be eligible for both the long-term care managed care program and the managed medical assistance program. These individuals would not qualify for enrollment in a Medicare Advantage plan.

Section 3 amends s. 409.967, F.S., relating to managed care plan accountability, to clarify that, for plans, other than provider services networks, only the *departing* plans must pay the penalty of 25 percent of the minimum surplus required under s. 641.225(1), F.S. The bill also reduces the penalty on departing plans, other than provider services networks, to 25 percent of the minimum surplus which is attributable to the provision of coverage to Medicaid enrollees, not all plan enrollees. This change may potentially reduce the payment a departing plan must make.

[7] *See* Agency for Health Care Administration 2012 Bill Analysis and Economic Impact Statement for SB 730 – on file with the Health Regulation Committee.

Section 4 amends s. 409.974, F.S., relating to eligibility of plans for participation in the Medicaid managed medical assistance program, to exempt a Medicare Advantage coordinated care plan from the procurement requirements or regional plan limits applicable to other managed care plans, if the Medicare Advantage coordinated care plan's Medicaid enrollees in the region consist exclusively of its current Medicare enrollees who are dually eligible. Participation by such plans would be pursuant to a contract with the AHCA. If a plan's Medicaid enrollees are not exclusively its current Medicare enrollees who are dually eligible, the plan must meet all procurement requirements. The bill corrects an incorrect cross-reference.

If Medicare Advantage plans are allowed to become Medicaid managed medical assistance plans and are not subject to procurement requirements, the AHCA will need to develop an open application document and process in addition to the competitive procurement documents and process specified in current law. The application would be necessary to ensure that Medicare Advantage plans meet or have the ability to meet all statutorily required and agency-defined contract requirements.

Section 5 amends s. 409.977, F.S., relating to enrollment of Medicaid managed medical assistance program recipients into managed care plans, to specify that, if a Medicaid recipient has not voluntarily selected a plan, is a dual eligible, and is currently receiving Medicare services from a Medicare Advantage coordinated care plan, the AHCA must automatically enroll the recipient in that plan for Medicaid services, if the plan is under contract with the AHCA.

The dual-eligible population makes up a large portion of the long-term-care population available for enrollment in Medicaid health plans. Under the provisions of this section, a health plan selected by the AHCA for the managed medical assistance program that is not also a Medicare Advantage plan may not have as many enrollments as a plan that does have a Medicare Advantage plan. Existing Medicare Advantage plans would have the advantage in enrolling dual eligibles for Medicaid services.

Section 6 amends s. 409.981, F.S., relating to eligibility of long-term care plans for participation in the Medicaid long-term care managed care program, to expand the list of Medicare Advantage plans to include all the Medicare Advantage coordinated care plans. The law currently includes only Medicare Advantage preferred provider organizations, Medicare Advantage provider-sponsored organizations, and Medicare Advantage special needs plans. The bill also limits the existing statutory exemption for such plans from the procurement requirements to plans whose Medicaid enrollees consist exclusively of its current Medicare enrollees who are dually eligible.

Section 7 amends s. 409.984, F.S., relating to enrollment of Medicaid recipients into long-term care managed care plans, to expand the list of Medicare Advantage plans to include all the Medicare Advantage coordinated care plans. The law currently includes only Medicare Advantage preferred provider organizations, Medicare Advantage provider-sponsored organizations, and Medicare Advantage special needs plans. This will potentially increase the number of plans available and potentially reduce enrollment in each plan.

Section 8 provides an effective date of July 1, 2012.

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 the 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:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has no discernable fiscal impact on the AHCA. The number of persons enrolled, the scope and extent of services, and the costs associated with the services will remain the same under the changes contained in the bill.[8]

VI. Technical Deficiencies:

On line 20, the word "care" should be inserted before the word "plans."

The term "Medicare Advantage coordinated care plan" is the federal Medicare term that encompasses a variety of plans that are offered by various organizations. It may be sufficient to refer to "Medicare Advantage coordinated care plans" as section 1 of the bill does, rather than listing all the types of organizations and plans within that broader category throughout the bill.

VII. Related Issues:

Section 1 of the bill requires the AHCA to establish a per-member, per-month payment for enrollees of a Medicare Advantage coordinated care plan who are also eligible for Medicaid. There are currently Medicare Advantage special needs plans that have entered into Coordination

[8] *Id.*

of Benefits Agreements with the AHCA. Under these agreements, the plan coordinates care for its members and the AHCA pays any cost sharing. Cost-sharing includes deductibles, coinsurance, and co-payments, but does not include any premiums. The AHCA does not pay a per-member, per-month payment to the plans that have a Coordination of Benefits Agreement with the AHCA.

Implementation of the requirement on lines 86-87 to split the minimum surplus requirement for health maintenance organizations into Medicaid and non-Medicaid business will be dependent on the ability of the AHCA to obtain the necessary data to develop a methodology for calculating the penalty on only the Medicaid-related surplus requirement. The AHCA has indicated that it is currently unable to identify what portion of the surplus requirement is related to Medicaid recipients.[9]

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 January 19, 2012:
The CS exempts Medicare Advantage plans from the procurement requirements for the managed medical assistance program and the long-term care managed care program only if their Medicaid enrollees consist exclusively of their current Medicare enrollees.

B. Amendments:

None.

[9] *Id.*

382986

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2012	.	
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	.	

The Committee on Health Regulation (Garcia) recommended the following:

Senate Amendment

Delete lines 134 - 137
and insert:
plan's Medicaid enrollees in the region consist exclusively of its current Medicare enrollees who are dually eligible for Medicaid and Medicare services. Otherwise, such organizations and plans are subject to all procurement requirements.

Delete lines 172 - 173
and insert:
requirements if the plan's Medicaid enrollees consist

382986

exclusively of its current Medicare enrollees ~~recipients~~ who are deemed dually eligible for

By Senator Flores

38-00402A-12 2012730__

A bill to be entitled

An act relating to Medicaid managed care plans; amending s. 409.9122, F.S.; requiring the Agency for Health Care Administration to establish per-member, per-month payments; substituting the Medicare Advantage Coordinated Care Plan for the Medicare Advantage Special Needs Plan; amending s. 409.962, F.S.; revising the definition of "eligible plan" to include certain Medicare plans; amending s. 409.967, F.S.; limiting the penalty that a plan must pay if it leaves a region before the end of the contract term; amending s. 409.974, F.S.; correcting a cross-reference; providing that certain Medicare plans are not subject to procurement requirements or plan limits; amending s. 409.977, F.S.; requiring dually eligible Medicaid recipients to be enrolled in the Medicare plan in which they are already enrolled; amending s. 409.981, F.S.; revising the list of Medicare plans that are not subject to procurement requirements for long-term plans; amending s. 409.984, F.S.; revising the list of Medicare plans in which dually eligible Medicaid recipients are enrolled in order to receive long-term care; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (15) of section 409.9122, Florida Statutes, is amended to read:

38-00402A-12 2012730__

409.9122 Mandatory Medicaid managed care enrollment; programs and procedures.—

(15) The agency shall ~~may~~ establish a per-member, per-month payment for enrollees who are enrolled in a Medicare Advantage Coordinated Care Plan and who ~~Medicare Advantage Special Needs members that~~ are also eligible for Medicaid as a mechanism for meeting the state's cost-sharing obligation. The agency may also develop a per-member, per-month payment only for Medicaid-covered services for which the state is responsible. The agency shall develop a mechanism to ensure that such per-member, per-month payment enhances the value to the state and enrolled members by limiting cost sharing, enhances the scope of Medicare supplemental benefits that are equal to or greater than Medicaid coverage for select services, and improves care coordination.

Section 2. Subsection (6) of section 409.962, Florida Statutes, is amended to read:

409.962 Definitions.—As used in this part, except as otherwise specifically provided, the term:

(6) "Eligible plan" means a health insurer authorized under chapter 624, an exclusive provider organization authorized under chapter 627, a health maintenance organization authorized under chapter 641, ~~or~~ a provider service network authorized under s. 409.912(4)(d), or an accountable care organization authorized under federal law. For purposes of the managed medical assistance program, the term also includes the Children's Medical Services Network authorized under chapter 391. For purposes of dually eligible Medicaid and Medicare recipients enrolled in the managed medical assistance program and the long-term care managed care program, the term also includes entities

qualified under 42 C.F.R. part 422 as Medicare Advantage Preferred Provider Organizations, Medicare Advantage Provider-sponsored Organizations, Medicare Advantage Health Maintenance Organizations, Medicare Advantage Coordinated Care Plans, ~~and~~ Medicare Advantage Special Needs Plans, and the Program of All-inclusive Care for the Elderly.

Section 3. Paragraph (h) of subsection (2) of section 409.967, Florida Statutes, is amended to read:

409.967 Managed care plan accountability.—

(2) The agency shall establish such contract requirements as are necessary for the operation of the statewide managed care program. In addition to any other provisions the agency may deem necessary, the contract must require:

(h) *Penalties.*—

1. Withdrawal and enrollment reduction.—Managed care plans that reduce enrollment levels or leave a region before the end of the contract term must reimburse the agency for the cost of enrollment changes and other transition activities. If more than one plan leaves a region at the same time, costs must be shared by the departing plans proportionate to their enrollments. In addition to the payment of costs, departing provider services networks must pay a per-enrollee ~~per enrollee~~ penalty of up to 3 months' payment and continue to provide services to the enrollee for 90 days or until the enrollee is enrolled in another plan, whichever occurs first. In addition to payment of costs, all other departing plans must pay a penalty of 25 percent of that portion of the minimum surplus maintained ~~requirement~~ pursuant to s. 641.225(1) which is attributable to the provision of coverage to Medicaid enrollees. Plans shall provide at least 180

days' notice to the agency before withdrawing from a region. If a managed care plan leaves a region before the end of the contract term, the agency shall terminate all contracts with that plan in other regions~~,~~ pursuant to the termination procedures in subparagraph 3.

2. Encounter data.—If a plan fails to comply with the encounter data reporting requirements of this section for 30 days, the agency must assess a fine of $5,000 per day for each day of noncompliance beginning on the 31st day. On the 31st day, the agency must notify the plan that the agency will initiate contract termination procedures on the 90th day unless the plan comes into compliance before that date.

3. Termination.—If the agency terminates more than one regional contract with the same managed care plan due to noncompliance with the requirements of this section, the agency shall terminate all the regional contracts held by that plan. When terminating multiple contracts, the agency must develop a plan to provide for the transition of enrollees to other plans, and phase in ~~phase-in~~ the terminations over a time period sufficient to ensure a smooth transition.

Section 4. Subsection (2) of section 409.974, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

409.974 Eligible plans.—

(2) QUALITY SELECTION CRITERIA.—In addition to the criteria established in s. 409.966, the agency shall consider evidence that an eligible plan has written agreements or signed contracts or has made substantial progress in establishing relationships with providers before the plan submitted ~~submitting~~ a response.

The agency shall evaluate and give special weight to evidence of signed contracts with essential providers as determined ~~defined~~ by the agency pursuant to s. 409.975(1) ~~409.975(2)~~. The agency shall exercise a preference for plans with a provider network in which more than ~~over~~ 10 percent of the providers use electronic health records, as defined in s. 408.051. When all other factors are equal, the agency shall consider whether the organization has a contract to provide managed long-term care services in the same region and shall exercise a preference for such plans.

(5) MEDICARE PLANS.—Participation by an entity qualified under 42 C.F.R. PART 422 as a Medicare Advantage Preferred Provider Organization, Medicare Advantage Provider-sponsored Organization, Medicare Advantage Health Maintenance Organization, Medicare Advantage Coordinated Care Plan, or Medicare Advantage Special Needs Plan shall be pursuant to a contract with the agency and is not subject to the procurement requirements or regional plan limits of this section if the plan's Medicaid enrollees in the region consist exclusively of recipients who are dually eligible for Medicaid and Medicare services. Otherwise, such organizations and plans must meet all other plan requirements.

Section 5. Subsection (1) of section 409.977, Florida Statutes, is amended to read:

409.977 Enrollment.—

(1) The agency shall automatically enroll into a managed care plan those Medicaid recipients who do not voluntarily choose a plan pursuant to s. 409.969. The agency shall automatically enroll recipients in plans that meet or exceed the performance or quality standards established pursuant to s.

409.967 and may not automatically enroll recipients in a plan that is deficient in those performance or quality standards. If ~~When~~ a specialty plan is available to accommodate a specific condition or diagnosis of a recipient, the agency shall assign the recipient to that plan. In the first year of the first contract term only, if a recipient was previously enrolled in a plan that is still available in the region, the agency shall automatically enroll the recipient in that plan unless an applicable specialty plan is available. If a recipient is dually eligible for Medicaid and Medicare services and is currently receiving Medicare services from an entity listed in s. 409.974(5), the agency shall automatically enroll the recipient in that plan for Medicaid services if the plan is currently under contract with the agency pursuant to s. 409.974(5). Except as otherwise provided in this part, the agency may not engage in practices that are designed to favor one managed care plan over another.

Section 6. Subsection (5) of section 409.981, Florida Statutes, is amended to read:

409.981 Eligible long-term care plans.—

(5) MEDICARE PLANS.—Participation by a Medicare Advantage Preferred Provider Organization, Medicare Advantage Provider-sponsored Organization, Medicare Advantage Health Maintenance Organization, Medicare Advantage Coordinated Care Plan, or Medicare Advantage Special Needs Plan shall be pursuant to a contract with the agency and is not subject to the procurement requirements if the plan's Medicaid enrollees consist exclusively of recipients who are deemed dually eligible for Medicaid and Medicare services. Otherwise, such organizations

and plans ~~Medicare Advantage Preferred Provider Organizations, Medicare Advantage Provider-sponsored Organizations, and Medicare Advantage Special Needs Plans~~ are subject to all procurement requirements.

Section 7. Subsection (1) of section 409.984, Florida Statutes, is amended to read:

409.984 Enrollment in a long-term care managed care plan.—

(1) The agency shall automatically enroll into a long-term care managed care plan those Medicaid recipients who do not voluntarily choose a plan pursuant to s. 409.969. The agency shall automatically enroll recipients in plans that meet or exceed the performance or quality standards established pursuant to s. 409.967 and may not automatically enroll recipients in a plan that is deficient in those performance or quality standards. If a recipient is deemed dually eligible for Medicaid and Medicare services and is currently receiving Medicare services from an entity qualified under 42 C.F.R. part 422 as a Medicare Advantage Preferred Provider Organization, Medicare Advantage Provider-sponsored Organization, Medicare Advantage Health Maintenance Organization, Medicare Advantage Coordinated Care Plan, or Medicare Advantage Special Needs Plan, the agency shall automatically enroll the recipient in such plan for Medicaid services if the plan is under contract with the agency ~~currently participating in the long-term care managed care program~~. Except as otherwise provided in this part, the agency may not engage in practices that are designed to favor one managed care plan over another.

Section 8. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Budget
Budget - Subcommittee on Education Pre-K - 12 Appropriations
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability
Reapportionment
Rules

SENATOR ANITERE FLORES
Majority Whip
38th District

November 17, 2011

The Honorable Rene Garcia
Chair of Committee on Health Regulation
310 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Garcia:

I respectfully request that you place SB 730, regarding Medicaid managed care plans, on the next Health Regulation Committee agenda. This proposed legislation requires the Agency for Health Care Administration to make revisions to current Medicare plans..

I look forward to presenting this bill before your committee.

Please do not hesitate to contact me should you have any questions. Thank you for your consideration.

Sincerely,

Anitere Flores

Anitere Flores

CC: Ms. Sandra Stovall, Staff Director, Committee on Health Regulation, 530 Knott Building

ENTERED

REPLY TO:
❒ 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
❒ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5130

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/2012
Meeting Date

Topic MEDICAID MANAGED CARE PLANS Bill Number 730
(if applicable)

Name RAMON MAURY Amendment Barcode
(if applicable)

Job Title LOBBYIST

Address 574 E. COLLEGE AVE Phone 850 222 5685
Street

TAL FL 32301 E-mail MMGGROUP@AOL.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☒ Information SUPPORTING SEN GARCIA'S AMENDMENT

Representing AMERICAN ELDER CARE

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/2012
Meeting Date

Topic Medicaid Managed Care Plans

Bill Number SB 730 *(if applicable)*

Name Jennifer Green

Amendment Barcode _____ *(if applicable)*

Job Title ~~Atr~~

Address 113 E. College Ave
Street
Tallahassee, FL 32301
City *State* *Zip*

Phone (850) 528-8809

E-mail jennifer@libertypartnersfl.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Humana

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/2012
Meeting Date

Topic MANAGED CARE PLANS

Bill Number 730 *(if applicable)*

Name JACK COLY

Amendment Barcode *(if applicable)*

Job Title PRESIDENT

Address COLLEGE AVE
Street

TAL FL 32301
City *State* *Zip*

Phone

E-mail

Speaking: ☐ For ☒ Against ☐ Information

Representing AMERICAN ELDER CARE — OPPOSING GAGE AMOS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

Spoke

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

01/19/12
Meeting Date

730

Topic Medicaid Managed Care

Bill Number SB ~~270~~ As amended
(if applicable)

Name Michael Cooper

Amendment Barcode
(if applicable)

Job Title Pres + CEO

Address 200 W. College Ave, Suite 104
Street

Phone 850-386-2904

Tallahassee FL 32301
City *State* *Zip*

E-mail michael@fahp.net

Speaking: ☐ For ☐ Against ☐ Information

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Regulation Committee

BILL:	CS/SB 1568
INTRODUCER:	Health Regulation Committee and Senators Gaetz and Garcia
SUBJECT:	Sale or Lease of County, District, or Municipal Hospital
DATE:	January 20, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**Fav/CS**
2.			CA	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The committee substitute (CS) requires any sale or lease of a public hospital that is owned by a county, district, or municipality to be approved by the Chief Financial Officer (CFO) of Florida, unless a majority vote of the registered voters within that county, district, or municipality, is required by law.

Unless exempted, the governing board of a public hospital must, by August 15, 2012, evaluate the possible benefits to an affected community from the sale or lease of the hospital. By December 8, 2012, the governing board must publish its findings related to the evaluation.

The CS also provides that prior to the sale or lease, the governing board of the public hospital must provide public notice of the proposed transaction, publish documents associated with the transaction, and publish the governing board's findings regarding the proposed sale or lease. The CS also provides the process of review of the sale or lease to be conducted by the CFO prior to approval or rejection of the sale or lease.

The CS provides for the appeal of the CFO's decision by the governing board or an interested party.

The CS allocates net proceeds received from the sale or lease of a county, district, or municipal hospital and ad valorem tax revenue collected when a public hospital is sold or leased to a for-profit corporation or other business entity subject to local taxation.

The CS exempts a lease modification, renewal, or extension relating to a hospital that was leased prior to the CS becoming a law from the evaluation, public disclosure, or approval processes, or net proceeds or tax revenue allocations provided for in the CS. The CS also exempts the sale or lease of any hospital property that generates less than a certain amount of revenue from these processes and allocations.

The CS also provides that, despite any other provision of general or special law, the purposes for which a special taxing district may appropriate funds from the sale or lease of a hospital to an economic development fund include the promotion and support of economic growth in the district and in the county in which the district is located.

The CS will take effect upon becoming a law.

This CS amends sections 155.40 and 395.3036, Florida Statutes.

This CS creates section 155.401, Florida Statutes.

II. Present Situation:

Sale or Lease of Public Hospitals

County, district, and municipal hospitals may be created by special enabling acts, rather than by general acts under Florida law.[1] The special act may specify the hospital's ability or inability to levy taxes to support the maintenance of the hospital, the framework for the governing board, and whether or not the governing board has the ability to issue bonds. There are currently 34 hospital districts in Florida under which public hospitals operate,[2] and the Public Health Trust of Miami-Dade County, which is not a special hospital district but is a part of county government.[3]

The process for the sale or lease of a public hospital is established by s. 155.40, F.S. Currently, the governing board of a public hospital has the authority to negotiate the sale or lease of the hospital. The hospital can be sold or leased to a for-profit or not-for-profit Florida corporation and such sale or lease must be in the best interest of the public. The board is required to publicly advertise the meeting at which the proposed sale or lease will be discussed in accordance with

[1] Section 155.04, F.S., allows a county, upon receipt of a petition signed by at least 5 percent of resident freeholders, to levy an ad valorem tax or issue bonds to pay for the establishment and maintenance of a hospital. Section 155.05, F.S., gives a county the ability to establish a hospital without raising bonds or an ad valorem tax, utilizing available discretionary funds. However, an ad valorem tax can be levied for the ongoing maintenance of the hospital.

[2] *See* Agency for Health Care Administration, Florida Commission on Review of Taxpayer Funded Hospital Districts, *Hospital Tax District Survey Data*, for a list of taxpayer funded hospital districts, available at: http://ahca.myflorida.com/mchq/FCTFH/hospitalNEW.shtml (Last visited on January 17, 2012).

[3] Commission on Review of Taxpayer Funded Hospital Districts, *Report of the Commission on Review of Taxpayer Funded Hospital Districts*, pg. 8, available at: http://ahca.myflorida.com/mchq/FCTFH/pdf/122911Meeting/FinalReportRF2.pdf (Last visited on January 17, 2012).

s. 286.0105, F.S., and the offer to accept proposals from all interested and qualified purchasers in accordance with s. 255.0525, F.S.

Section 155.40(2), F.S., requires any lease, contract, or agreement to:

- Provide that the articles of incorporation of the corporation are subject to approval of the board of directors or board of trustees of the hospital.
- Require that any not-for-profit corporation become qualified under s. 501(c)(3) of the U.S. Internal Revenue Code.
- Provide for the orderly transition of the operation and management of the facilities.
- Provide for the return of the facility to the county, municipality, or district upon the termination of the lease, contract, or agreement.
- Provide for the continued treatment of indigent patients pursuant to the Florida Health Care Responsibility Act[4] and ch. 87-92, Laws of Florida.

For the sale or lease to be considered "a complete sale of the public agency's interest in the hospital" under s. 155.40(8)(a), F.S., the purchasing private entity must:

- Acquire 100 percent ownership of the hospital enterprise.
- Purchase the physical plant of the hospital facility and have complete responsibility for the operation and maintenance of the facility, regardless of the underlying ownership of the real property.
- Not allow the public agency to retain control over decision-making or policymaking for the hospital.
- Not receive public funding, other than by contract for services rendered to patients for whom the public agency seller has the responsibility to pay for hospital or medical care.
- Not receive substantial investment or loans from the seller.
- Not be created by the public agency seller.
- Primarily operate for its own financial interests and not those of the public agency seller.

A complete sale of the public agency's interest under s. 155.40(8)(b), F.S., shall not be construed as:

- A transfer of governmental function from the county, district, or municipality to the private corporation or entity.
- A financial interest of the public agency in the private corporation or other private entity purchaser.
- Making the private corporation or other private entity purchaser an "agency" as that term is used in statute.
- Making the private entity an integral part of the public agency's decision-making process.
- Indicating that the private entity is "acting on behalf of a public agency," as that term is used in statute.

If the corporation that operates a public hospital receives more than $100,000 in revenues from the county, district, or municipality, it must account for the manner in which the funds are expended.[5] The funds are to be expended by being subject to annual appropriations by the

[4] Sections 154.301-154.316, F.S.
[5] Section 155.40(5), F.S.

county, district, or municipality, or if there is a contract for 12 months or longer to provide revenues to the hospital, then the governing board of the county, district, or municipality must be able to modify the contract upon 12 months notice to the hospital.[6]

Recent Leases or Sales of Public Hospitals

The public hospital Bert Fish Medical Center entered into a controversial $80 million lease agreement with Adventist Health System, which was nullified by Circuit Court Judge Richard Graham because of 21 closed-door meetings that occurred during the negotiation process and violated Florida's Sunshine Law under s. 286.011, F.S.[7]

Other leases or sales or proposed leases or sales of public hospitals have been scrutinized, especially for the effect such sales or leases would have on taxpayers. For example, Helen Ellis Hospital was merged with Adventist Health in 2010, and there have been proposals to turn public hospital systems in Miami-Dade County and Broward County into private hospitals.[8]

Florida Commission on Review of Taxpayer Funded Hospital Districts

On March 23, 2011, Governor Rick Scott issued Executive Order Number 11-63, which created the Florida Commission on Review of Taxpayer Funded Hospital Districts (Commission). The Commission was created to assess and make recommendations on the role of hospital districts, whether it is in the public's best interest to have government entities operating hospitals, and what is the most effective model for enhancing health-care access for the poor.

The Commission held 14 public meetings between May 23 and December 29, 2011, at which stakeholders, government officials, and taxpayers gave testimony and made presentations. The Commission also surveyed all Florida hospital districts. Based on the presentations, testimony, and the survey responses, the Commission made several recommendations in the Report of the Commission on Review of Taxpayer Funded Hospital Districts.[9]

The Commission's general recommendations include the following:[10]

- The Governor and other appointing authorities should appoint qualified individuals to district and hospital boards who do not have conflicts of interest.
- Board members should include health care stakeholders and members of the local community who have financial expertise and experience operating successful, larger enterprises.

[6] *Id.*
[7] Linda Shrieves, *Judge rules Bert Fish must cut ties with Florida Hospital*, Orlando Sentinel, February 24, 2011, available at: http://articles.orlandosentinel.com/2011-02-24/health/os-bert-fish-decision-20110224_1_sunshine-laws-open-meetings-hospital-board (Last visited January 17, 2012).
[8] Anne Geggis, *Bills reflect problems at Bert Fish*, Daytona Beach News-Journal, March 8, 2011, available at: http://www.news-journalonline.com/news/local/southeast-volusia/2011/03/08/bills-reflect-problems-at-bert-fish.html (Last visited January 17, 2012).
[9] Commission on Review of Taxpayer Funded Hospital Districts, *Report of the Commission on Review of Taxpayer Funded Hospital Districts*, pg. 1, available at: http://ahca.myflorida.com/mchq/FCTFH/pdf/122911Meeting/FinalReportRF2.pdf (Last visited on January 17, 2012).
[10] *Id.* at 3.

- To ensure appropriate checks and balances, the membership of district and hospital boards should be separate and distinct.
- To ensure appropriate checks and balances the membership of hospital board members and hospital managers should be separate and distinct.
- Special hospital districts should become indigent health care districts, funding indigent health care based on local priorities and not limited to hospitals owned or operated by the districts. As a part of the transition to indigent health care districts, hospital districts that own hospitals should de-couple them from the districts.
- When considering changes to taxation rates, millage rates should be adjustable with a maximum allowable rate, but with the flexibility to lower the rate if circumstances change.
- Boards of directors of hospital districts should be subject to appropriate oversight.

Furthermore, to correspond with the directives in the Governor's executive order, the Commission made several comments and recommendations regarding quality of care, cost of care, access to care for the poor, oversight and accountability, physician employment, and changes of ownership and governance in taxpayer funded hospitals.[11] Those comments and recommendations, pertaining to the sale or lease of taxpayer funded hospitals, are as follows:

- Using the available outcome data, the Commission could not establish that there is a pattern of higher or lower quality in Florida hospitals based on ownership. The Governor and Legislature should support the Agency for Health Care Administration (AHCA) in its effort to continue to refine and publish data on outcomes and quality by hospital and health care facility.
- An open, competitive public procurement process or negotiation should be ensured.
- A fair and independent asset valuation process should be ensured during a sale or lease.
- Guidelines should be established to ensure an ongoing community benefit from any proceeds generated by the sale of a hospital.
- Without inhibiting the functioning of a free market, independent oversight of a sale or lease process should be maintained with review by an appropriate authority.
- The maintenance and/or expansion of community health programs should be required if there is a sale or lease, with an emphasis on primary care and emergency room diversion.

Chief Financial Officer of Florida

Florida's Chief Financial Officer (CFO) oversees the state's accounting and auditing functions and unclaimed property, monitors the investment of state funds, and manages the deferred compensation program and risk management program for the state.[12]

Florida's CFO serves as one of three constitutionally elected state executives of the Florida Cabinet, which consists of the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture and Consumer Services. The Governor and the Cabinet serve as a board of directors, or agency heads, governing such matters as the purchase of state lands; clemency matters; state bond, trust and fund management; veterans' affairs; state law

[11] *Id.* at 4-5.
[12] Florida Department of Financial Services, Jeff Atwater, Chief Financial Officer, *Meet the CFO*, available at: http://www.myfloridacfo.com/sitepages/agency/cfo.aspx (Last visited on January 17, 2012).

enforcement administration; tax collection; power plant and transmission line sitings; and financial and insurance regulation for the state of Florida.[13]

III. Effect of Proposed Changes:

Section 1 amends s. 155.40, F.S., to require the governing board of a county, district, or municipal hospital to find that a sale, lease, or contract is in the best interests of the "affected community," rather than the public and requires the board to state the basis of that finding. "Affected community" is defined in this section to mean those persons residing within the geographic boundaries defined by the charter of the county, district, or municipal hospital, or if the boundaries are not specifically defined by charter of the hospital, by the geographic area from which 75 percent of the county, district, or municipal hospital's inpatient admissions are derived.

Subsection (3) of this section exempts any lease modification, renewal, or extension relating to a hospital that was leased before the CS becomes a law from the requirements in the CS relating to hospital evaluations, public disclosure of the lease, processes in order for the lease to be approved, and allocations of net proceeds or tax revenue generated from the lease.

Subsection (5) of this section requires the hospital governing board, within 45 calendar days after July 1, 2012 (by August 15, 2012), to commence an evaluation of the possible benefits to an affected community from the sale or lease of hospital facilities owned by the board to a nonprofit or for-profit entity. During the evaluation the board must:

- Conduct a public hearing to provide interested persons the opportunity to be heard on the matter.
- Publish notice of the public hearing in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located and in the Florida Administrative Weekly at least 15 days before the hearing is scheduled to take place.
- Contract with a certified public accounting firm or other firm having substantial expertise in the valuation of hospitals for an independent valuation of the hospital's "fair market value," which is defined in this section as the price that a seller or lessor is willing to accept and a buyer or lessee is willing to pay on the open market and in an arms-length transaction, or what an independent expert in hospital valuation determines the fair market value to be. The valuation must be available to the public before the scheduled public hearing.
- Consider an objective operating comparison between a hospital or hospital system operated by the district, county, or municipality and other similarly situated hospitals, both nonprofit and for-profit, which have a similar service mix, in order to determine whether there is a difference in the cost of operation using publicly available data provided by the AHCA and the quality metrics identified by the Centers for Medicare and Medicaid Services (CMS) Core Measures. The comparison must determine whether it is more beneficial to taxpayers and the affected community for the hospital to be operated by a governmental entity, or whether the hospital can be operated by a nonprofit or for-profit corporation with similar or better cost efficiencies or measurable outcomes identified by the CMS Core Measures. The comparison must also determine whether

[13] *Id.*

there is a net benefit to the community to operate the hospital as a nonprofit or for-profit entity and use the proceeds of the sale or lease for specified purposes.
- Make publicly available all documents considered by the board in the course of the evaluation.

The governing board must publish notice of the board's findings, within 160 days after July 1, 2012 (by December 8, 2012), in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located and in the Florida Administrative Weekly.

This section includes a provision to grandfather-in, and exempt from the evaluation process, any district, county, or municipal hospital that has issued a public request for proposals for the sale or lease of a hospital on or before February 1, 2012, for the purpose of receiving proposals from interested and qualified prospective buyers or lessees, regardless if the buyer or lessee is nonprofit or for-profit.

Subsection (6) requires the governing board of the hospital, when it has determined that it is no longer in the interest of the public to own or operate the hospital, to first determine whether there are any qualified purchasers or lessees, prior to the sale or lease of the county, district, or municipal hospital. The authority of the board to negotiate the terms of a sale or lease with a for-profit or nonprofit Florida corporation to determine if there is a potential purchaser or lessee is removed.

A sale or lease of the hospital is required to be for fair market value, or if less than fair market value, the lease must be in the best interest of the affected community.

Subsection (7) requires the governing board's determination to accept a proposal for sale or lease to be made after consideration of all proposals received and negotiations with a for-profit or nonprofit business entity organized under the laws of this state. The governing board's determination must include detailed written findings of all reasons for accepting the proposal. Furthermore, the governing board's acceptance of a proposal for sale or lease must include a description of how the sale or lease satisfies each of the following requirements:
- The sale or lease represents fair market value, as determined by a certified public accounting firm or other qualified firm. If leased at less than fair market value, the governing board must provide a detailed explanation of how the best interests of the affected community are served by the acceptance of less than fair market value for the lease of the hospital.
- Acceptance of the proposal will result in a reduction or elimination of ad valorem or other taxes for taxpayers in the district.
- The proposal includes an enforceable commitment that programs and services and quality health care will continue to be provided to all residents of the affected community, particularly to the indigent, the uninsured, and the underinsured.
- Disclosure has been made of all conflicts of interest, including whether the sale or lease of the hospital would result in a special private gain or loss to members of the governing board or key management employees of the county, district, or municipal hospital, or if governing board members will be serving on the board of any successor private

corporation. Conflicts of interest, if any, with respect to experts retained by the governing board must also be disclosed.
- Disclosure has been made by the seller or lessor of all contracts with physicians or other entities to provide health care services, including all agreements or contracts that would be void or voidable upon the consummation of the sale or lease.
- The proposal is in compliance with legal requirements to make the board's findings and documents publicly available, to publish a notice of the proposed transaction, and to allow any person to submit written comments to the board regarding the proposed transaction.

The board's findings must be accompanied by all information and documents relevant to the governing board's determination, including:
- The names and addresses of all parties to the transaction.
- The location of the hospital and all related facilities.
- A description of the terms of all proposed agreements.
- A copy of the proposed sale or lease agreement and any related agreements, including leases, management contracts, service contracts, and memoranda of understanding.
- The estimated total value associated with the proposed agreement and the proposed acquisition price.
- Any valuations of the hospital's assets prepared during the 3 years immediately preceding the proposed transaction date.
- The fair market value analysis.
- Copies of all other proposals and bids the governing board may have received or considered.

Subsection (8) requires, within 120 days before the anticipated closing date of the proposed transaction, the governing board to make publicly available all findings and documents associated with the transaction or relevant to the board's determination, including copies of all other proposals and bids, and publish a notice of the proposed transaction in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located. The notice must include the names of the parties involved and the means by which a person may submit written comments about the proposed transaction to the governing board and obtain copies of the findings and documents.

Subsection (9) provides that, within 20 days after the date of publication of the public notice provided by the governing board, any person may submit to the governing board written comments regarding the proposed transaction.

Subsection (10) provides that the sale or lease of the hospital is subject to approval by the state CFO or his or her designee, unless a law (most likely a local charter) requires approval of the sale or lease exclusively by majority vote of the registered voters in the county, district, or municipality in which the hospital is located.

To obtain approval from the CFO, the governing board must file a petition with the CFO seeking approval of the proposed transaction at least 30 days after publication of the notice of the proposed transaction. The petition for approval filed by the governing board must include all

findings and related documents and certification by the governing board of compliance with all requirements under s. 155.40, F.S. The chair of the governing board must certify under oath and subject to the penalty of perjury on a form accompanying the petition that the contents of the petition and representations therein are true and correct.

Subsection (11) requires the CFO or his or her designee to issue a final order approving or denying the proposed transaction based solely upon consideration of whether the procedures required under s. 155, 40, F.S., have been followed by the governing board of the county, district, or municipal hospital. The CFO's order must require the governing board to accept or reject the proposal for the sale or lease of the county, district, or municipal hospital based upon a determination that:

- The proposed transaction is permitted by law.
- The proposed transaction does not unreasonably exclude a potential purchaser or lessee on the basis of being a for-profit or a not-for-profit Florida corporation or other form of business organization, such as a partnership or limited liability company.
- The governing board of the hospital publicly advertised the meeting at which the proposed transaction was considered by the board in compliance with s. 286.0105, F.S., which requires notice to be provided to the public that a record of a meeting must be made in order to appeal any decision made by the board with respect to any matter considered at the meeting.
- The governing board of the hospital publicly advertised the offer to accept proposals in compliance with s. 255.0525, F.S. which requires the solicitation of competitive bids or proposals for any county, municipality, or other political subdivision construction project that is projected to cost more than $200,000 to be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference. The solicitation of competitive bids or proposals for any county, municipality, or other political subdivision construction project that is projected to cost more than $500,000 must be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled prebid conference.
- Any conflict of interest was disclosed, including how the proposed transaction could result in a special private gain or loss to members of the governing board or key management employees of the county, district, or municipal hospital, or if governing board members will be serving on the board of any successor private corporation. Conflicts of interest, if any, with respect to experts retained by the governing board must also be disclosed.
- The seller or lessor will receive fair market value for the sale or lease of the assets or, if leased at less than fair market value, the governing board provided a detailed explanation of how the best interests of the affected community are served by the acceptance of less than fair market value for the lease of the hospital.
- The acquiring entity has made an enforceable commitment that programs and services and quality health care will continue to be provided to all residents of the affected community, particularly to the indigent, the uninsured, and the underinsured.
- The governing board disclosed whether the sale or lease will result in a reduction or elimination of ad valorem or other taxes used to support the hospital.

Subsection (12) provides that any interested party to the action has the right to seek judicial review of the CFO's decision in the appellate district where the hospital is located or in the First District Court of Appeal pursuant to s. 120.68, F.S. "Interested party" is defined in the CS to include any person submitting a proposal for sale or lease of the county, district, or municipal hospital, as well as the governing board. All appellate proceedings must be initiated by filing a notice of appeal in accordance with the Florida Rules of Appellate Procedure within 30 days after the date of the final order.

In judicial review of the appeal, the appellate court must affirm the decision of the CFO, unless the decision by the CFO is shown to be clearly erroneous.[14]

Subsection (13) requires all costs to be paid by the governing board, unless an interested party contests the action, in which case the court may assign costs equitably to the parties.

Subsection (14) requires that if any provision of subsection (5), subsection (6), or subsection (7) is not followed, the contract for sale or lease is voidable by any party to the contract. If any member of the governing board negligently or willfully violates subsection (5), subsection (6), or subsection (7), as determined by the Commission on Ethics after receipt of a sworn complaint, the member is subject to a penalty, as determined by the Commission on Ethics.

Subsection (15) requires, when a county, district, or municipal hospital is sold or leased, the governing board to:

- Deposit 50 percent of the "net proceeds," which means the sale price after payment of all district debts and obligations, of the sale or lease into an economic development trust fund, which must be under the control of the county commission of the county in which the property is located. The use and distribution of the funds must be at the discretion of a majority of the county commission, the members of which must serve as trustees of the trust fund. The net proceeds in the economic development trust fund must be distributed, in consultation with the Department of Economic Opportunity, to promote new business development, research, collaborative investment with the state university system, and the expansion of business economic opportunities within the affected community; and
- Appropriate 50 percent of the net proceeds of the sale or lease for funding the delivery of indigent and uncompensated care on an equitable basis, based on the amount of indigent and uncompensated care provided, to all hospitals within the boundaries of the district.

Subsection (16) provides that if a county, district, or municipal hospital is sold or leased to a for-profit corporation or other business entity subject to local taxation, in addition to the distribution of net proceeds as directed in subsection (15):

- Fifty percent of the resulting county and municipal ad valorem tax revenue from the formerly tax-exempt property must be distributed by the county commission of the county in which the property is located, in consultation with the Department of Economic

[14] "Clearly erroneous" is the standard of review that an appellate court usually applies in judging a trial court's treatment of factual issues. Under this standard, a judgment will be upheld unless the appellate court is left with the firm conviction that an error has been committed. Black's Law Dictionary, 9th ed., 2009.

Opportunity, to promote new or expanded health care business development or health care research within the affected community; and

- Fifty percent of the resulting county and municipal ad valorem tax revenue from the formerly tax-exempt property must be appropriated by the county commission for the sole purpose of enhancing education and law enforcement programs within the county.

Subsection (21) exempts, from the evaluation, public disclosure, and approval of sale or lease processes provided for in the CS, the sale or lease of any hospital property if such property generated less than 20 percent of the hospital's total revenue within the hospital's most recent fiscal year. However, the governing board must publicly advertise the meeting at which the proposed sale or lease of such property will be considered by the governing board of the hospital in accordance with s. 286.0105, F.S., or publicly advertise the offer to accept proposals in accordance with s. 255.0525, F.S., and receive proposals from all interested and qualified purchasers and lessees. Additionally, the sale or lease of the property must be for fair market value, or if the lease is for less than fair market value, the lease must be in the best interest of the affected community.

Section 2 creates s. 155.401, F.S., to provide that, despite any other provision of general or special law, the purposes for which a special taxing district may appropriate funds from the sale or lease of a hospital to an economic development fund include the promotion and support of economic growth in such district and in the county in which such district is located and the furthering of the purposes of such district, as provided by law.

Section 3 amends s. 395.3036, F.S., to change a cross-reference to conform to changes made by the CS.

Section 4 provides that the CS will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, subsection 18(a) of the Florida Constitution, provides that a county or municipality may not be bound by any general law requiring the county or municipality to spend funds or to take an action requiring the expenditure of funds, unless the legislature has determined that such law fulfills an important state interest and unless:

- Funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure;
- The legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality;
- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or

- The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

Subsection 18(d) provides an exemption from this prohibition. Laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for the applicable fiscal year times 10 cents (which is $1.88 million for FY 2009/10), are exempt.

The extent of this CS's fiscal impact has not yet been determined, but the requirement in the CS to have the governing board of a county, district, or municipal hospital commence an evaluation of the possible benefits to an affected community from the sale or lease of the hospital facilities, which would require the governing board to conduct a public hearing, publish notice of the hearing, hire a certified public accounting firm or other firm for an independent valuation of the hospital's fair market value, and consider an objective operating comparison between the public hospital and other similarly situated hospitals, would likely be a significant fiscal impact on the county, district, or municipality.

B. Public Records/Open Meetings Issues:

This CS will provide more disclosure of the sale or lease process of a public hospital by requiring the governing board of the hospital to make available to the public its facts and findings that support its decision to sell or lease the hospital. Additionally, the CS ensures more oversight of the sale or lease process by requiring the CFO to determine whether the public has been put on notice as to any meetings at which the proposed sale or lease is to be considered or as to any offer to accept the proposal for sale or lease prior to the CFO's approval of the sale.

C. Trust Funds Restrictions:

The provisions of this CS 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:

None.

B. Private Sector Impact:

This CS will allow interested parties to provide written statements of opposition to a governing board's determination to accept a proposal for the sale or lease of a public hospital and requires the governing board to conduct a public hearing to provide interested persons the opportunity to be heard regarding the proposed sale or lease.

In the event that an interested party challenges the CFO's decision to approve or reject the sale or lease, the interested party may incur costs associated with appealing the decision.

C. Government Sector Impact:

This CS will require a governing board to make publicly available and publish certain findings and documents that support a board's decision to accept a proposal for the sale or lease of a public hospital. Therefore, there may be costs associated with gathering and publishing such information.

The governing board will also likely incur costs associated with contracting with a certified public accounting firm or other firm to provide a valuation of the hospital's fair market value.

In the event that a governing board challenges the CFO's decision to reject the sale or lease, the governing board may incur costs associated with appealing the decision.

The state CFO is likely to incur costs associated with reviewing and approving or rejecting proposed sales or leases of public hospitals.

The CS allocates the net proceeds of the sale or lease of a public hospital.

VI. Technical Deficiencies:

Several provisions in the CS require the "interests of the affected community" to be considered and "affected community" is defined in the CS. However, in line 177 of the CS, the governing board must decide if it is in the "public interest" to own or operate a public hospital. It is unclear whether the use of "public interest" in this instance is an oversight or whether there is a substantive reason that "public interest" is used instead of "in the interest of the affected community."

In line 334 of the CS, the word "instituted" should be replaced by the word "initiated."

VII. Related Issues:

The CS requires notice of public hearings and notice of the board's findings and documents to be published in the county in which the "majority of the physical assets of the hospital are located." It is unclear whether the "majority of the physical assets" means the place where multiple facilities associated with the hospital are located or whether it is the location of the largest physical building associated with the hospital.

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 January 19, 2012:
The CS is different from the bill in that it:

- Makes several technical changes;
- Exempts an existing lease that is modified, renewed, or extended from the requirements of s. 155.40, F.S.;
- Adds the term "hospital system" to clarify that multiple hospitals may be considered in a cost of operation comparison;
- Requires the governing board to demonstrate that disclosure was made by the seller or lessor of all contracts with physicians or other entities to provide health care services, including agreements or contracts that would be void or voidable upon the consummation of the sale or lease;
- Exempts the sale or lease of any hospital property that generates less than 20 percent of the hospital's total revenue in the most recent fiscal year from certain requirements relating to public disclosure, approval of a sale or lease, or allocations of the net proceeds or taxes stemming from a lease or sale, while maintaining other requirements that exist under current law; and
- Revises the effective date to provide that the CS takes effect upon becoming a law.

B. Amendments:

None.

862950

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2012	.	
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The Committee on Health Regulation (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete lines 94 - 138
and insert:
(3) Any sale, lease, or contract entered into pursuant to this section prior to the effective date of this act must have complied with the requirements of subsection (2) in effect at the time of the sale, lease, or contract. Any lease modification, renewal, or, extension relating to a hospital that was leased before the effective date of this act is not subject to this section. It is the intent of the Legislature that this section does not impose any further requirements with respect to

862950

the formation of any for-profit or not-for-profit Florida corporation, the composition of the board of directors of any Florida corporation, or the manner in which control of the hospital is transferred to the Florida corporation.

(4) As used in this section, the term:

(a) "Affected community" means those persons residing within the geographic boundaries defined by the charter of the county, district, or municipal hospital, or if the boundaries are not specifically defined by charter of the hospital, by the geographic area from which 75 percent of the county, district, or municipal hospital's inpatient admissions are derived.

(b) "Fair market value" means the price that a seller or lessor is willing to accept and a buyer or lessee is willing to pay on the open market and in an arms-length transaction, or what an independent expert in hospital valuation determines the fair market value to be.

(c) "Interested party" includes any person submitting a proposal for sale or lease of the county, district, or municipal hospital, as well as the governing board.

(5) Within 45 calendar days after July 1, 2012, the governing board of a county, district, or municipal hospital shall commence an evaluation of the possible benefits to an affected community from the sale or lease of hospital facilities owned by the board to a not-for-profit or for-profit entity. In the course of such evaluation, the board shall:

(a) Conduct a public hearing to provide interested persons the opportunity to be heard on the matter.

(b) Publish notice of the public hearing in one or more newspapers of general circulation in the county in which the

862950

majority of the physical assets of the hospital are located and in the Florida Administrative Weekly at least 15 days before the hearing is scheduled to take place.

(c) Contract with a certified public accounting firm or other firm having substantial expertise in the valuation of hospitals for an independent valuation of the hospital's fair market value, with such valuation being available to the public before the scheduled public hearing.

(d) Consider an objective operating comparison between a hospital or hospital system operated by the district, county, or municipality and

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

And the title is amended as follows:

Delete line 5

and insert:

market value," and "interested party"; requiring the

587072

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2012	.	
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The Committee on Health Regulation (Garcia and Gaetz) recommended the following:

Senate Amendment

Delete lines 223 - 224
and insert:
5. Disclosure has been made by the seller or lessor of all contracts with physicians or other entities providing health care services through a contract with the seller or lessor, including all agreements or contracts that would be void or voidable upon the consummation of the sale or lease.
6. The proposal is in compliance with subsections (8) and (9).

583314

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2012	.	
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The Committee on Health Regulation (Gaetz) recommended the following:

Senate Amendment

Delete line 305
and insert:

the sale or lease of the assets as indicated in paragraph (5)(c) or, if

865408

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2012	.	
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The Committee on Health Regulation (Garcia and Gaetz) recommended the following:

Senate Amendment (with title amendment)

Between lines 457 and 458
insert:

(21) If the governing board elects to sell or lease any physical property of a county, district, or municipal hospital and such property generated less than 20 percent of the hospital's total revenue within the hospital's most recent fiscal year, then the sale or lease of such property is exempt from the requirements under subsections (6)-(16). However, the governing board shall publicly advertise the meeting at which the proposed sale or lease of such property will be considered

865408

by the governing board of the hospital in accordance with s. 286.0105 or publicly advertise the offer to accept proposals in accordance with s. 255.0525 and receive proposals from all interested and qualified purchasers and lessees. The sale or lease of the property must be for fair market value, or if a lease is for less than fair market value, the lease must be in the best interest of the affected community.

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

And the title is amended as follows:

Delete line 41

and insert:

transaction; exempting the sale or lease of specified physical property of a county, district, or municipal hospital from processes required for the approval of a sale or lease of county, district, or municipal hospital property; creating s. 155.401, F.S.; providing that

364866

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2012	.	
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The Committee on Health Regulation (Gaetz) recommended the following:

Senate Amendment

Delete line 502
and insert:

Section 4. This act shall take effect upon becoming a law.

By Senator Gaetz

4-00505C-12 20121568__

A bill to be entitled

An act relating to the sale or lease of a county, district, or municipal hospital; amending s. 155.40, F.S.; defining the terms "affected community," "fair market value," and "interested parties"; requiring the governing board of a county, district, or municipal hospital to evaluate the possible benefits to an affected community from the sale or lease of a hospital facility owned by the board to a not-for-profit or for-profit entity within a specified time period; specifying the actions the board must take in evaluating whether to sell or lease the public hospital; requiring the board to determine whether qualified purchasers or lessees exist; specifying the factors that must be considered by the governing board before accepting a proposal to sell or lease the hospital; requiring the board to state in writing its detailed findings related to its decision to accept or reject the proposal; requiring the governing board to make public the required findings and documents and to publish a notice of the proposed transaction in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located; allowing persons to submit written comments regarding the proposed transaction; providing that the sale or lease is subject to the approval of the Chief Financial Officer; requiring the governing board to file a petition with the Chief Financial Officer seeking approval of the proposed

4-00505C-12 20121568__

transaction within a specified time period; requiring the Chief Financial Officer or his or her designee to issue a final order approving or denying the proposed transaction; specifying the criteria upon which the Chief Financial Officer must base his or her decision; authorizing an interested party to appeal the decision of the Chief Financial Officer; providing that all costs be paid by the governing board, unless an interested party contests the action, in which case the court may assign costs equitably to the parties; providing for the distribution of proceeds from the transaction; creating s. 155.401, F.S.; providing that the purposes for which a special taxing district may appropriate funds from the sale or lease of a hospital include the promotion and support of economic growth in the district and county in which the taxing district is located and the furthering of the purposes of the taxing district; amending s. 395.3036, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 155.40, Florida Statutes, is amended to read:

155.40 Sale or lease of county, district, or municipal hospital; effect of sale.—

(1) In the interest of providing quality health care services to the ~~order that~~ citizens and residents of this ~~the~~

state ~~may receive quality health care~~, a ~~any~~ county, district, or municipal hospital organized and existing under the laws of this state, acting by and through its governing board, may ~~shall have the authority to~~ sell or lease the ~~such~~ hospital to a for-profit or not-for-profit Florida corporation, and enter into leases or other contracts with a for-profit or not-for-profit Florida corporation for the purpose of operating the ~~and managing such~~ hospital and ~~any or all of~~ its facilities ~~of whatsoever kind and nature~~. The term of any such lease, contract, or agreement and the conditions, covenants, and agreements to be contained therein shall be determined by the governing board of the ~~such county, district, or municipal~~ hospital. The governing board of the hospital must find that the sale, lease, or contract is in the best interests of the affected community ~~public~~ and must state the basis of that ~~such~~ finding. ~~If the governing board of a county, district, or municipal hospital decides to lease the hospital, it must give notice in accordance with paragraph (4)(a) or paragraph (4)(b).~~

(2) A ~~Any such~~ lease, contract, or agreement made pursuant hereto shall:

(a) Provide that the articles of incorporation of the ~~such~~ for-profit or not-for-profit corporation be subject to the approval of the board of directors or board of trustees of the ~~such~~ hospital;

(b) Require that any not-for-profit corporation become qualified under s. 501(c)(3) of the United States Internal Revenue Code;

(c) Provide for the orderly transition of the operation and management of the ~~such~~ facilities;

(d) Provide for the return of the ~~such~~ facility to the county, municipality, or district upon the termination of the ~~such~~ lease, contract, or agreement; and

(e) Provide for the continued treatment of indigent patients pursuant to the Florida Health Care Responsibility Act and pursuant to chapter 87-92, Laws of Florida.

(3) A ~~Any~~ sale, lease, or contract entered into pursuant to this section before July 1, 2012, ~~prior to the effective date of this act~~ must have complied with the requirements of subsection (2) in effect at the time of the sale, lease, or contract. It is the intent of the Legislature that this section does not impose any further requirements with respect to the formation of any for-profit or not-for-profit Florida corporation, the composition of the board of directors of any Florida corporation, or the manner in which control of the hospital is transferred to the Florida corporation.

(4) As used in this section, the term:

(a) "Affected community" means those persons residing within the geographic boundaries defined by the charter of the county, district, or municipal hospital, or if the boundaries are not specifically defined by charter of the hospital, by the geographic area from which 75 percent of the county, district, or municipal hospital's inpatient admissions are derived.

(b) "Fair market value" means the price that a seller or lessor is willing to accept and a buyer is willing to pay on the open market and in an arms-length transaction, or what an independent expert in hospital valuation determines the fair market value to be.

(c) "Interested parties" includes any person submitting a

proposal for sale or lease of the county, district, or municipal hospital, as well as the governing board.

(5) Within 45 calendar days after July 1, 2012, the governing board of a county, district, or municipal hospital shall commence an evaluation of the possible benefits to an affected community from the sale or lease of hospital facilities owned by the board to a not-for-profit or for-profit entity. In the course of such evaluation, the board shall:

(a) Conduct a public hearing to provide interested persons the opportunity to be heard on the matter.

(b) Publish notice of the public hearing in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located and in the Florida Administrative Weekly at least 15 days before the hearing is scheduled to take place.

(c) Contract with a certified public accounting firm or other firm having substantial expertise in the valuation of hospitals for an independent valuation of the hospital's fair market value, with such valuation being available to the public before the scheduled public hearing.

(d) Consider an objective operating comparison between a hospital operated by the district, county, or municipality and other similarly situated hospitals, both not-for-profit and for-profit, which have a similar service mix, in order to determine whether there is a difference in the cost of operation using publicly available data provided by the Agency for Health Care Administration and the quality metrics identified by the Centers for Medicare and Medicaid Services Core Measures. The comparison must determine whether it is more beneficial to taxpayers and

the affected community for the hospital to be operated by a governmental entity, or whether the hospital can be operated by a not-for-profit or for-profit corporation with similar or better cost efficiencies or measurable outcomes identified by the Centers for Medicare and Medicaid Services Core Measures. The comparison must also determine whether there is a net benefit to the community to operate the hospital as a not-for-profit or for-profit entity and use the proceeds of the sale or lease for the purposes described in this section.

(e) Make publicly available all documents considered by the board in the course of such evaluation.

1. Within 160 days after July 1, 2012, the governing board shall publish notice of the board's findings in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located and in the Florida Administrative Weekly.

2. This evaluation is not required if a district, county, or municipal hospital has issued a public request for proposals for the sale or lease of a hospital on or before February 1, 2012, for the purpose of receiving proposals from interested and qualified prospective buyers or lessees, either not-for-profit or for-profit.

(6) ~~(4)~~ If ~~In the event~~ the governing board of a county, district, or municipal hospital determines that it is no longer in the public interest to own or operate such hospital and elects to consider a sale or lease of the hospital to a third party, the governing board must first determine whether there are any qualified purchasers or lessees. In the process of evaluating any potential purchasers or lessees ~~elects to sell or~~

~~lease the hospital~~, the board shall:

(a) ~~Negotiate the terms of the sale or lease with a for-profit or not-for-profit Florida corporation and~~ Publicly advertise the meeting at which the proposed sale or lease will be considered by the governing board of the hospital in accordance with s. 286.0105; or

(b) Publicly advertise the offer to accept proposals in accordance with s. 255.0525 and receive proposals from all interested and qualified purchasers and lessees.

Any sale or lease must be for fair market value, or, if not for fair market value, the lease must be in the best interest of the affected community. A ~~and any~~ sale or lease must comply with all applicable state and federal antitrust laws.

(7) A determination by a governing board to accept a proposal for sale or lease shall be made after consideration of all proposals received and negotiations with a for-profit or not-for-profit business entity organized under the laws of this state. The governing board's determination must include, in writing, detailed findings of all reasons for accepting the proposal.

(a) The governing board's acceptance of a proposal for sale or lease must include a description of how the sale or lease satisfies each of the following requirements:

1. The sale or lease represents fair market value, as determined by a certified public accounting firm or other qualified firm pursuant to paragraph (5)(c). If leased at less than fair market value, the governing board shall provide a detailed explanation of how the best interests of the affected

community are served by the acceptance of less than fair market value for the lease of the hospital.

2. Acceptance of the proposal will result in a reduction or elimination of ad valorem or other taxes for taxpayers in the district.

3. The proposal includes an enforceable commitment that programs and services and quality health care will continue to be provided to all residents of the affected community, particularly to the indigent, the uninsured, and the underinsured.

4. Disclosure has been made of all conflicts of interest, including, but not limited to, whether the sale or lease of the hospital would result in a special private gain or loss to members of the governing board or key management employees of the county, district, or municipal hospital, or if governing board members will be serving on the board of any successor private corporation. Conflicts of interest, if any, with respect to experts retained by the governing board shall also be disclosed.

5. The proposal is in compliance with subsections (8) and (9).

(b) The findings must be accompanied by all information and documents relevant to the governing board's determination, including, but not limited to:

1. The names and addresses of all parties to the transaction.

2. The location of the hospital and all related facilities.

3. A description of the terms of all proposed agreements.

4. A copy of the proposed sale or lease agreement and any

related agreements, including, but not limited to, leases, management contracts, service contracts, and memoranda of understanding.

5. The estimated total value associated with the proposed agreement and the proposed acquisition price.

6. Any valuations of the hospital's assets prepared during the 3 years immediately preceding the proposed transaction date.

7. The fair market value analysis required by paragraph (5)(c).

8. Copies of all other proposals and bids the governing board may have received or considered in compliance with subsection (6).

(8) Within 120 days before the anticipated closing date of the proposed transaction, the governing board shall make publicly available all findings and documents required under subsection (7) and publish a notice of the proposed transaction in one or more newspapers of general circulation in the county in which the majority of the physical assets of the hospital are located. The notice must include the names of the parties involved and the means by which a person may submit written comments about the proposed transaction to the governing board and obtain copies of the findings and documents required under subsection (7).

(9) Within 20 days after the date of publication of the public notice, any person may submit to the governing board written comments regarding the proposed transaction.

(10) The sale or lease of the hospital is subject to approval by the Chief Financial Officer or his or her designee, except, if otherwise required by law, approval of the sale or

lease shall exclusively be by majority vote of the registered voters in the county, district, or municipality in which the hospital is located.

(a) The governing board shall file a petition with the state Chief Financial Officer seeking approval of the proposed transaction at least 30 days after publication of the notice of the proposed transaction.

(b) The petition for approval filed by the governing board must include all findings and documents required under subsection (7) and certification by the governing board of compliance with all requirements of this section. The chair of the governing board must certify under oath and subject to the penalty of perjury on a form accompanying the petition that the contents of the petition and representations therein are true and correct.

(11) The Chief Financial Officer or his or her designee shall issue a final order approving or denying the proposed transaction based solely upon consideration of whether the procedures contained within this section have been followed by the governing board of the county, district, or municipal hospital. The order shall require the governing board to accept or reject the proposal for the sale or lease of the county, district, or municipal hospital based upon a determination that:

(a) The proposed transaction is permitted by law.

(b) The proposed transaction does not unreasonably exclude a potential purchaser or lessee on the basis of being a for-profit or a not-for-profit Florida corporation or other form of business organization, such as a partnership or limited liability company.

(c) The governing board of the hospital publicly advertised the meeting at which the proposed transaction was considered by the board in compliance with s. 286.0105.

(d) The governing board of the hospital publicly advertised the offer to accept proposals in compliance with s. 255.0525.

(e) Any conflict of interest was disclosed, including, but not limited to, how the proposed transaction could result in a special private gain or loss to members of the governing board or key management employees of the county, district, or municipal hospital, or if governing board members will be serving on the board of any successor private corporation. Conflicts of interest, if any, with respect to experts retained by the governing board shall also be disclosed.

(f) The seller or lessor will receive fair market value for the sale of the assets as indicated in paragraph (5)(c) or, if leased at less than fair market value, the governing board provided a detailed explanation of how the best interests of the affected community are served by the acceptance of less than fair market value for the lease of the hospital.

(g) The acquiring entity has made an enforceable commitment that programs and services and quality health care will continue to be provided to all residents of the affected community, particularly to the indigent, the uninsured, and the underinsured.

(h) The governing board disclosed whether the sale or lease will result in a reduction or elimination of ad valorem or other taxes used to support the hospital.

(12) Any interested party to the action has the right to seek judicial review of the decision in the appellate district

where the hospital is located or in the First District Court of Appeal pursuant to s. 120.68.

(a) All proceedings shall be instituted by filing a notice of appeal in accordance with the Florida Rules of Appellate Procedure within 30 days after the date of the final order.

(b) In such judicial review, the appellate court shall affirm the decision of the Chief Financial Officer, unless the decision by the Chief Financial Officer is shown to be clearly erroneous.

(13) All costs shall be paid by the governing board, unless an interested party contests the action, in which case the court may assign costs equitably to the parties.

(14) If any provision of subsection (5), subsection (6), or subsection (7) is not followed, the contract for sale or lease is voidable by any party to the contract. If any member of the governing board negligently or willfully violates subsection (5), subsection (6), or subsection (7), as determined by the Commission on Ethics after receipt of a sworn complaint pursuant to s. 112.322, the member is subject to a penalty, as determined by the Commission on Ethics, pursuant to s. 112.317.

(15) If a county, district, or municipal hospital is sold or leased the governing board shall:

(a) Deposit 50 percent of the net proceeds of the sale or lease into an economic development trust fund, which shall be under the control of the county commission of the county in which the property is located. The use and distribution of the funds shall be at the discretion of a majority of the county commission, the members of which shall serve as trustees of the trust fund. The net proceeds in the economic development trust

fund shall be distributed, in consultation with the Department of Economic Opportunity, to promote new business development, research, collaborative investment with the state university system, and the expansion of business economic opportunities within the affected community; and

(b) Appropriate 50 percent of the net proceeds of the sale or lease for funding the delivery of indigent and uncompensated care on an equitable basis, based on the amount of indigent and uncompensated care provided, to all hospitals within the boundaries of the district.

For the purposes of this subsection, the term "net proceeds" means the sale price after payment of all district debts and obligations.

(16) If a county, district, or municipal hospital is sold or leased to a for-profit corporation or other business entity subject to local taxation, in addition to the distribution of funds as directed in subsection (15):

(a) Fifty percent of the resulting county and municipal ad valorem tax revenue from the formerly tax-exempt property shall be distributed by the county commission of the county in which the property is located, in consultation with the Department of Economic Opportunity, to promote new or expanded health care business development or health care research within the affected community; and

(b) Fifty percent of the resulting county and municipal ad valorem tax revenue from the formerly tax-exempt property shall be appropriated by the county commission for the sole purpose of enhancing education and law enforcement programs within the

county.

(17)~~(5)~~ If ~~In the event~~ a hospital operated by a for-profit or not-for-profit Florida corporation receives annually more than $100,000 in revenues from the county, district, or municipality that owns the hospital, the Florida corporation must be accountable to the county, district, or municipality with respect to the manner in which the funds are expended by either:

(a) Having the revenues subject to annual appropriations by the county, district, or municipality; or

(b) Where there is a contract to provide revenues to the hospital, the term of which is longer than 12 months, the governing board of the county, district, or municipality must be able to modify the contract upon 12 months notice to the hospital.

A not-for-profit corporation that is subject to this subsection and that does not currently comply with the accountability requirements in this subsection shall have 12 months after the effective date of this act to modify any contracts with the county, district, or municipality in a manner that is consistent with this subsection.

(18)~~(6)~~ Unless otherwise expressly stated in the lease documents, the transaction involving the sale or lease of a hospital shall not be construed as:

(a) A transfer of a governmental function from the county, district, or municipality to the private purchaser or lessee;

(b) Constituting a financial interest of the public lessor in the private lessee; or

(c) Making a private lessee an integral part of the public lessor's decisionmaking process.

(19)~~(7)~~ The lessee of a hospital, under this section or any special act of the Legislature, operating under a lease may ~~shall~~ not be construed to be "acting on behalf of" the lessor as that term is used in statute, unless the lease document expressly provides to the contrary.

(20)~~(8)~~(a) If, whenever the sale of a public hospital by a public agency to a private corporation or other private entity pursuant to this section or pursuant to a special act of the Legislature reflects that:

1. The private corporation or other private entity purchaser acquires 100 percent ownership in the hospital enterprise;

2. The private corporation or other private entity purchases the physical plant of the hospital facility and has complete responsibility for the operation and maintenance of the facility, regardless of ownership of the underlying real property;

3. The public agency seller retains no control over decisionmaking or policymaking for the hospital;

4. The private corporation or other private entity purchaser receives no funding from the public agency seller other than by contract for services rendered to patients for whom the public agency seller has the responsibility to pay for hospital or medical care;

5. The public agency seller makes no substantial investment in or loans to the private entity;

6. The private corporation or other private entity

purchaser was not created by the public entity seller; and

7. The private corporation or other private entity purchaser operates primarily for its own financial interests and not primarily for the interests of the public agency,

such a sale shall be considered a complete sale of the public agency's interest in the hospital.

(b) A complete sale of a hospital as described in this subsection shall not be construed as:

1. A transfer of a governmental function from the county, district, or municipality to the private corporation or other private entity purchaser;

2. Constituting a financial interest of the public agency in the private corporation or other private entity purchaser;

3. Making the private corporation or other private entity purchaser an "agency" as that term is used in statutes;

4. Making the private corporation or other private entity purchaser an integral part of the public agency's decisionmaking process; or

5. Indicating that the private corporation or other private entity purchaser is "acting on behalf of a public agency" as that term is used in statute.

Section 2. Section 155.401, Florida Statutes, is created to read:

155.401 Power of special taxing district to appropriate proceeds from sale or lease of hospital to economic development trust fund.—Notwithstanding any other provision of general or special law, the purposes for which a special taxing district may appropriate funds from the sale or lease of a hospital to an

economic development fund include the promotion and support of economic growth in such district and in the county in which such district is located and the furthering of the purposes of such district, as provided by law.

Section 3. Section 395.3036, Florida Statutes, is amended to read:

395.3036 Confidentiality of records and meetings of corporations that lease public hospitals or other public health care facilities.—The records of a private corporation that leases a public hospital or other public health care facility are confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and the meetings of the governing board of a private corporation are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution if ~~when~~ the public lessor complies with the public finance accountability provisions of s. 155.40(17) ~~155.40(5)~~ with respect to the transfer of any public funds to the private lessee and if ~~when~~ the private lessee meets at least three of the five following criteria:

(1) The public lessor that owns the public hospital or other public health care facility was not the incorporator of the private corporation that leases the public hospital or other health care facility.

(2) The public lessor and the private lessee do not commingle any of their funds in any account maintained by either of them, other than the payment of the rent and administrative fees or the transfer of funds pursuant to subsection (5) ~~(2)~~.

(3) Except as otherwise provided by law, the private lessee is not allowed to participate, except as a member of the public,

in the decisionmaking process of the public lessor.

(4) The lease agreement does not expressly require the lessee to comply with ~~the requirements of~~ ss. 119.07(1) and 286.011.

(5) The public lessor is not entitled to receive any revenues from the lessee, except for rental or administrative fees due under the lease, and the lessor is not responsible for the debts or other obligations of the lessee.

Section 4. This act shall take effect July 1, 2012.

SENATOR DON GAETZ
4th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Reapportionment, *Chair*
Banking and Insurance
Budget
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Budget - Subcommittee on Health and Human Services Appropriations
Health Regulation
Rules
Rules - Subcommittee on Ethics and Elections

JOINT COMMITTEE:
Legislative Budget Commission

January 12, 2012

The Honorable Rene Garcia, Chair
Health Regulation Committee
310 Senate Office Building
404 South Monroe Street
Tallahassee, Fl 32399-1100

Dear Senator Garcia,

Upon referral to your committee, I respectfully request that you place Senate Bill 1568, relating to the Sale or Lease of a County, District, or Municipal Hospital, on your Healthcare Regulation committee agenda as soon as conveniently possible.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Senator Don Gaetz
District 4

CC: Sandra Stovall, Staff Director

ENTERED
1-13-12

REPLY TO:
❒ 4300 Legendary Drive, Suite 230, Destin, Florida 32541 (850) 897-5747
❒ 420 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/19/12
Meeting Date

Topic Sale of Hospitals

Bill Number 1568
(if applicable)

Name Steve UHLFELDER

Amendment Barcode
(if applicable)

Job Title Attorney

Address 519 E DARK Ave
Street

Phone 850-7806435

TALLAHASSEE Fla 32303
City *State* *Zip*

E-mail steve@suhlaw.net

Speaking: ☒ For ☐ Against ☐ Information

Representing Tenet

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic _____ Bill Number 1568 *(if applicable)*

Name Steve Ecenia Amendment Barcode _____ *(if applicable)*

Job Title _____

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City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing HCA

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/2012
Meeting Date

Topic _____ Bill Number SB 1568 *(if applicable)*

Name JOSÉ L. GONZALEZ Amendment Barcode _____ *(if applicable)*

Job Title VP GOVERNMENT AFFAIRS

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Speaking: ☑ For ☐ Against ☐ Information

Representing ASSOCIATED INDUSTRIES OF FLORIDA

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☐ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/8/12
Meeting Date

Topic Sale of Hospitals

Bill Number 1568 *(if applicable)*

Name Bill Bell

Amendment Barcode _____ *(if applicable)*

Job Title General Counsel

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E-mail billb@fha.org

Speaking: ☐ For ☐ Against ☑ Information

Representing Fla Hospital Assn

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

Spoke

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/12
Meeting Date

Topic Leaving to local Communities Sale & Lease of their hospitals

Bill Number 1568 *(if applicable)*

Name John Ratliff

Amendment Barcode *(if applicable)*

Job Title Public Policy Coordinator, SEIU Local 1991

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Phone 3056108855

Miami Gdns FL 33169 *City* *State* *Zip*

E-mail johnr@seiu1991.org

Speaking: ☐ For ☑ Against ☐ Information

Representing SEIU Local 1991, Nurses, Phycians, & Health Professionals Jackson Health System, Miami-Dade County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

Spoke

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/2012
Meeting Date

Topic SALE OR LEASE OF TAXPAYER OWNED HOSPITAL Bill Number 1568 *(if applicable)*

Name SLATER BAILISS Amendment Barcode *(if applicable)*

Job Title

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Speaking: ☒ For ☐ Against ☐ Information

Representing HEALTH MANAGEMENT ASSOCIATES

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

spoke ✓

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/18/12
Meeting Date

Topic Sale of Hospitals

Bill Number 1568 *(if applicable)*

Name Nick Iarossi

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 101 E College Ave. *Street*

Phone 222-9075

Tallahassee FL 32308
City *State* *Zip*

E-mail _____

Speaking: ☐ For ☐ Against ☒ Information

Representing Safety Net Hospital Alliance of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

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 Regulation Committee

BILL:	PCB 7174
INTRODUCER:	For consideration by Health Regulation Committee
SUBJECT:	Assisted Living Facilities
DATE:	January 18, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

The proposed committee bill increases regulation pertaining to assisted living facilities (ALFs) in order to improve the safety of persons living in ALFs.

This bill revises part I of ch. 429, F.S., relating to ALFs, to:

- Require an ALF to obtain a limited mental health license if any mental health resident resides in the facility.
- Revise the eligibility requirements for licensure of a facility seeking to be a limited mental health licensee.
- Require ALFs to provide notice to residents of the confidential nature of complaints to the Office of State Long-Term Care Ombudsman (Ombudsman Office).
- Require state and local agency employees to report abuse, neglect, and exploitation of residents to the Department of Children and Families (DCF) central abuse hotline.
- Increase certain facility licensure fees for ALFs with a history of certain violations.
- Increase certain administrative and criminal penalties and reduce the Agency for Health Care Administration's (AHCA) discretion to impose certain penalties.
- Require all ALF staff to complete at least 2 hours of pre-service orientation.
- Require an ALF to operate under the management of a licensed administrator.
- Create the Board of Assisted Living Facility Administration (Board) to issue licenses to administrators who meet delineated eligibility requirements, including age, education, training, and examination requirements.
- Authorize the Board to develop training curricula for ALF staff; approve and certify training and testing centers; and certify and discipline core training providers.

- Require the Board, if funding is available, to develop and maintain a database of core training providers and attendees of core training.
- Designate the AHCA as the central agency for receiving and tracking complaints against ALFs.
- Require agencies, if funding is available, to develop or modify electronic systems to ensure the transfer of information between agencies pertaining to ALFs.
- Create a task force to look at streamlining agency regulatory oversight of ALFs.
- Revise the AHCA's inspection authority and requirements, such as requiring the AHCA to monitor a certain number of ALF elopement drills.
- Require the AHCA to have lead surveyors in each field office, who specialize in assessing ALFs, to train other surveyors of ALFs and facilitate consistent inspections.
- Create a task force to review the AHCA inspection forms to ensure ALFs are being assessed appropriately for resident needs and safety.
- Authorize the DOEA to require additional staffing in ALFs, depending on the number of residents receiving special care and the type of special care being provided.
- Require ALFs to semiannually report to the AHCA information relating to occupancy rates and residents' acuity and demographics in order for the AHCA to track the information.
- Require the AHCA to develop a user-friendly rating system of ALFs.

Additional provisions affecting other chapters of law require:
- Community living support plans to be updated more frequently.
- Case managers to record interaction with residents.
- Consistent and adequate monitoring of community living support plans and cooperative agreements by the Department of Elderly Affairs (DOEA).

This bill substantially amends the following sections of the Florida Statutes: 394.4574, 400.0078, 415.1034, 429.02, 429.07, 429.075, 429.14, 429.17, 429.176, 429.178, 429.19, 429.23, 429.256, 429.28, 429.34, 429.41, 429.49, 429.52, and 429.54.

This bill creates the following sections of the Florida Statutes: 429.515, 429.521, 429.522, 429.523, 429.55, and 429.56.

This bill also creates two undesignated sections of the Florida Statutes.

II. Present Situation:

Assisted Living Facilities

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

[1] Section 429.02(5), F.S.
[2] An ALF does not include an adult family-care home or a non-transient 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 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 non-transient establishment (a.k.a. boarding house) is

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.[4]

Assisted living facilities are licensed by the AHCA, pursuant to part I of ch. 429, F.S., relating to ALFs, 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, Florida Administrative Code (F.A.C.). These rules are adopted by the DOEA in consultation with the AHCA, the DCF, and the Department of Health (DOH).[5] 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.[6]

As of December 1, 2011, there were 2,985 licensed ALFs in Florida.[7] In addition to a standard license, an ALF may have specialty licenses that authorize the ALF to provide limited nursing services (LNS),[8] limited mental health (LMH) services,[9] and extended congregate care (ECC) services.[10] Out of the 2,985 licensed ALFs, 1,083 have LNS licenses, 1,108 have LMH licenses, and 267 have ECC licenses.[11]

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:[12]

- 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

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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] Section 429.02(16), F.S.

[4] Section 429.02(1), F.S.

[5] Section 429.41(1), F.S.

[6] *See* chs. 64E-12, 64E-11, and 64E-16, F.A.C.

[7] Agency for Health Care Administration, *Assisted Living Directory*, available at: http://ahca.myflorida.com/MCHQ/Long_Term_Care/Assisted_living/pdf/Directory_ALF.pdf (Last visited on January 16, 2012).

[8] Section 429.07(3)(c), F.S.

[9] 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 optional state supplementation (OSS). *See* ss. 429.075 and 429.02(15), F.S.

[10] Section 429.07(3)(b), F.S.

[11] Agency for Health Care Administration, *Directories*, available at: http://ahca.myflorida.com/MCHQ/Long_Term_Care/Assisted_living/alf.shtml (Last visited on January 16, 2012).

[12] Rule 58A-5.0182, F.A.C.

- Providing to the resident a copy of, and adhering to, the Resident Bill of Rights.

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.[13] A resident who requires 24-hour nursing supervision[14] may not reside in an ALF, unless the resident is enrolled as a hospice patient.[15]

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.[16]

Limited Nursing Services Specialty License

An 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, 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.[17]

Extended Congregate Care Specialty License

An ECC specialty license enables an ALF to provide, directly or through contract, services performed by licensed nurses and supportive services[18] to persons who otherwise would be disqualified from continued residence in an ALF.[19]

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[13] Section 429.26, F.S., and Rule 58A-5.030, F.A.C.

[14] "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.

[15] 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. Section 429.26, F.S.

[16] Section 429.28, F.S.

[17] Section 429.26, F.S., and Rule 58A-5.031(3)(c), F.A.C.

[18] 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)(a), F.A.C.

[19] 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 recoding basic vital functions and weight; dietary management; assisting with self-administered medications or administering medications and treatments pursuant to a health care provider's order; supervising residents with dementia and cognitive impairments; health education, counseling,

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. A licensed facility must adopt its own requirements within guidelines for continued residency set forth by rule. However, the facility may not serve residents who require 24-hour nursing supervision.[20]

Facilities holding an ECC license must:

- Ensure that the administrator of the facility and the ECC supervisor, if separate from the administrator, has a minimum of 2 years of managerial, nursing, social work, therapeutic recreation, or counseling experience in a residential, long-term care, or acute care setting or agency serving elderly or disabled persons. A baccalaureate degree may be substituted for 1 year of the required experience and a nursing home administrator is considered to be qualified for the position.
- Provide enough qualified staff to meet the needs of ECC residents considering the amount and type of services established in each resident's service plan.
- Immediately provide additional or more qualified staff, when the AHCA determines that service plans are not being followed or that residents' needs are not being met because of the lack of sufficient or adequately trained staff.
- Ensure and document that staff receive required ECC training.

Limited Mental Health Specialty License

An ALF that serves three or more mental health residents must obtain an LMH specialty license.[21] 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).[22,23] 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.[24]

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:[25]

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and implementing health-promoting programs; rehabilitative services; and escort services related to health-related appointments. Section 429.07(3)(b), F.S., and Rule 58A-5.030, F.A.C.

[20] Section 429.07(3)(b), F.S.

[21] Section 429.075, F.S.

[22] Section 429.02(15), F.S.

[23] Optional State Supplementation is a cash assistance program. Its purpose is to supplement a person's income to help pay for costs in an assisted living facility, mental health residential treatment facility, or adult family care home, but it is not a Medicaid program. Department of Elder Affairs, *Florida Affordable Assisted Living: Optional State Supplementation (OSS)*, available at: http://elderaffairs.state.fl.us/faal/operator/statesupp.html (Last visited on January 17, 2012).

[24] 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.

[25] Rule 58A-5.029(2)(c)3., F.A.C.

- The specific needs of the resident which must be met for the resident to live in the ALF and community;
- The clinical mental health services to be provided by the mental health care provider to help meet the resident's needs, and the frequency and duration of such services;
- 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, and the frequency and duration of such services and activities;
- 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.

Additionally, according to Rule 58A-5.029, F.A.C., facilities holding an LMH license must:
- Provide an opportunity for private face-to-face contact between the mental health resident and the resident's mental health case manager or other treatment personnel of the resident's mental health care provider.
- Observe resident behavior and functioning in the facility, and record and communicate observations to the resident's mental health case manager or mental health care provider regarding any significant behavioral or situational changes which may signify the need for a change in the resident's professional mental health services, supports and services described in the community living support plan, or that the resident is no longer appropriate for residency in the facility.
- Ensure that designated staff have completed the required LMH training.
- Maintain facility, staff, and resident records in accordance with the requirements of the law.

ALF Staffing Requirements

Every ALF must be under the supervision of an administrator, who is responsible for the operation and maintenance of the facility, including the management of all staff and the provision of adequate care to all residents.

Rule 58A-5.019(4), F.A.C., provides the minimum staffing requirements for ALFs. An ALF may be required by the AHCA to immediately increase staff above the minimum staffing levels if the AHCA determines that adequate supervision and care are not being provided to residents, resident care standards are not being met, or that the facility is failing to meet the terms of residents' contracts. When additional staff is required above the minimum, the AHCA requires the submission of a corrective action plan indicating how the increased staffing is to be achieved and resident service needs will be met.[26]

[26] Rule 58A-5.019(4), F.A.C.

Resident Elopement

All facilities must assess residents at risk for elopement or must identify those residents having any history of elopement in order for staff to be alerted to their needs for support and supervision. As part of its resident elopement response policies and procedures, the facility must make, at a minimum, a daily effort to determine that at-risk residents have identification on their persons that includes their name and the facility's name, address, and telephone number.[27]

The facility is required to develop detailed written policies and procedures for responding to a resident elopement. At a minimum, the policies and procedures must include:

- An immediate staff search of the facility and premises;
- The identification of staff responsible for implementing each part of the elopement response policies and procedures, including specific duties and responsibilities;
- The identification of staff responsible for contacting law enforcement, the resident's family, guardian, health care surrogate, and case manager if the resident is not located pursuant to an immediate search of the facility and premises; and
- The continued care of all residents within the facility in the event of an elopement.[28]

Use of Restraints

Florida law limits the use of restraints on residents of ALFs. The use of physical restraints[29] is limited to half-bed rails as prescribed and documented by the resident's physician with the consent of the resident or, if applicable, the resident's representative or designee or the resident's surrogate, guardian, or attorney in fact. The physician is to review the order for physical restraints biannually.[30] The use of chemical restraints[31] is limited to prescribed dosages of medications authorized by the resident's physician and must be consistent with the resident's diagnosis. Residents who are receiving medications that can serve as chemical restraints must be evaluated by their physician at least annually to assess the continued need for the medication, the level of the medication in the resident's blood, and the need for adjustments in the prescription.

ALF Staff Training

Administrators and other ALF staff[32] must meet minimum training and education requirements established by the DOEA by rule.[33] This training and education is intended to assist facilities

[27] Rule 58A-5.0182(8), F.A.C.
[28] *Id*.
[29] "Physical restraint" means a device which physically limits, restricts, or deprives an individual of movement or mobility, including, but not limited to, a half-bed rail, a full-bed rail, a geriatric chair, and a posey restraint. The term "physical restraint" shall also include any device which was not specifically manufactured as a restraint but which has been altered, arranged, or otherwise used for this purpose. The term shall not include bandage material used for the purpose of binding a wound or injury. Section 429.02(17), F.S.
[30] Rule 58A-5.0182(6)(h), F.S.
[31] "Chemical restraint" means a pharmacologic drug that physically limits, restricts, or deprives an individual of movement or mobility, and is used for discipline or convenience and not required for the treatment of medical symptoms. Section 429.02(6), F.S.
[32] An ALF administrator must be at least 21 years of age and have a high school diploma or general equivalency diploma (G.E.D.) An administrator must be in compliance with level 2 background screening standards and complete a core training requirement. Section 429.174, F.S., and Rule 58A-5.019, F.A.C. In addition, all staff, who are employed by or contracted with the ALF to provide personal services to residents, must receive a level 2 background screening. Section 408.809(1)(e), F.S. and s. 429.174, F.S.
[33] Rule 58A-5.0191, F.A.C.

appropriately respond to the needs of residents, maintain resident care and facility standards, and meet licensure requirements.[34]

The ALF core training requirements established by the DOEA consist of a minimum of 26 hours of training and a competency test. Administrators and managers are required to successfully complete the ALF core training requirements within 3 months from the date of becoming a facility administrator or manager. Successful completion of the core training requirements includes passing the competency test.[35] The minimum passing score for the competency test is 75 percent.[36]

Administrators and managers must participate in 12 hours of continuing education in topics related to assisted living every 2 years. A newly hired administrator or manager, who has successfully completed the ALF core training and continuing education requirements, is not required to retake the core training. An administrator or manager, who has successfully completed the core training but has not maintained the continuing education requirements, is considered a new administrator or manager for the purposes of the core training requirements. He or she must retake the ALF core training and retake and pass the competency test.[37]

Facility administrators or managers are required to provide or arrange for the following in-service training to facility staff:

- Staff who provide direct care to residents, other than nurses, certified nursing assistants, or home health aides must receive a minimum of 1-hour in-service training in infection control, including universal precautions, and facility sanitation procedures before providing personal care to residents.[38]
- Staff who provide direct care to residents must receive a minimum of 1-hour in-service training within 30 days of employment that covers the reporting of major incidents, reporting of adverse incidents, and facility emergency procedures including chain-of-command and staff roles relating to emergency evacuation.
- Staff who provide direct care to residents, who have not taken the core training program, must receive a minimum of 1-hour in-service training within 30 days of employment that covers resident rights in an ALF and recognizing and reporting resident abuse, neglect, and exploitation.
- Staff who provide direct care to residents, other than nurses, CNAs, or home health aides must receive 3 hours of in-service training within 30 days of employment that covers resident behavior and needs and providing assistance with the activities of daily living.
- Staff who prepare or serve food and who have not taken the ALF core training, must receive a minimum of 1-hour in-service training within 30 days of employment in safe food handling practices.

[34] Section 429.52(1), F.S.
[35] Rule 58A-5.0191, F.A.C.
[36] Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, are not required to take the competency test. Administrators licensed as nursing home administrators in accordance with Part II of Chapter 468, F.S., are exempt from this requirement.
[37] Rule 58A-5.0191, F.A.C.
[38] Documentation of compliance with the staff training requirements of 29 CFR 1910.1030, relating to blood borne pathogens, may be used to meet this requirement. Rule 58A-5.0191(2)(a), F.A.C.

- All facility staff are required to receive in-service training regarding the facility's resident elopement response policies and procedures within 30 days of employment, must be provided with a copy of the facility's resident elopement response policies and procedures, and must demonstrate an understanding and competency in the implementation of the elopement response policies and procedures.[39]

Facilities are required to conduct a minimum of two resident elopement prevention and response drills per year. All administrators and direct care staff must participate in the drills, which must include a review of procedures to address resident elopement. Facilities must document the implementation of the drills and ensure that the drills are conducted in a manner consistent with the facility's resident elopement policies and procedures.[40]

Assistance with Self-Administered Medications

Unlicensed persons who are to provide assistance with self-administered medications must complete a minimum of 4 additional hours of training provided by a registered nurse, licensed pharmacist, or department staff and receive a training certificate.[41] Training must cover state law and rule requirements with respect to the supervision, assistance, administration, and management of medications in ALFs; procedures and techniques for assisting the resident with self-administration of medication, including how to read a prescription label; providing the right medications to the right resident; common medications; the importance of taking medications as prescribed; recognition of side effects and adverse reactions and procedures to follow when residents appear to be experiencing side effects and adverse reactions; documentation and record keeping; and medication storage and disposal. Training must include demonstrations of proper techniques and provide opportunities for hands-on learning through practice exercises.[42]

Those unlicensed persons, who provide assistance with self-administered medications and have successfully completed the initial 4-hour training, must obtain, annually, a minimum of 2 hours of continuing education training on providing assistance with self-administered medications and safe medication practices in an ALF.[43]

ECC Specific

The administrator and ECC supervisor, if different from the administrator, must complete core training and 4 hours of initial training in extended congregate care prior to the facility's receiving its ECC license or within 3 months of beginning employment in the facility as an administrator or ECC supervisor.[44] The administrator and the ECC supervisor, if different from the administrator, must complete a minimum of 4 hours of continuing education every 2 years in topics relating to the physical, psychological, or social needs of frail elderly and disabled persons, or persons with Alzheimer's disease or related disorders.[45]

[39] Rule 58A-5.0191, F.A.C.
[40] Section 429.41(1)(a)3., F.S.
[41] Section 429.52(5), F.S.
[42] Rule 58A-5.0191(5)(a), F.A.C.
[43] Rule 58A-5.0191(5)(c), F.A.C.
[44] ECC supervisors who attended the ALF core training prior to April 20, 1998, are not required to take the ALF core training competency test. Rule 58A-5.0191(7), F.A.C.
[45] Rule 58A-5.0191(7)(b), F.A.C.

All direct care staff providing care to residents in an ECC program must complete at least 2 hours of in-service training, provided by the facility administrator or ECC supervisor, within 6 months of beginning employment in the facility. The training must address ECC concepts and requirements, including statutory and rule requirements, and delivery of personal care and supportive services in an ECC facility.[46]

LMH Specific
The administrator, managers, and staff, who have direct contact with mental health residents in a licensed LMH facility, must receive the following training:[47]

- A minimum of 6 hours of specialized training in working with individuals with mental health diagnoses.
- A minimum of 3 hours of continuing education, which may be provided by the ALF administrator or through distance learning, biennially thereafter in subjects dealing with mental health diagnoses or mental health treatment.

Special Care for Persons with Alzheimer's Disease
Facilities which advertise that they provide special care for persons with Alzheimer's disease and related disorders must ensure that facility staff, who have regular contact with or provide direct care to residents with Alzheimer's disease and related disorders, obtain 4 hours of initial training, entitled "Alzheimer's Disease and Related Disorders Level I Training," within 3 months of employment.[48]

Facility staff, who provide direct care to residents with Alzheimer's disease and related disorders, must obtain an additional 4 hours of training, entitled "Alzheimer's Disease and Related Disorders Level II Training," within 9 months of employment.

Direct care staff is required to participate in 4 hours of continuing education annually.[49] Facility staff who, have only incidental contact[50] with residents with Alzheimer's disease and related disorders, must receive general written information provided by the facility on interacting with such residents within 3 months of employment.[51]

Do Not Resuscitate Orders
Facility administrators, managers, direct care staff and staff involved in resident admissions must receive at least 1 hour of training in the facility's policies and procedures regarding Do Not Resuscitate Orders within 30 days after employment.[52]

[46] Rule 58A-5.0191(7)(c), F.A.C.
[47] Section 429.075, F.S. and Rule 58A-5.0191(8), F.A.C.
[48] Those that have completed the core training program between April 20, 1998, and July 1, 2003, are deemed to have satisfied this requirement. Those qualified to provide such training are not required to complete this requirement or the requirement for Alzheimer's Disease and Related Disorders Level II Training. *See* Rule 58A-5.0191, F.A.C.
[49] Section 429.178, F.S.
[50] "Incidental contact" means all staff who neither provide direct care nor are in regular contact with such residents. Rule 58A-5.0191(9)(f), F.A.C.
[51] Section 429.178, F.S.
[52] Rule 58A-5.0191(11), F.A.C.

Trainers

Training for administrators must be performed by trainers registered with the DOEA. The trainer must provide the DOEA with proof that he or she has completed the minimum core training education requirements, successfully passed the competency test, and complied with continuing education requirements (12 contact hours of continuing education in topics related to assisted living every 2 years), and meet one of the following requirements:

- Provide proof of completion of a 4-year degree from an accredited college or university and have worked in a management position in an ALF for 3 years after being core certified;
- Have worked in a management position in an ALF for 5 years after being core certified and have 1 year of teaching experience as an educator or staff trainer for persons who work in ALFs or other long-term care settings;
- Have been previously employed as a core trainer for the DOEA;
- Have a minimum of 5 years of employment with the AHCA, or formerly the Department of Health and Rehabilitative Services, as a surveyor of ALFs;
- Have a minimum of 5 years of employment in a professional position in the AHCA Assisted Living Unit;
- Have a minimum of 5 years employment as an educator or staff trainer for persons working in an ALF or other long-term care settings;
- Have a minimum of 5 years of employment as an ALF core trainer, which was not directly associated with the DOEA; or
- Have a minimum of a 4-year degree from an accredited college or university in the areas of healthcare, gerontology, social work, education or human services, and a minimum of 4 years experience as an educator or staff trainer for persons working in an ALF or other long-term care settings after core certification.[53]

Inspections and Surveys

The AHCA is required to conduct a survey, investigation, or appraisal of an ALF:

- Prior to the issuance of a license.
- Prior to biennial renewal of a license.
- When there is a change of ownership.
- To monitor facilities licensed to provide LNS or ECC services, or facilities cited in the previous year for a class I or class II, or four or more uncorrected class III, violations.[54]
- Upon receipt of an oral or written complaint of practices that threaten the health, safety, or welfare of residents.
- If the AHCA has reason to believe a facility is violating a provision of part III of ch. 429, F.S., relating to adult day care centers, or an administrative rule.
- To determine if cited deficiencies have been corrected.
- To determine if a facility is operating without a license.[55]

An applicant for licensure renewal is eligible for an abbreviated biennial survey by the AHCA if the applicant does not have any:

- Class I or class II violations or uncorrected class III violations.

[53] Section 429.52(9)-(10), F.S. and Rule 58T-1.203, F.A.C.
[54] *See below* information under subheading "Violations and Penalties" for a description of each class of violation.
[55] *See* s. 429.34, F.S., and Rule 58A-5.033, F.A.C.

- Confirmed long-term care ombudsman council complaints reported to the AHCA by the council.
- Confirmed licensing complaints within the two licensing periods immediately preceding the current renewal date.[56]

The AHCA must expand an abbreviated survey or conduct a full survey if violations, which threaten or potentially threaten the health, safety, or security of residents are identified during an abbreviated survey.[57]

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.[58]

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.[59]

There is no additional monitoring requirement of LMH licensees.

Violations and Penalties

Part II of ch. 408, F.S., provides the general licensure standards for all facilities regulated by the AHCA. Under s. 408.813, F.S., ALFs may be subject to administrative fines imposed by the AHCA for certain types of violations. Violations are categorized into four classes according to the nature of the violation and the gravity of its probable effect on facility residents.[60]

The AHCA must provide written notice of a violation and must impose an administrative fine[61] for a cited class I violation in an amount not less than $5,000 and not exceeding $10,000 for each

[56] Rule 58A-5.033(2), F.A.C.
[57] *Id.*
[58] Section 429.07(3)(c), F.S.
[59] Section 429.07(3)(b), F.S.
[60] Class "I" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients, which the AHCA determines present an imminent danger to the clients of the provider or a substantial probability that death or serious physical or emotional harm would result therefrom. Class "II" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the AHCA determines directly threaten the physical or emotional health, safety, or security of the clients, other than class I violations. Class "III" violations are those conditions or occurrences related to the operation and maintenance of a provider or to the care of clients which the AHCA determines indirectly or potentially threaten the physical or emotional health, safety, or security of clients, other than class I or class II violations. Class "IV" violations are those conditions or occurrences related to the operation and maintenance of a provider or to required reports, forms, or documents that do not have the potential of negatively affecting clients.
[61] When determining if a penalty is to be imposed and in fixing the amount of the fine, the AHCA must consider the following factors: the gravity of the violation and the extent to which any laws or rules were violated, actions taken to correct the violations, any previous violations, the financial benefit of committing or continuing the violation, and the licensed capacity of the facility. Section 429.19(3), F.S.

violation; impose an administrative fine for a cited class II violation in an amount not less than $1,000 and not exceeding $5,000 for each violation; impose an administrative fine for a cited class III violation in an amount not less than $500 and not exceeding $1,000 for each violation; and impose an administrative fine for a cited class IV violation in an amount not less than $100 and not exceeding $200 for each violation.[62]

The AHCA may deny, revoke, and suspend any license and impose an administrative fine against a licensee for a violation of any provision of part I of ch. 429, F.S., part II of ch. 408, F.S., or applicable rules; for the actions of any person subject to level 2 background screening under s. 408.809, F.S.; for the actions of any facility employee; or for any of the following actions by a licensee:

- An intentional or negligent act seriously affecting the health, safety, or welfare of a resident of the facility.
- A determination by the AHCA that the owner lacks the financial ability to provide continuing adequate care to residents.
- Misappropriation or conversion of the property of a resident of the facility.
- Failure to follow the criteria and procedures provided under part I of ch. 394, F.S., relating to the transportation, voluntary admission, and involuntary examination of a facility resident.
- A citation for one or more cited class I deficiencies, three or more cited class II deficiencies, or five or more cited class III deficiencies that have been cited on a single survey and have not been corrected within the times specified.
- Failure to comply with background screening standards.
- Violation of a moratorium.
- Failure of the license applicant, the licensee during re-licensure, or a licensee that holds a provisional license to meet the minimum license requirements at the time of license application or renewal.
- An intentional or negligent life-threatening act in violation of the uniform fire-safety standards for ALFs or other fire-safety standards that threatens the health, safety, or welfare of a resident of a facility, as communicated to the AHCA by the local authority having jurisdiction or the State Fire Marshal.
- Knowingly operating any unlicensed facility or providing without a license any service that must be licensed.
- Any act constituting a ground upon which application for a license may be denied.[63]

The AHCA is required to deny or revoke the license of an ALF that 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 2 years.[64]

The AHCA may also impose an immediate moratorium[65] or emergency suspension on any provider if the AHCA determines that any condition related to the provider or licensee presents a

[62] Section 429.19(2), F.S.
[63] Section 429.14, F.S.
[64] Section 429.14(4), F.S.
[65] "Moratorium" means a prohibition on the acceptance of new clients. Section 408.803(10), F.S.

threat to the health, safety, or welfare of a client.[66] The AHCA is required to publicly post notification of a license suspension or revocation, or denial of a license renewal, at the facility.[67]

Florida's Criminal Code, under ch. 825, F.S., provides criminal penalties for the abuse, neglect, and exploitation of elderly persons[68] and disabled adults.[69]

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.[70]

Income from fees and fines collected by the AHCA must be used by the AHCA for the following purposes:

- Up to 50 percent of the trust funds accrued each fiscal year may be used to offset the expenses of receivership,71 if the court determines that the income and assets of the facility are insufficient to provide for adequate management and operation.
- An amount of $5,000 of the trust funds accrued each year must be allocated to pay for inspection-related physical and mental health examinations requested by the AHCA for residents who are either recipients of SSI or have monthly incomes not in excess of the maximum combined federal and state cash subsidies available to SSI recipients, but such funds are only to be used where the resident is ineligible for Medicaid.
- Any trust funds accrued each year and not used for the purposes of receivership or inspection-related physical and mental health examinations must be used to offset the costs of the licensure program, verifying information submitted, defraying the costs of processing the names of ALF applicants, and conducting inspections and monitoring visits.[72]

Adult Protective Services

The DCF is required under s. 415.103, F.S., to establish and maintain a central abuse hotline to receive reports, in writing or through a single statewide toll-free telephone number, of known or

[66] Section 408.814, F.S.
[67] Section 429.14(7), F.S.
[68] "Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired. Section 825.101(5), F.S. It does not constitute a defense to a prosecution for any violation of this chapter that the accused did not know the age of the victim. Section 825.104, F.S.
[69] "Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living. Section 825.101(4), F.S.
[70] The current CPI adjusted fees are: $371 for a standard license, $62 for a standard license per-bed fee, $523 for an ECC license, $10 for an ECC per-bed fee, $250 for an LNS license, and $10 for an LNS per-bed fee. Agency for Health Care Administration, Bureau of Long Term Care, Form Letter to ALF Providers, available at: http://ahca.myflorida.com/MCHQ/LONG_TERM_CARE/Assisted_living/alf/ALF_fee_increase.pdf (Last visited on January 16, 2012).
[71] *See* s. 429.22, F.S., for instances as to when a court may appoint a receiver for an ALF.
[72] Section 429.18, F.S.

suspected abuse, neglect, or exploitation of a vulnerable adult[73] at any hour of the day or night, any day of the week.[74]

The following persons, who know, or have reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited are required to immediately report such knowledge or suspicion to the central abuse hotline:

- A physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults;
- A health professional or mental health professional;
- A practitioner who relies solely on spiritual means for healing;
- Nursing home staff; ALF staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;
- A state, county, or municipal criminal justice employee or law enforcement officer;
- An employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments;
- A Florida advocacy council member or long-term care ombudsman council member; or
- An officer, trustee, or employee of a bank, savings and loan, or credit union.[75]

If at any time during a protective investigation the DCF has reasonable cause to believe that an employee of a facility that provides day or residential care or treatment for vulnerable adults is the alleged perpetrator of abuse, neglect, or exploitation of a vulnerable adult, the DCF must notify the AHCA, Division of Health Quality Assurance, in writing. If at any time during a protective investigation the DCF has reasonable cause to believe that professional licensure violations have occurred, the DCF must notify the Division of Medical Quality Assurance within the DOH in writing. The DCF must provide a copy of its investigation to the AHCA when the DCF has reason to believe that a vulnerable adult resident of a facility licensed by the AHCA or to the DOH when the investigation determines that a health professional licensed or certified under the DOH may have abused, neglected, or exploited a vulnerable adult.[76]

The DCF must also provide written notification to the state attorney having jurisdiction in the county in which the abuse, neglect, or exploitation occurred if evidence indicates that further criminal investigation is warranted. At the conclusion of a protective investigation at a facility, the DCF must notify, in writing, either the Florida local advocacy council or long-term care ombudsman council of the results of the investigation.[77]

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[73] "Vulnerable adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. Section 415.102(27), F.S.

[74] The central abuse hotline must be operated in such a manner as to enable the DCF to: accept reports for investigation when there is a reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited; determine whether the allegations require an immediate, 24-hour, or next-working-day response priority; when appropriate, refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might better resolve the reporter's concerns; immediately identify and locate prior reports of abuse, neglect, or exploitation through the central abuse hotline; Section 415.103(1), F.S.

[75] Section 415.1034, F.S.

[76] Section 415.1055, F.S.

[77] *Id.*

To ensure coordination, communication, and cooperation with the investigation of abuse, neglect, or exploitation of vulnerable adults, the DCF is required to develop and maintain inter-program agreements or operational procedures among appropriate departmental programs and the State Long-Term Care Ombudsman Council, the Florida Statewide Advocacy Council, and other agencies that provide services to vulnerable adults. These agreements or procedures must cover such subjects as the appropriate roles and responsibilities of the DCF in identifying and responding to reports of abuse, neglect, or exploitation of vulnerable adults; the provision of services; and related coordinated activities. In addition, the DCF must cooperate with and seek cooperation from all appropriate public and private agencies, including health agencies, educational agencies, social service agencies, courts, organizations, or programs providing or concerned with human services related to the prevention, identification, or treatment of abuse, neglect, or exploitation of vulnerable adults.[78]

Florida's Long-Term Care Ombudsman Program

The federal Older Americans Act (OAA) requires each state to create a Long-Term Care Ombudsman Program to be eligible to receive funding associated with programs under the OAA.[79] In Florida, the program is a statewide, volunteer-based system of district councils that protect, defend, and advocate on behalf of long-term care facility residents, including residents of nursing homes, ALFs, and adult family-care homes. The Ombudsman Office is administratively housed in the DOEA and is headed by the State Long-Term Care Ombudsman, who is appointed by and serves at the pleasure of the Secretary of Elderly Affairs.[80] The program is supported with both federal and state funding.[81]

Florida's Long-Term Care Ombudsman Program (State Program) is made up of nearly 400 volunteers, who are organized into councils in 17 districts[82] around the state. During fiscal year 2009-2010 (October 1, 2009 to September 30, 2010), ombudsmen:

- Completed 4,015 administrative assessments statewide, visiting 100 percent of the licensed long-term care facilities in Florida;
- Completed 9,098 complaint investigations;[83]
- Donated 20,221 hours of volunteer service to the residents; and

[78] Section 415.106(2), F.S.
[79] 42 U.S.C. 3058. *See also* s. 400.0061(1), F.S.
[80] Section 400.0063, F.S.
[81] According to *Florida's Long-Term Care Ombudsman Program 2009-2010 Annual Report*, in fiscal year 2009-2010, the program received a total of $3,242,586 in funding; the state contribution totaled $1,452,977. *Florida's Long-Term Care Ombudsman Program 2009-2010 Annual Report*, available at: http://ombudsman.myflorida.com/publications/ar/2009-2010%20Annual%20Report.pdf (Last visited on January 17, 2012).
[82] A list of the district offices is available at: http://ombudsman.myflorida.com/DistrictsList.php (Last visited on January 17, 2012).
[83] Section 400.0073, F.S., requires a local council to investigate any complaint of a resident, a representative of a resident, or any other credible source based on the action or inaction of an administrator, employee, or representative of a long-term care facility, which might be contrary to law; unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law; based on a mistake of fact; based on improper or irrelevant grounds; unaccompanied by an adequate statement of reasons; performed in an inefficient manner; or otherwise adversely affecting the health, safety, welfare, or rights of a resident.

- Provided 5,829 free in-service trainings in nursing homes, ALFs, and adult family care homes throughout the state to encourage facility staff members to adopt best practices to improve the residents' quality of life.[84]

The Ombudsman Office is required to establish a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents of nursing homes, ALFs and adult family care homes. Every resident or representative of a resident must receive, upon admission to a long-term care facility, information regarding the purpose of the State Program, the statewide toll-free telephone number for receiving complaints, and other relevant information regarding how to contact the State Program. Residents or their representatives must be furnished additional copies of this information upon request.[85]

The names or identities of the complainants or residents involved in a complaint, including any problem identified by an ombudsman council as a result of an investigation, are confidential and exempt from Florida's public records laws, unless the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure in writing; the complainant or resident consents orally and the consent is documented contemporaneously in writing by the ombudsman council requesting such consent; or the disclosure is required by court order.[86]

The Miami Herald Investigative Series on Assisted Living Facilities

Beginning on April 30, 2011, the Miami Herald published a three-part series, titled "Neglected to Death," which exposed several examples of abuses occurring in ALFs and the state regulatory responses to such cases. According to the publication, the Miami Herald spent a year examining thousands of state inspections, police reports, court cases, autopsy files, e-mails, and death certificates and conducting dozens of interviews with operators and residents throughout Florida.

The three-part investigative series gives several examples of abuses or neglect that took place at facilities in Florida, including:[87]

- The administrator of an ALF in Caryville punished his disabled residents by refusing to give them food and drugs, threatened the residents with a stick, doped the residents with powerful tranquilizers, beat residents who broke the facilities rules, forced residents to live without air conditioning even when temperatures reached 100 degrees Fahrenheit, and fell asleep on the job while a 71-year-old woman with mental illness wandered outside the facility and drowned in a nearby pond.
- In an ALF in Kendall, a 74-year-old woman was bound for more than 6 hours, the restraints pulled so tightly that they ripped into her skin and killed her.

[84] *Florida's Long-Term Care Ombudsman Program 2009-2010 Annual Report*, available at: http://ombudsman.myflorida.com/publications/ar/2009-2010%20Annual%20Report.pdf (Last visited on January 17, 2012).
[85] Section 400.0078, F.S.
[86] Section 400.0077(1)(b), F.S.
[87] The Miami Herald, *Neglected to Death, Parts 1-3*, available at: http://www.miamiherald.com/2011/04/30/2194842/once-pride-of-florida-now-scenes.html and http://www.miamiherald.com/2011/05/03/2199747/key-medical-logs-doctored-missing.html (Last visited on January 17, 2012) (see left side of article to access weblinks to the three-part series).

- In an ALF in Hialeah, a 71-year-old man with mental illness died from burns after he was left in a bathtub filled with scalding water.
- In an ALF in Clearwater, a 75-year-old Alzheimer's patient was torn apart by an alligator after he wandered from his ALF for the fourth time.
- In an ALF in Haines City, a 74-year-old suffering from diabetes and depression died after going 13 days without crucial antibiotics and several days without food or water.
- An ALF in Miami-Dade County had a door alarm and video cameras in disrepair, an unlocked back gate on the premises, and an attendant who had fallen asleep, which enabled an 85-year-old to wander from the facility and drown in a pond.
- The administrator of an ALF in Dunedin drove a male resident with a criminal history to a pharmacy to fill a prescription for powerful narcotics but failed to collect the drugs from the resident. The resident fed the drugs to a 20-year-old female resident with mental illness, raped her, and caused her to die of an overdose.
- In an ALF in Tampa, a 55-year-old man died after his caretakers failed to give him food, water, or medicine.
- An ALF in Orlando failed to give an 82-year-old woman critical heart medication for 4 days, failed to read her medical chart, and gave her the wrong drugs on the day she died.
- An ALF in West Melbourne shut off the facility's exit alarm when it was triggered without doing a head count or calling 911 as a 74-year-old man slipped out the door and drowned in a nearby pond.
- An ALF in Deerfield Beach did not provide protections to a 98-year-old woman who fell 11 times and died of resulting injuries, including a fractured neck.
- A caretaker in an ALF in Miami-Dade County strapped down a 74-year-old woman for at least 6 hours so tightly that she lost circulation in her legs and as a result a blood clot formed which killed her.

The investigative series decried the state's regulatory and law enforcement agencies responses to the alleged egregious acts claiming:[88]

- Nearly once a month residents die from abuse and neglect, with some caretakers altering and forging records to conceal evidence, but law enforcement agencies almost never make arrests.
- Facilities are routinely caught using illegal restraints, including powerful tranquilizers, locked closets, and ropes, but the state rarely punishes them.
- State regulators could have shut down 70 facilities in the past 2 years for a host of severe violations, but only seven facilities were closed.
- Although the number of ALFs has increased substantially over the last 5 years, the state has dropped critical inspections by 33 percent.
- Although the state has the authority to fine ALFs that break the law, the penalties are routinely decreased, delayed, or dropped altogether.
- The state's lack of enforcement has prompted other government agencies to cut off funding and in some cases the agencies refuse to send clients to live in certain ALFs.
- In at least one case, an investigation was never performed by the AHCA, although a woman drowned after wandering off the premises.

[88] *Id.*

- It took the AHCA inspectors an average of 37 days to complete a complaint investigation in 2009, which was 10 days longer than 5 years earlier.
- At least five times, other state agencies were forced to take the lead in shutting down homes when the AHCA did not act.

Governor Rick Scott's ALF Task Force

In response to the Miami Herald Investigative Series on ALFs, Governor Rick Scott announced in his veto message of HB 4045 (2011),[89] which pertains to ALFs, that he was going to form an ALF task force for the purpose of examining current assisted living regulations and oversight.[90] Governor Scott directed the task force to develop recommendations to improve the state's ability to monitor quality and safety in ALFs and ensure the well-being of their residents.[91]

The task force, which is now referred to as the Assisted Living Workgroup, held meetings on August 8, 2011, in Tallahassee; September 23, 2011, in Tampa; and November 7 and 8, 2011 in Miami. In addition to public testimony and presentations, the Assisted Living Workgroup discussion focused on assisted living regulation, consumer information and choice, and long term care services and access.[92]

The Assisted Living Workgroup made several recommendations in a final report released in December 2011, stating that it believed the recommendations would strengthen oversight and reassure the public that ALFs are safe places for their residents. The general recommendations of the workgroup are to:

- Increase administrator qualifications.
- Expand and improve training for administrators and other staff.
- Increase survey and inspection activity with a focus on facilities with poor track records.
- Create a systematic appeal process for residents who want to contest a notice of eviction.
- Increase reporting of resident data by facilities.
- Enhance enforcement capacity by state agencies.
- Create of a permanent policy review and oversight council with members representing all stakeholder groups.

[89] HB 4045 (2011) repealed a requirement for the annual dissemination of a list of ALFs that had been sanction or fined, a requirement for an ALF to report monthly any liability claims filed against it, a requirement to disseminate the results of the inspection of each ALF, provisions concerning rule promulgation for ALFs by the DOEA, provisions concerning the collection of information regarding the cost of care in ALFs, and the authority for local governments or organizations to contribute to the cost of care of local facility residents.

[90] The task force, which is now referred to as the "Assisted Living Workgroup," consists of 14 members. These members represent the following entities: Florida Association of Homes and Services for the Aging; Eastside Care, Inc.; Palm Breeze Assisted Living Facility; Long Term Care Ombudsman; Florida House of Representatives; Lenderman and Associates; The Florida Bar, Elder Law Section; Florida State University, the Pepper Center; the Villa at Carpenters; Florida Council for Community Mental Health; Florida Assisted Living Association; Villa Serena I-V, Florida Senate; and Florida Health Care Association. Agency for Health Care Administration, *Assisted Living Workgroup Members*, available at: http://ahca.myflorida.com/SCHS/ALWG2011/wgmembers.shtml (Last visited on January 16, 2012).

[91] Governor Rick Scott's veto message for HB 4045 (2011) is available at: http://www.flgov.com/wp-content/uploads/2011/06/hb4045.pdf (Last visited on January 17, 2012).

[92] Agency For Health Care Administration, Assisted Living Workgroup, *Final Report And Recommendations*, available at: http://ahca.myflorida.com/SCHS/ALWG2011/alwg2011.shtml (Last visited on January 16, 2012).

- Require all facilities with at least one resident receiving mental health care to be licensed as an LMH facility.
- Provide greater integration of information from all agencies involved in ALF regulation in order to identify potential problems sooner.[93]

The Assisted Living Workgroup also decided that there are additional matters that should be reviewed more in-depth prior to making recommendations and therefore, recommended that a phase II workgroup be appointed by the Governor to review these additional matters at a later date.[94]

Interim Report 2012-128

Professional staff of the Senate Health Regulation Committee recommended in interim report 2012-128, Review Regulatory Oversight of Assisted Living Facilities in Florida,[95] a myriad of options for the Legislature to consider to improve the regulatory oversight of ALFs. To better protect residents from abuse, neglect, or otherwise harmful conditions in ALFs in Florida, the report recommends that the Legislature enact legislation to:

- Require ALFs to report occupancy rates and demographic and resident acuity information.
- Require the AHCA to conduct abbreviated inspections and develop targeted and efficient inspection plans.
- Require the AHCA to use lead surveyors to ensure consistent inspections.
- Create a workgroup to assess the AHCA's inspection forms.
- Better fund the AHCA to conduct inspections, whether through fee or fine increases.
- Require additional monitoring of LMH facilities, akin to the additional monitoring currently conducted on LNS and ECC facilities.
- Require better oversight of core training providers.
- Expand Florida's core training curriculum and require additional administrator qualifications.
- Require staff to demonstrate, by a short examination, receipt and comprehension of staff training.
- Increase staffing ratios for facilities with specialty licenses.
- Increasing elopement training requirements and require AHCA attendance of elopement drills.
- Require additional administrator qualifications and additional training for all staff of LMH facilities.
- Require a facility with any mental health resident, instead of three mental health residents, to obtain an LMH license.
- Reduce the AHCA's discretion to assess administrative penalties and increase administrative penalties.
- Establish a workgroup to review agency regulatory oversight of ALFs and make recommendations, if any, to streamline the regulatory oversight of ALFs.
- Designate the AHCA as the lead agency to coordinate all complaints related to ALFs.

[93] *Id.*
[94] *Id.*
[95] Florida Senate, Interim Report 2012-128, is available at: http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-128hr.pdf (Last visited on January 17, 2012).

- Require each agency to establish a direct line of communication to the AHCA to communicate complaints and require the AHCA to maintain a database to track such complaints.
- Require staff of regulatory state or local agencies to immediately report abuse, neglect, or exploitation of a vulnerable adult to the DCF's central abuse hotline.
- Require the AHCA to develop and implement a user-friendly rating system of ALFs for consumers to use.
- Require ALFs to notify residents that any complaint made to an ombudsman, and the identification of the person making the complaint, is confidential.

III. Effect of Proposed Changes:

Section 1 amends s. 394.4574, F.S., to require community living support plans to be updated as needed, not only annually. Case managers are required to maintain a record of the date and time of face-to-face interaction with mental health residents, in order for the DCF to inspect such records for compliance with contractual or other requirements. The records must be retained for 2 years after the date of the last interaction.

This section also requires the DCF to ensure adequate and consistent monitoring and enforcement of community living support plans and cooperative agreements.

Section 2 amends s. 400.0078, F.S., to require a long-term care facility to provide notice to each resident or representative of a resident, upon admission, that the subject matter of a complaint made to the State Long-Term Care Ombudsman Program and the complainant's name and identity are confidential.

Section 3 amends s. 415.1034, F.S., to require an employee or agent of a state or local agency who has regulatory responsibilities over, or who provides services to, persons residing in a state-licensed facility to report abuse, neglect, or exploitation of vulnerable adults to the DCF central abuse hotline.

Section 4 amends s. 429.02, F.S., to define the term "board" to mean the Board of Assisted Living Facility Administration and the term "mental health professional" to mean a person licensed under chapters 458, 459, 464, 490, or 491, related to the practice of medicine, allopathic medicine, nursing, psychological services, and clinical counseling and psychotherapy services, respectively, who provides mental health services, or an individual who has at least 5 years of experience providing services that improve an individual's mental health or that treat mental illness.

Section 5 amends s. 429.07, F.S., to conform a cross-reference and increase the standard licensure fee from $300 to $500, increase the per resident fee from $50 to $55, and increase the total fee cap from $10,000 to $15,000, for an ALF that has one or more class I or class II violations within the 2 years before licensure renewal.

Section 6 amends s. 429.075, F.S., to require an ALF with any mental health residents, rather than three mental health residents, to obtain an LMH license. The eligibility requirements for

obtaining an LMH specialty license are strengthened. A successful applicant may not have been administratively sanctioned during the previous 2 years, or since initial licensure, for:

- Two or more class I or class II violations;
- Three or more repeat or recurring class III violations of identical or similar resident care standards from which a pattern of noncompliance is found by the AHCA;
- Three or more class III violations that were not corrected in accordance with an AHCA-approved corrective action plan;
- A violation of resident care standards, which required the ALF to employ certain consultant services;
- Denial, suspension, or revocation of a license for another licensed facility under which the license applicant has at least a 25 percent ownership interest; or
- Imposition of a moratorium or initiation of injunctive proceedings.

This section clarifies that for an ALF to obtain an LMH license, it must ensure that employees meet the LMH training requirements, in addition to any other training or education requirements.

This section also provides that after July 1, 2012, an administrator of a facility that has an LMH license must, in addition to any other educational requirements, have completed at least 6 semester credit hours of college-level coursework relating to mental health.

This section requires a mental health professional to serve as part of the AHCA inspection team that inspects LMH licensees. An LMH licensee must be monitored by a mental health professional quarterly. However, one of the monitoring visits may be in conjunction with a regular survey. If an ALF has been licensed for at least 2 years and has had a good performance record, one of the quarterly monitors may be waived by the AHCA, but not before the AHCA has first consulted with the ombudsman council to determine if any complaint has been made and substantiated against the facility.

Section 7 amends s. 429.14, F.S., to require the AHCA to deny or revoke the license of an ALF that has 2 or more class I or class II violations that are similar or identical to violations identified by the AHCA within the previous 2 years or if the ALF committed a class I violation or any intentional or negligent act that caused the death of a resident.

Section 8 amends s. 429.17, F.S., to prohibit an ALF that has been cited for 2 or more class I violations within the previous 2 years from obtaining a conditional license.

Section 9 amends s. 429.176, F.S., to provide the eligibility requirements for an applicant for licensure as an ALF administrator and to require, as of July 1, 2013, all ALFs to operate under the management of a licensed ALF administrator.

To be eligible for licensure as an ALF administrator an applicant must:

- Be at least 21 years old;
- Provide proof to the Board that the applicant has a 4-year baccalaureate degree that includes some coursework in health care, gerontology, or geriatrics; a 4-year baccalaureate degree with at least 2 years of experience in direct patient care in an ALF or nursing home; or a

2-year associate degree that includes coursework in health care, gerontology, or geriatrics and at least 2 years of experience in direct patient care in an ALF or nursing home;
- Complete core and supplemental training developed by the Board;
- Pass a licensure examination with a minimum score of 80;
- Complete background screening; and
- Meet any other requirements under part I of ch. 429, F.S.

In addition, the applicant is responsible for paying a $250 initial licensure fee and a $250 fee for each biennial renewal of the license thereafter.

This section also exempts existing ALF administrators, who have been continuously employed as an ALF administrator for at least the 2 years before July 1, 2012, from the education requirements for licensure and the licensure examination. However, an applicant must provide the Board with proof of compliance with continuing education requirements, the administrator must not have been an administrator of a facility that was cited for a class I or class II violation within the prior 2 years, and the administrator is still required to complete core training.

This section also exempts licensed nursing home administrators from the core training requirements, but they must complete the supplemental training required for applicants for administrator licensure and must pass the licensure test. Other licensed professionals may be exempted from the training requirements as determined by the Board by rule.

This section provides that an applicant for administrator licensure, who fails the licensure examination, must wait 10 days to retake the licensure examination and may take the examination up to three times. If the applicant fails the examination three times, then he or she must retake the initial core and supplemental training before retaking the examination.

This section requires an administrator of an LMH licensee to have completed at least 6 semester credit hours of college-level coursework relating to mental health, in addition to any other education requirements.

A licensed administrator must take at least 18 hours of continuing education and pass a competency test with a minimum score of 80 every 2 years.

This section provides that an administrator may apply for inactive licensure status or a license may become inactive if an administrator does not complete continuing education courses on time or the administrator does not pay licensure renewal fees on time. A license may only be reactivated by the Board if renewal fees or delinquent fees and a reactivation fee are paid. The Board is given rulemaking authority relating to the inactive status and the reactivation of licenses and any related fees.

This section also authorizes the Board to develop rules relating to, and to issue, provisional licenses. Provisional licenses may be issued only to fill a position of an ALF administrator which unexpectedly becomes vacant and may only be issued for a single period not to exceed 6 months. The provisional license is to be issued to the person who is designated as the responsible person next in command in the event of the administrator's departure. The Board is prohibited from issuing a provisional license if the applicant is under investigation for, or has committed certain

acts. The Board is authorized to set an application fee for a provisional license not to exceed $500.

Section 10 amends s. 429.178, F.S., to clarify that all staff members, including administrators, employed by an ALF providing special care to residents with Alzheimer's disease or other related disorders and who provide regular or direct care to such residents, must complete up to 4 hours of initial dementia-specific training within 3 months after beginning employment. This section also reduces the amount of time, from 9 months to 6 months, that a direct caregiver working at such a facility and providing direct care to such residents must complete an additional 4 hours of training.

This section also removes the provision that any of the training related to Alzheimer's disease or related disorders required under this section satisfies the core training requirements for administrators, which relate to Alzheimer's disease or related disorders.

Section 11 amends s. 429.19, F.S., to provide a cross-reference and establish certain penalties for violations. For a violation that results in the death of a resident, the AHCA must impose the maximum penalty for the class of violation committed. If a second or subsequent violation that is in the same class as a prior violation cited as a result of or since the last inspection is cited, the AHCA must double the fine that was previously assessed against the ALF when assessing a fine for the second or subsequent violation. The AHCA is also required to impose a fine for class III or class IV violations, regardless of whether the violations are corrected.

Section 12 amends s. 429.23, F.S., to require, instead of authorize, a licensed ALF to establish a risk management and quality assurance program.

Section 13 amends s. 429.256, F.S., to conform a cross-reference to other changes made in the bill.

Section 14 amends s. 429.28, F.S., relating to resident bill of rights, to require an ALF to post notice in a prominent place in each facility that the subject matter of a complaint made to the Ombudsman Office or a local long-term care ombudsman council and the names and identities of the residents involved in the complaint and complainants are confidential.

This section also requires, instead of permits, the AHCA to conduct periodic followup inspections to monitor the compliance of facilities having a history of class I violations that threaten the health, safety, or security of residents.

This section requires the AHCA to impose a fine of $2,500, in addition to any other penalty, if the ALF cannot show in a court of law good cause for the termination of a resident when that act is challenged as retaliatory.

Section 15 amends s. 429.34, F.S., to designate the AHCA as the central agency for receiving and tracking complaints to ensure that allegations regarding facilities are timely responded to and that licensure enforcement action is initiated if warranted. State agencies regulating, or providing services to residents of ALFs, must report any substantiated allegations complaints, or

allegations or complaints that are likely to have occurred, to the AHCA as soon as reasonably possible.

This section requires the AHCA to have lead surveyors in each field office who specialize in assessing ALFs and requires such surveyors to provide initial and ongoing training to surveyors inspecting and monitoring ALFs to ensure consistent monitoring and inspections of ALFs. In addition, the AHCA must have one statewide lead surveyor who specializes in ALF inspections to coordinate communication between lead surveyors and ensure statewide consistency in applying facility inspection laws and rules.

Section 16 amends s. 429.41, F.S., to require ALFs to notify the AHCA at least 15 calendar days before conducting its two elopement drills. The AHCA is required to randomly select 10 percent of the ALFs to have an AHCA employee attend and observe a resident elopement drill at each of the selected facilities. The AHCA's attendance must be unannounced. If the AHCA employee observes an elopement drill that does not meet standards established by rule, the AHCA must notify the ALF of the deficiencies within 15 calendar days after the drill and the ALF must submit a corrective action plan to the AHCA within 30 calendar days after receiving such notice.

This section authorizes the DOEA to require additional staffing for facilities that have specialty licenses, but the additional staffing must correlate with the number of residents receiving special care and the type of special care required.

This section requires, rather than authorizes, the AHCA to conduct an abbreviated biennial standard licensure inspection in a facility that has a good record of past performance in order to allocate AHCA resources efficiently.

Section 17 amends s. 429.49, F.S., to increase the criminal penalty from a misdemeanor of the second degree to a misdemeanor of the first degree for any person who fraudulently alters, defaces, or falsifies any medical or other record of an ALF, or causes or procures any such offense to be committed.

Section 18 creates s. 429.515, F.S., to require all employees hired by an ALF after July 1, 2012, to attend a pre-service orientation, which must be at least 2 hours in duration and cover the following topics:

- Care of persons who have Alzheimer's disease or other related disorders.
- De-escalation techniques.
- Aggression control.
- Elopement prevention.
- Behavior management.

Upon completion of the pre-service orientation, the employee must sign an affidavit, under penalty of perjury, stating that the employee completed the orientation. The affidavit must be maintained in the employee's work file.

Section 19 amends s. 429.52, F.S., to require ALF staff members who provide regular or direct care to residents to complete a board-approved training curriculum within 30 days after employment, in addition to pre-service orientation. This requirement does not pertain to

administrators. The individual participating in the training is required to pay any cost or fee associated with the training. After completing such training, the staff member must complete an interactive online tutorial to demonstrate an understanding of the training received. Upon completing the tutorial, the staff member will receive a certificate of completion, which must be maintained in the employee's work file.

The staff members who provide regular or direct care to residents must participate in a minimum of 8 hours of continuing education every 2 years. The continuing education may be offered through online courses and the person taking the courses is responsible for paying any fee associated with the courses.

Section 20 creates s. 429.521, F.S., to require administrators and staff members who provide regular or direct care to residents of an ECC licensee to complete a minimum of 6 hours of board-approved ECC training within 30 days after beginning employment.

This section also requires administrators employed by a LNS licensee to complete a minimum of 4 hours of board-approved courses that train and educate administrators on the special needs and care of those requiring LNS services. The training must be completed within 30 days after employment.

Staff, including administrators, who prepare or serve food must receive a minimum of 1 hour of in-service training in safe food handling practices within 30 days after beginning employment, which is consistent with current law.

This section clarifies that administrators, as well as staff members, must receive at least 1 hour of in-service training on the ALF's resident elopement response policies and procedures within 30 days after beginning employment. A copy of the ALF's resident elopement policies and procedures must be provided to staff *and* the administrator. Staff *and* administrator, must demonstrate an understanding and competency in the implementation of the elopement response policies and procedures.

This section requires administrators of an LMH licensee and staff members who provide regular or direct care to mental health residents to complete a minimum of 8 hours of board-approved mental health training within 30 days after beginning employment. Within 30 days after completing the LMH training, a staff member must complete an online interactive tutorial to demonstrate an understanding of the training received and pay for any fee associated with the tutorial. An administrator must pass an examination related to the training with a minimum score of 80 and must pay for any fee associated with the examination. A staff member who does not complete the tutorial, or an administrator who fails the examination may not provide regular or direct care to residents until the staff member completes the tutorial or the administrator passes the examination. If the administrator does not pass the examination within 6 months after completing the mental health training, the administrator may not be an administrator of an LMH licensee until the administrator passes the examination.

This section requires administrators, as well as staff members, involved with the management of medications and the assistance with self-administration of medications to complete a minimum of 4 additional hours of training provided by a registered nurse, licensed pharmacist, or DOEA

staff member, which is consistent with current law. The Board must establish, by rule, the minimum requirements of this training, including continuing education requirements.

This section authorizes the Board to, by rule, require other facility staff members to participate in training relevant to their job duties.

Section 21 creates s. 429.522, F.S., to require any individual seeking to provide core training in Florida on or after January 1, 2013, to be certified by the Board. The applicant for certification as a core training provider must provide the Board with proof of completion of core training, passage of the ALF administrator licensure examination, and compliance with continuing education requirements. In addition, an applicant for certification must:

- Provide proof of completion of a 4-year baccalaureate degree from an accredited college or university and have worked in a management position in an ALF for 3 years after obtaining certification in core training courses;
- Have worked in a management position in an ALF for 5 years after obtaining certification in the core training courses and have 1 year of teaching experience as an educator or staff trainer for persons who work in an ALF or another long-term care setting;
- Have been previously employed as a trainer of core training courses for the DOEA;
- Have at least 5 years of employment with the AHCA as a surveyor of ALFs;
- Have at least 5 years of employment in a professional position in the AHCA's assisted living unit;
- Have at least 5 years of employment as an educator or staff trainer for persons working in an ALF or another long-term care setting;
- Have at least 5 years of employment as a trainer of core of ALF courses not directly associated with the DOEA;
- Have a 4-year baccalaureate degree from an accredited college or university in the areas of health care, gerontology, social work, education, or human services and at least 4 years of experience as an educator or staff trainer for persons working in an ALF or another long-term care setting after receiving certification in core courses; or
- Meet other qualification criteria as defined by rule of the Board.

The Board is required to oversee core training providers and establish, by rule, requirements for trainer certification and de-certification or other disciplinary actions.

This section requires the Board, if funding is available, to develop by January 1, 2013, an electronic database, which must list all persons holding a certificate as a core training provider and any history of violations. The Board must maintain the database and make the database accessible to the public. Core trainers must also submit to the Board a list of individuals who have completed training within 24 hours after the training has been completed in order for such information to be included in the database.

Section 22 creates s. 429.523, F.S., to authorize training and testing required under part I, ch. 429, F.S., to be provided by board-approved training and testing centers. The Board, when reviewing an applicant, must consider whether the center will provide sufficient space for training, the location of the center and whether another center already provides training or testing services in the approximate area, the fee to be charged by the center for providing such services,

whether the center has sufficient and qualified staff to provide such services, and any other consideration the Board deems necessary to approve a center.

The Board is required to provide a certificate of approval to an approved center and the center must keep the certificate on file as long as it provides training and examination services.

The Board is authorized to inspect training and testing centers to determine whether the centers meet law and rule requirements. The Board may de-certify a center that does not continue to meet such requirements.

Section 23 amends s. 429.54, F.S., to require the AHCA, the DOEA, the DCF, and the APD, if funds are available, to develop or modify electronic systems of communication among state-supported automated systems to ensure that relevant information pertaining to the regulation of ALFs and ALF staff is timely and effectively communicated among agencies in order to facilitate the protection of residents.

This section also requires ALFs to submit semiannually, electronic reports to the AHCA, which must include:

- The number of beds in the facility;
- The number of beds being occupied;
- The number of residents who are younger than 65 years of age, are 65 to 74 years of age, are 75 to 84 years of age, and are 85 years of age or older;
- The number of residents who are mental health residents, who are receiving extended congregate care, who are receiving limited nursing services, and who are receiving hospice care;
- If there is a facility waiting list, the number of individuals on the waiting list and the type of services or care that they require, if known;
- The number of residents receiving OSS; and
- The number of residents who are Medicaid recipients and the type of waiver used to fund each such resident's care.

The report must be submitted in accordance with a reporting cycle established by AHCA rule and the AHCA may allow an ALF to submit the report in writing, instead of electronically, if the ALF provides written notice at least 30 days before the report is due that it cannot provide an electronic report and the reason the report is being provided in writing.

The AHCA is required to maintain the reported information in electronic format and must use the reported information to track trends in ALF resident populations and needs.

The ALF reporting requirement is scheduled to expire on July 1, 2017, which will allow the Legislature to review whether the reporting requirement is overly burdensome to ALFs and whether the reported information is beneficial to the AHCA and the Legislature to track trends relating to ALF residents.

Section 24 creates s. 429.55, F.S., to create the Board within AHCA, which is to be headquartered in Tallahassee and must consist of 9 members, who are to be appointed by the

Governor and confirmed by the Senate. The members will serve for a term of 4 years or for the remainder of an unexpired term following a vacancy. The membership of the Board must include a licensed ALF administrator and 2 residents of an ALF or 2 family members of an ALF resident and a representative from each of the following:

- The AHCA.
- The DOEA.
- The DCF.
- The APD.
- The DOH.
- The Ombudsman Office.

This section prohibits a person from being appointed as a member of the Board if a conflict of interest exists, except the ALF administrator who has been appointed may retain a financial interest in the facility he or she administers at the time of appointment.

The duties of the Board include:

- Adopting rules to carry out the duties of the Board.
- Overseeing ALF administrator licensure, which requires the Board to:
    - Develop, impose, and enforce specific standards that are designed to ensure that administrators are individuals of good character and otherwise suitable and qualified to serve as administrators by virtue of training or experience in the field of health care facility administration.
    - Develop by appropriate techniques a method for determining whether an applicant meets such standards.
    - Issue licenses, including provisional licenses, to qualified applicants meeting Board standards and revoke or suspend licenses previously issued by the Board if the licensee fails to substantially conform to the requirements of such standards.
    - Establish and carry out procedures, adopted by rule, which are designed to ensure that administrators comply with and maintain standards adopted by the Board.
    - Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the AHCA alleging that an administrator failed to comply with the requirements or standards adopted by the Board.
    - Continually seek to improve the standards imposed for the licensure of administrators and the procedures and methods for enforcing such standards.
    - Develop a core training curriculum, in consultation with the AHCA, the DOEA, and the DCF, to be completed by an applicant for administrator licensure. The curriculum must include at least 40 hours of training, be offered in English and Spanish, be reviewed at least annually by the Board, and be updated as needed to reflect changes in the law, rules, and best practices. The curriculum must, at a minimum, cover state law and rules relating to ALFs; resident rights and the identification and reporting of abuse, neglect, and exploitation; special needs of elderly persons, persons who have mental illness, and persons who have developmental disabilities and how to meet those needs; nutrition and food service; medication management, recordkeeping, and proper techniques for assisting residents who self-administer medication; firesafety requirements; care of persons who have Alzheimer’s disease and related disorders; elopement prevention; aggression and behavior management, de-escalation techniques, and proper protocols and procedures

relating to the Baker Act; do-not-resuscitate orders; infection control; admission and continued residency; phases of care and interacting with residents; and best practices in the industry.
    - Develop a supplemental course consisting of at least 10 hours of training related to extended congregate care, limited mental health, best practices, and business operations, including, but not limited to, human resources, financial management, and supervision of staff, to be completed by an applicant for ALF administrator licensure.
    - Develop an ALF administrator licensure examination in consultation with the AHCA, the DOEA, and the DCF which tests the applicant's knowledge and training of the required subject matter. The examination must be offered in English and Spanish, reviewed at least annually by the Board, and updated as needed to reflect changes in the law, rules, and best practices. A minimum score of 80 is required to show successful completion of the training requirements.
- Developing an LMH curriculum and examination, in consultation with a panel of at least three mental health professionals, which must be completed by an administrator within 30 days after being employed by an LMH licensee. The Board must ensure that the examination is available online, offer the examination in English and Spanish, and update the examination as needed, but at least annually. The Board may establish an examination fee or a fee may be charged by a testing service. The examination fee may not exceed the cost of administering the examination.
- Developing a continuing education curriculum, in consultation with the AHCA, the DOEA, and the DCF, for administrators and for staff members who provide regular and direct care to residents. The Board must require additional credit hours for administrators who are employed by ECC, LNS, or LMH licensees. The Board must also develop a short test for administrators to take upon completing the continuing education curriculum. The Board must review the continuing education curriculum and test at least annually, and update the curriculum and examination as needed to reflect changes in the law, rules, and best practices. Continuing education must include topics similar to those of the core training and in-service training and may include additional subject matter that enhances the knowledge, skills, and abilities of administrators and staff members, as adopted by rule.
- Developing, in consultation with stakeholders, a standardized staff training curriculum for staff members of an ALF, other than an administrator, who provide regular or direct care to residents. Only staff members hired on or after July 1, 2012, are subject to this training requirement. The Board may exempt from this training requirement nurses, certified nursing assistants, and home health aides who can demonstrate that they have already completed such training or substantially similar training. The curriculum must include at least 20 hours of in-service training, with at least 1 hour of training per topic, covering, at a minimum, reporting major incidents; reporting adverse incidents; facility emergency procedures; resident rights in an ALF; recognizing and reporting resident abuse, neglect, and exploitation; resident behavior and needs; providing assistance with the activities of daily living; infection control; and aggression and behavior management and de-escalation techniques.
- Developing an interactive online tutorial, in consultation with the AHCA, the DOEA, the DCF, and stakeholders, which must be completed by facility staff members who provide regular or direct care to ALF residents. The tutorial must be based on LMH training. The Board must offer the tutorial in English and Spanish and update the tutorial as needed, but at least annually. The Board shall provide a certificate to each staff member who completes the tutorial.

- Requiring and providing, or causing to be provided, the training or education of staff members of a facility beyond that which is required under part I of ch. 429, F.S., if the Board or the AHCA determines that there are problems in a facility which could be reduced through specific staff training or education.
- Approving testing and training centers.
- Certifying core training providers who meet the required qualifications for certification.

This section also provides the Board with disciplinary authority over administrators, authorizing the Board to deny licensure or license renewal or suspend or revoke the license of an administrator who is under investigation for, or who has committed any of the following:

- Practicing ALF administration with a revoked, suspended, inactive, or delinquent license.
- Using the name or title "assisted living facility administrator" if the person has not been licensed as such.
- Presenting as his or her own the license of another.
- Giving false or forged evidence to the Board or a member thereof for the purpose of obtaining a license.
- Using or attempting to use an administrator's license that has been suspended or revoked.
- Knowingly employing unlicensed persons in the practice of ALF administration.
- Knowingly concealing information relative to violations of part I, ch. 429, F.S.
- Attempting to procure a license to practice ALF administration by bribery, fraudulent misrepresentation, or through an error of the AHCA or the Board.
- Having a license to practice ALF administration revoked, suspended, or otherwise acted against, including the denial of licensure by the licensing authority of another state, territory, or country.
- Being convicted or found guilty of, or entered a plea of nolo contendre, regardless of adjudication, to a crime in any jurisdiction which relates to the practice of ALF administration.
- Making or filing a report or record that the licensee knows to be false, intentionally failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records include only those which are signed in the capacity of a licensed ALF administrator.
- Advertising goods or services in a manner that is fraudulent, false, deceptive, or misleading in form or content.
- Committing fraud or deceit or exhibiting negligence, incompetence, or misconduct in the practice of ALF administration.
- Violating a lawful order of the Board or AHCA previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the Board or AHCA.
- Repeatedly acting in a manner that is inconsistent with the health, safety, or welfare of the residents of the facility in which he or she is the administrator.
- Being unable to practice ALF administration with reasonable skill and safety to residents by reason of illness, drunkenness, use of drugs, narcotics, chemicals, or any other material or substance or as a result of any mental or physical condition.
- Paying, giving, causing to be paid or given, or offering to pay or to give to any person a commission or other valuable consideration for the solicitation or procurement, directly or indirectly, of ALF usage.

- Willfully permitting unauthorized disclosure of information relating to a resident or his or her records.
- Discriminating with respect to residents, employees, or staff members on account of race, religion, sex, or national origin.
- Violating any provision of part I of ch. 429, F.S., part II of chapter 408, F.S., or rules adopted pursuant to part I of ch. 429, F.S.

The Board is required to revoke the license of an administrator who knowingly participates in intentional misconduct, or engages in conduct that constitutes gross negligence, and contributes to the death of a resident.

This section also provides the Board with rulemaking authority related to education, training, testing, procedures, forms, and fees, and authorizes the Board to consult with or contract with a service provider to develop training and provide online training, testing, or tutorial services.

Section 25 creates s. 429.56, F.S., to require the AHCA, in consultation with the DOEA, the DCF, and the Ombudsman Office, to develop and adopt by rule a user-friendly ALF rating system. The rating system must be publicly available on the Internet and must be based on resident satisfaction, the number and class of deficiencies for which the facility has been cited, AHCA inspection reports, inspection reports of any other regulatory agency, assessments conducted by the ombudsman program, and other criteria as determined by the AHCA. The Internet home page for the rating system must include a link that allows consumers to complete a voluntary survey that provides feedback on whether the rating system is helpful and suggestions for improvement.

This section also gives the AHCA rulemaking authority to implement the rating system.

Section 26 creates an undesignated section of law to require the AHCA to create a task force consisting of at least one representative from the AHCA, the DOEA, the DCF, the DOH, and the Ombudsman Office, for the purpose of determining whether agencies have overlapping regulatory responsibilities over ALFs. The task force is required to meet at least 3 times and must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, by January 1, 2013. The report must include the task force's findings and recommendations pertaining to streamlining agency oversight of ALFs and improving the effectiveness of regulatory functions.

The task force is scheduled to be terminated as of March 1, 2013.

Section 27 creates an undesignated section of law to require the AHCA, by January 1, 2013, to submit copies of all of its inspection forms used to inspect ALFs to the Ombudsman Office. The Ombudsman Office is required to create and act as the chair of a task force of up to 11 members, consisting of an ombudsman, one representative of a nonprofit ALF, one representative of a for-profit ALF, at least one ALF resident or family member of a resident, other stakeholders, and one representative from each of the following:

- The AHCA.
- The DOEA.
- The DCF.

- The DOH.

The task force is required to provide recommendations, if any, to modify the inspection forms to ensure the inspections adequately assess whether the ALFs are in compliance with the law, meet the needs of residents, and ensure resident safety. The task force must provide its recommendations, and explanations of any recommendations, to the AHCA within 90 days after receiving the inspection forms.

The task force is scheduled to terminate on July 1, 2013.

Section 28 provides an effective date of July 1, 2012.

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:

The bill increases the standard ALF license fee from $300 to $500, when an ALF is cited for one or more class I or class II violations within the two years prior to licensure renewal. Additionally, the per-bed fee is increased from $50 to $55, and the total licensure fee is capped at $15,000, instead of the current $10,000 fee cap.

The bill establishes ALF administrator licensure fees of $250 for initial licensure and $250 for each licensure renewal period. The bill also requires participants to pay for any training fees or fees required to take a tutorial or examination.

The bill provides that an administrator must pay a fee when applying for inactive status of his or her license and that an administrator with a license in inactive status must pay a reactivation fee in addition to any licensure renewal or delinquency fee.

The bill authorizes the Board to establish an application fee not to exceed to $500 for a provisional license for an ALF administrator.

B. Private Sector Impact:

ALFs that are cited for certain types of violations would be subject to increased fines and fees. An ALF that commits a retaliatory act against a resident without showing good cause in court would be subject to a fine of $2,500.

Those who are required to complete certain training requirements under the bill are responsible for the cost of such training.

C. Government Sector Impact:

The AHCA and DOEA would incur an indeterminate amount of costs associated with the additional rulemaking and oversight responsibilities provided for in the bill. The AHCA's costs should be somewhat offset by the increased fine and fee amounts provided for in the bill.

A fiscal analysis has been requested, but was not available for this analysis.

VI. Technical Deficiencies:

Line 496 of the bill contains an improper cross-reference. Section 429.176, F.S., should be cross-referenced instead of s. 429.56, F.S.

In line 1033 of the bill, the word "education" should be deleted.

In line 1228 of the bill, the word "examination" should be deleted.

In line 1281 of the bill, the word "a" should be replaced with "an."

VII. Related Issues:

The bill does not authorize a fee for the certification of core training providers or for a certificate of approval for a training and testing center.

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
Comm: FAV	.	
01/19/2012	.	
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The Committee on Health Regulation (Sobel) recommended the following:

Senate Amendment

Delete line 803
and insert:
care ombudsman council shall have the right to enter

FOR CONSIDERATION By the Committee on Health Regulation

588-01897A-12 20127174__

A bill to be entitled

An act relating to assisted living facilities; amending s. 394.4574, F.S.; revising the duties of the case manager for, and the community living support plan of, a mental health resident of an assisted living facility; amending s. 400.0078, F.S.; requiring residents of long-term care facilities to be informed about the confidentiality of the subject matter and identify of the complainant of a complaint received by the State Long-Term Care Ombudsman Program; amending s. 415.1034, F.S.; adding certain employees or agents of a state or local agency to the list of persons who must report the known or suspected abuse of a vulnerable adult to the abuse hotline; amending s. 429.02, F.S.; providing definitions for "board" and "mental health professional"; amending s. 429.07, F.S.; conforming a cross-reference; increasing the biennial license fee required for a facility that has certain violations within the 2 years preceding license renewal; amending s. 429.075, F.S.; revising the criteria preventing a licensed facility from receiving a limited mental health license; providing training requirements for administrators and staff members of facilities that hold a limited mental health license; requiring that a mental health professional be part of the team inspecting a facility that holds a limited mental health license; requiring quarterly monitoring of the facility; providing for an exception from quarterly monitoring; amending s.

Florida Senate - 2012 (Proposed Committee Bill) SPB 7174

588-01897A-12 20127174__

429.14, F.S.; requiring the revocation of a facility license for certain violations that result in the death of a resident; amending s. 429.17, F.S.; providing that a facility that has been cited for certain violations may not be issued a conditional license; amending s. 429.176, F.S.; requiring the licensure of facility administrators; providing administrator education, training, and examination requirements; providing exceptions; providing for inactive and provisional licenses; amending s. 429.178, F.S.; revising training requirements for staff who provide care for persons with Alzheimer's disease and related disorders; amending s. 429.19, F.S.; conforming provisions to changes made by the act; authorizing the Agency for Health Care Administration to impose an increased fine for certain violations that result in the death of a resident; amending s. 429.23, F.S.; requiring a facility to establish a risk management and quality assurance program; amending s. 429.256, F.S.; conforming a cross-reference; amending s. 429.28, F.S.; requiring residents of facilities to be informed about the confidentiality of the subject matter and identify of the resident and complainant of a complaint made to the State Long-Term Care Ombudsman Program; requiring the agency to conduct followup inspections of facilities that have a history of certain violations; providing that facility that terminates an individual's residency will be fined if good cause is

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

not shown in court; amending s. 429.34, F.S.; providing that the agency is designated as the central agency for receiving and tracking facility complaints; requiring the agency to have lead surveyors who specialize in assessing facilities; amending s. 429.41, F.S.; requiring the agency to anonymously observe the elopement drills of a randomly selected group of facilities; authorizing the agency to require additional staffing for facilities that hold a specialty license; requiring the agency to conduct an abbreviated biennial licensure inspection; amending s. 429.49, F.S.; increasing the criminal penalty for altering facility records; creating s. 429.515, F.S.; requiring new facility employees to attend a preservice orientation; providing requirements for such orientation; amending s. 429.52, F.S.; revising training and continuing education requirements for facility staff other than administrators; providing for the use of interactive online tutorials; creating s. 429.521, F.S.; providing training requirements for certain staff of facilities that hold an extended congregate care, limited nursing, and limited mental health license; providing for examinations; authorizing the Board of Assisted Living Facility Administration to adopt rules; creating s. 429.522, F.S.; requiring training providers to be certified by the board and provide trainer oversight; providing trainer requirements; requiring the board to maintain an electronic database of certified providers and

persons who complete training if funding is available; creating s. 429.523, F.S.; providing for board approval of training and testing centers; providing approval criteria; amending s. 429.54, F.S.; requiring specified state agencies to have an electronic system of communication pertaining to the regulation of facilities; requiring facilities to submit certain facility and resident information electronically to the agency twice yearly; providing for the maintenance and use of such information; providing for expiration of this requirement; creating s. 429.55, F.S.; establishing the Board of Assisted Living Facility Administration in the agency; providing for membership; providing board duties including duties relating to administrator licensing and to administrator and facility staff training; providing board oversight over administrators including grounds for disciplinary action; authorizing the board to adopt certain rules; creating s. 429.56, F.S.; directing the agency to establish an online, user-friendly facility rating system that may be accessed by the public; requiring the agency to create a task force to determine whether state agencies have overlapping regulatory jurisdiction over facilities and to submit findings and recommendations to the Governor and Legislature by a certain date; providing for termination; requiring the Office of the State Long-Term Care Ombudsman to create a task force to review the agency’s facility inspection forms and to

submit its recommendations to the agency by a certain date; providing for termination; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (e) of subsection (2) of section 394.4574, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

394.4574 Department responsibilities for a mental health resident who resides in an assisted living facility that holds a limited mental health license.—

(2) The department must ensure that:

(e) The mental health services provider assigns a case manager to each mental health resident who lives in an assisted living facility with a limited mental health license. The case manager is responsible for coordinating the development ~~of~~ and implementation of the community living support plan defined in s. 429.02. The plan must be updated as needed, but at least annually, to ensure that the ongoing needs of the resident are being addressed. Case managers must keep a record of the date and time of any face-to-face interaction with the mental health resident and make the record available to the department for inspection. The record must be retained for 2 years after the date of the last interaction.

(f) There is adequate and consistent monitoring and enforcement of community living support plans and cooperative agreements by the department.

Section 2. Subsection (2) of section 400.0078, Florida

Statutes, is amended to read:

400.0078 Citizen access to State Long-Term Care Ombudsman Program services.—

(2) ~~Every resident or representative of a resident shall receive,~~ Upon admission to a long-term care facility, each resident or representative of a resident must receive information regarding the purpose of the State Long-Term Care Ombudsman Program, the statewide toll-free telephone number for receiving complaints, the confidentiality of the subject matter of a complaint and the complainant's name and identity, and other relevant information regarding how to contact the program. Residents or their representatives must be furnished additional copies of this information upon request.

Section 3. Paragraph (a) of subsection (1) of section 415.1034, Florida Statutes, is amended to read:

415.1034 Mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.—

(1) MANDATORY REPORTING.—

(a) Any person, including, but not limited to~~, any~~:

1. A physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults;

2. A health professional or mental health professional other than one listed in subparagraph 1.;

3. A practitioner who relies solely on spiritual means for healing;

4. Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff;

social worker; or other professional adult care, residential, or institutional staff;

5. A state, county, or municipal criminal justice employee or law enforcement officer;

6. An employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. 509.032;

7. A Florida advocacy council member or long-term care ombudsman council member; ~~or~~

8. A bank, savings and loan, or credit union officer, trustee, or employee; or

9. An employee or agent of a state or local agency who has regulatory responsibilities over, or who provides services to, persons residing in a state-licensed facility,

who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited must ~~shall~~ immediately report such knowledge or suspicion to the central abuse hotline.

Section 4. Subsections (5) and (11) of section 429.02, Florida Statutes, are amended, present subsections (6) through (14) of that section are redesignated as subsections (7) through (15), respectively, present subsections (15) through (26) of that section are redesignated as subsections (17) through (28), respectively, and new subsections (6) and (16) are added to that section, to read:

429.02 Definitions.—When used in this part, the term:

(5) "Assisted living facility" or "facility" means any building or buildings, section or distinct part of a building,

private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide 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.

(6) "Board" means the Board of Assisted Living Facility Administration established under s. 429.55.

(12) ~~(11)~~ "Extended congregate care" means acts beyond those authorized in subsection (18) which ~~(16) that~~ may be performed pursuant to part I of chapter 464 by persons licensed thereunder while carrying out their professional duties, and other supportive services which may be specified by rule. The purpose of such services is to enable residents to age in place in a residential environment despite mental or physical limitations that might otherwise disqualify them from residency in a facility licensed under this part.

(16) "Mental health professional" means a person licensed under chapter 458, chapter 459, chapter 464, chapter 490, or chapter 491 who provides mental health services as defined in s. 394.67, or an individual who has at least 5 years of experience providing services that improve an individual's mental health or that treat mental illness.

Section 5. Section 429.07, Florida Statutes, is amended to read:

429.07 Facility license required; fee.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or

applying for such licensure from the agency pursuant to this part. A license issued by the agency is required in order to operate an assisted living facility in this state.

(2) Separate licenses are ~~shall be~~ required for facilities maintained in separate premises, even though operated under the same management. A separate license is ~~shall~~ not ~~be~~ required for separate buildings on the same grounds.

(3) In addition to the requirements of s. 408.806, each license granted by the agency must state the type of care for which the license is granted. Licenses shall be issued for one or more of the following categories of care: standard, extended congregate care, limited nursing services, or limited mental health.

(a) A standard license shall be issued to facilities providing one or more of the personal services identified in s. 429.02. Such facilities may also employ or contract with a person licensed under part I of chapter 464 to administer medications and perform other tasks as specified in s. 429.255.

(b) An extended congregate care license shall be issued to facilities providing, directly or through contract, services beyond those authorized in paragraph (a), including services performed by persons licensed under part I of chapter 464 and supportive services, as defined by rule, to persons who would otherwise be disqualified from continued residence in a facility licensed under this part.

1. In order for extended congregate care services to be provided, the agency must first determine that all requirements established in law and rule are met and must specifically designate, on the facility's license, that such services may be

provided and whether the designation applies to all or part of the facility. Such designation may be made at the time of initial licensure or relicensure, or upon request in writing by a licensee under this part and part II of chapter 408. The notification of approval or the denial of the request shall be made in accordance with part II of chapter 408. Existing facilities qualifying to provide extended congregate care services must have maintained a standard license and may not have been subject to administrative sanctions during the previous 2 years, or since initial licensure if the facility has been licensed for less than 2 years, for any of the following reasons:

a. A class I or class II violation;

b. Three or more repeat or recurring class III violations of identical or similar resident care standards from which a pattern of noncompliance is found by the agency;

c. Three or more class III violations that were not corrected in accordance with the corrective action plan approved by the agency;

d. Violation of resident care standards which results in requiring the facility to employ the services of a consultant pharmacist or consultant dietitian;

e. Denial, suspension, or revocation of a license for another facility licensed under this part in which the applicant for an extended congregate care license has at least 25 percent ownership interest; or

f. Imposition of a moratorium pursuant to this part or part II of chapter 408 or initiation of injunctive proceedings.

2. A facility that is licensed to provide extended

congregate care services must ~~shall~~ maintain a written progress report on each person who receives services which describes the type, amount, duration, scope, and outcome of services that are rendered and the general status of the resident's health. A registered nurse, or appropriate designee, representing the agency shall visit the facility at least quarterly to monitor residents who are receiving extended congregate care services and to determine if the facility is in compliance with this part, part II of chapter 408, and relevant rules. One of the visits may be in conjunction with the regular survey. The monitoring visits may be provided through contractual arrangements with appropriate community agencies. A registered nurse shall serve as part of the team that inspects the facility. The agency may waive one of the required yearly monitoring visits for a facility that has been licensed for at least 24 months to provide extended congregate care services, if, during the inspection, the registered nurse determines that extended congregate care services are being provided appropriately, and if the facility has no class I or class II violations and no uncorrected class III violations. The agency must first consult with the long-term care ombudsman council for the area in which the facility is located to determine if any complaints have been made and substantiated about the quality of services or care. The agency may not waive one of the required yearly monitoring visits if complaints have been made and substantiated.

3. A facility that is licensed to provide extended congregate care services must:

a. Demonstrate the capability to meet unanticipated

resident service needs.

b. Offer a physical environment that promotes a homelike setting, provides for resident privacy, promotes resident independence, and allows sufficient congregate space as defined by rule.

c. Have sufficient staff available, taking into account the physical plant and firesafety features of the building, to assist with the evacuation of residents in an emergency.

d. Adopt and follow policies and procedures that maximize resident independence, dignity, choice, and decisionmaking in order to permit residents to age in place~~,~~ so that moves due to changes in functional status are minimized or avoided.

e. Allow residents or, if applicable, a resident's representative, designee, surrogate, guardian, or attorney in fact to make a variety of personal choices, participate in developing service plans, and share responsibility in decisionmaking.

f. Implement the concept of managed risk.

g. Provide, directly or through contract, the services of a person licensed under part I of chapter 464.

h. In addition to the training mandated under s. 429.55 ~~in s. 429.52~~, provide specialized training as defined by rule for facility staff.

4. A facility that is licensed to provide extended congregate care services is exempt from the criteria for continued residency set forth in rules adopted under s. 429.41. A licensed facility must adopt its own requirements within guidelines for continued residency set forth by rule. However, the facility may not serve residents who require 24-hour nursing

supervision. A licensed facility that provides extended congregate care services must also provide each resident with a written copy of facility policies governing admission and retention.

5. The primary purpose of extended congregate care services is to allow residents, as they become more impaired, the option of remaining in a familiar setting from which they would otherwise be disqualified for continued residency. A facility licensed to provide extended congregate care 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 extended congregate care facility.

6. Before the admission of an individual to a facility licensed to provide extended congregate care services, the individual must undergo a medical examination as provided in s. 429.26(4) and the facility must develop a preliminary service plan for the individual.

7. If ~~When~~ a facility can no longer provide or arrange for services in accordance with the resident's service plan and needs and the facility's policy, the facility must ~~shall~~ make arrangements for relocating the person in accordance with s. 429.28(1)(k).

8. Failure to provide extended congregate care services may result in denial of extended congregate care license renewal.

(c) A limited nursing services license shall be issued to a facility that provides services beyond those authorized in paragraph (a) and as specified in this paragraph.

1. In order for limited nursing services to be provided in

a facility licensed under this part, the agency must first determine that all requirements established in law and rule are met and must specifically designate, on the facility's license, that such services may be provided. Such designation may be made at the time of initial licensure or relicensure, or upon request in writing by a licensee under this part and part II of chapter 408. Notification of approval or denial of such request shall be made in accordance with part II of chapter 408. Existing facilities qualifying to provide limited nursing services shall have maintained a standard license and may not have been subject to administrative sanctions that affect the health, safety, and welfare of residents for the previous 2 years or since initial licensure if the facility has been licensed for less than 2 years.

2. Facilities that are licensed to provide limited nursing services shall maintain a written progress report on each person who receives such nursing services, which report describes the type, amount, duration, scope, and outcome of services that are rendered and the general status of the resident's health. A registered nurse representing the agency shall visit such facilities at least twice a year to monitor residents who are receiving limited nursing services and to determine if the facility is in compliance with applicable provisions of this part, part II of chapter 408, and related rules. The monitoring visits may be provided through contractual arrangements with appropriate community agencies. A registered nurse shall also serve as part of the team that inspects such facility.

3. A person who receives limited nursing services under this part must meet the admission criteria established by the

agency for assisted living facilities. When a resident no longer meets the admission criteria for a facility licensed under this part, arrangements for relocating the person shall be made in accordance with s. 429.28(1)(k), unless the facility is licensed to provide extended congregate care services.

(4) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule.

(a) The biennial license fee required of a facility is $300 per license, plus ~~with~~ an additional fee of $50 per resident based on the total licensed resident capacity of the facility, except that an ~~no~~ additional fee may not ~~will~~ be assessed for beds designated for recipients of optional state supplementation payments provided under ~~for in~~ s. 409.212. The total fee may not exceed $10,000. However, the biennial license fee for a licensed facility that has one or more class I or class II violations within the 2 years before licensure renewal is $500 per license, plus an additional fee of $55 per resident based on the total licensed resident capacity of the facility. The total fee for such facilities may not exceed $15,000.

(b) In addition to the total fee assessed under paragraph (a), the agency shall require facilities that are licensed to provide extended congregate care services under this part to pay an additional fee per licensed facility. The amount of the biennial fee shall be $400 per license, with an additional fee of $10 per resident based on the total licensed resident capacity of the facility.

(c) In addition to the total fee assessed under paragraph

(a), the agency shall require facilities that are licensed to provide limited nursing services under this part to pay an additional fee per licensed facility. The amount of the biennial fee shall be $250 per license, with an additional fee of $10 per resident based on the total licensed resident capacity of the facility.

(5) Counties or municipalities applying for licenses under this part are exempt from the payment of license fees.

Section 6. Section 429.075, Florida Statutes, is amended to read:

429.075 Limited mental health license.—An assisted living facility that serves a ~~three or more~~ mental health resident ~~residents~~ must obtain a limited mental health license.

(1) To obtain a limited mental health license, a facility must hold a standard license as an assisted living facility and~~,~~ ~~must~~ not have been subject to administrative sanctions during the previous 2 years, or since initial licensure if the facility has been licensed for less than 2 years, for any of the following reasons:

(a) Two or more class I or class II violations;

(b) Three or more repeat or recurring class III violations of identical or similar resident care standards from which a pattern of noncompliance is found by the agency;

(c) Three or more class III violations that were not corrected in accordance with the facility's corrective action plan approved by the agency;

(d) A violation of resident care standards which resulted in requiring the facility to employ the consultant services of a licensed pharmacist or a registered or licensed dietitian under

s. 429.42;

(e) Denial, suspension, or revocation of a license for another facility licensed under this part in which the license applicant has at least a 25 percent ownership interest; or

(f) Imposition of a moratorium pursuant to this part or part II of chapter 408 or initiation of injunctive proceedings ~~any current uncorrected deficiencies or violations, and must ensure that, within 6 months after receiving a limited mental health license, the facility administrator and the staff of the facility who are in direct contact with mental health residents must complete training of no less than 6 hours related to their duties. Such designation~~

(2) Licensure to provide services to mental health residents may be made at the time of initial licensure or relicensure or upon request in writing by a licensee under this part and part II of chapter 408. Notification of agency approval or denial of such request must ~~shall~~ be made in accordance with this part, part II of chapter 408, and applicable rules. ~~This training will be provided by or approved by the Department of Children and Family Services.~~

(3) ~~(2)~~ Facilities licensed to provide services to mental health residents shall provide appropriate supervision and staffing to provide for the health, safety, and welfare of such residents.

(a) In addition to any other training or education requirements for employees of an assisted living facility, each administrator and staff member of the facility must meet the limited mental health training requirements set forth in s. 429.521.

(b) Effective July 1, 2012, an administrator of a facility that has a limited mental health licensee must, in addition to the educational requirements under s. 429.56, also have completed at least 6 semester credit hours of college-level coursework relating to mental health.

(4) ~~(3)~~ A facility that holds ~~has~~ a limited mental health license must:

(a) Have a copy of each mental health resident's community living support plan and the cooperative agreement with the mental health care services provider. The support plan and the agreement may be combined.

(b) Have documentation that is provided by the Department of Children and Family Services that each mental health resident has been assessed and determined to be able to live in the community in an assisted living facility with a limited mental health license.

(c) Make the community living support plan available for inspection by the resident, the resident's legal guardian, the resident's health care surrogate, and other individuals who have a lawful basis for reviewing this document.

(d) Assist the mental health resident in carrying out the activities identified in the individual's community living support plan.

(5) ~~(4)~~ A facility that holds ~~with~~ a limited mental health license may enter into a cooperative agreement with a private mental health provider. For purposes of the limited mental health license, the private mental health provider may act as the case manager.

(6) A mental health professional shall serve as part of the

team that inspects a facility that holds a mental health license. A mental health professional representing the agency shall visit the facility at least quarterly to monitor residents who are receiving limited mental health services and to determine if the facility is in compliance with this part, part II of chapter 408, and relevant rules. One of those visits may be in conjunction with the agency's regular survey. The monitoring visits may be provided through a contractual arrangement with an appropriate community agency. The agency may waive one of the quarterly monitoring visits of a facility that has had a mental health license for at least 2 years if, during the inspection, the mental health professional determines that mental health services are being provided appropriately and the facility has had no class I or class II violation and no uncorrected class III violation. Before waiving a monitoring visit, the agency must first consult with a representative of the local long-term care ombudsman council for the area in which the facility is located to determine if any complaint has been made and substantiated regarding the quality of services or care provided at that facility. The agency may not waive one of the required monitoring visits if a complaint has been made and substantiated.

Section 7. Subsection (4) of section 429.14, Florida Statutes, is amended to read:

429.14 Administrative penalties.—

(4) The agency shall deny or revoke the license of an assisted living facility that:

(a) Has two or more class I or class II violations that are similar or identical to violations identified by the agency

during a survey, inspection, monitoring visit, or complaint investigation occurring within the previous 2 years; or.

(b) Committed a class I violation or any intentional or negligent act that caused the death of a resident.

Section 8. Subsection (4) of section 429.17, Florida Statutes, is amended to read:

429.17 Expiration of license; renewal; conditional license.—

(4) In addition to the license categories available in s. 408.808, a conditional license may be issued to an applicant for license renewal if the applicant fails to meet all standards and requirements for licensure. A conditional license must ~~issued under this subsection shall~~ be limited ~~in duration~~ to a specific period of time not to exceed 6 months, as determined by the agency, and ~~shall~~ be accompanied by an agency-approved plan of correction. An assisted living facility that has been cited for two or more class I violations within the previous 2 years may not be issued a conditional license.

Section 9. Section 429.176, Florida Statutes, is amended to read:

429.176 ~~Notice of change of~~ Administrator license.—

(1) Effective July 1, 2013, an assisted living facility in the state may not operate unless it is under the management of an administrator who holds a currently valid license or provisional license as an assisted living facility administrator.

(2) In order to be licensed as an assisted living facility administrator, an applicant must:

(a) Be at least 21 years old;

(b) Meet the educational requirements under this section;

(c) Complete the core training and supplemental training developed by the board pursuant to s. 429.55(3)(b)7.-8.;

(d) Pass a licensure examination with a minimum score of 80;

(e) Complete background screening pursuant to s. 429.174; and

(f) Otherwise meet the requirements of this part.

(3) Before licensure, the applicant must submit to the board proof that he or she is at least 21 years old and has a 4-year baccalaureate degree that includes some coursework in health care, gerontology, or geriatrics; a 4-year baccalaureate degree and at least 2 years of experience in direct patient care in an assisted living facility or nursing home; or a 2-year associate degree that includes coursework in health care, gerontology, or geriatrics and at least 2 years of experience in direct patient care in an assisted living facility or nursing home. The applicant must also submit a licensure fee established by the board by rule. The fee may not exceed $250 for the initial licensure or $250 for each biennial license renewal.

(4) An assisted living facility administrator who is continuously employed as facility administrator for at least the 2 years before July 1, 2012, is eligible for licensure without meeting the educational requirements of this section or taking the licensure examination if proof of compliance with the core training and educational requirements under this part is submitted to the board and the applicant was not the administrator of a facility that was cited for a class I or class II violation within the prior 2 years.

(5) An administrator licensed in accordance with part II of chapter 468 is exempt from the core training requirements developed under s. 429.55(3)(b)7. Other licensed professionals may be exempted from some or all of the training requirements of this section, as determined by the board by rule.

(6) If an applicant fails the licensure examination, the applicant must wait 10 days before retaking it. If an applicant fails the licensure examination three times, the applicant must retake the initial core and supplemental training before retaking the examination.

(7) An administrator may not be an administrator of a facility that holds a limited mental health license unless the administrator meets the educational requirement under s. 429.075(3).

(8) A licensed administrator must complete a minimum of 18 hours of continuing education every 2 years and pass a short test with a minimum score of 80 in order to document receipt and comprehension of the training. A passing score must be achieved before license renewal. The examination may be offered online. Any fees associated with the online service shall be borne by the participant.

(9) An administrator may apply for inactive licensure status. An administrator’s license also becomes inactive if the administrator does not complete continuing education courses within the requisite time or if the administrator does not pay licensure renewal fees on time. The board may not reactivate a license unless the inactive or delinquent licensee has paid any applicable biennial renewal or delinquency fee, or both, and a reactivation fee.

(a) The board shall adopt rules relating to application procedures for inactive status, for the renewal of inactive licenses, and for the reactivation of licenses.

(b) The board shall prescribe by rule an application fee for inactive status, a renewal fee for inactive status, a delinquency fee, and a fee for the reactivation of a license. Such fees may not exceed the biennial renewal fee established by the board for an active license.

(10) The board may establish requirements by rule for issuing a provisional assisted living facility administrator license. A provisional license shall be issued only to fill a position of an assisted living facility administrator which unexpectedly becomes vacant and shall be issued for only one single period as provided by rule, not to exceed 6 months. The board may not issue a provisional license to an applicant who is under investigation for, or has committed, an act in this state or another jurisdiction which would constitute a violation of s. 429.55(4)(a). The provisional license may be issued to a person who does not meet all of the licensing requirements established by this part, but does meet minimal requirements established by board rule, to ensure protection of the public health, safety, and welfare. The provisional license shall be issued to the person who is designated as the responsible person next in command in the event of the administrator's departure. The board may set an application fee not to exceed $500 for a provisional license.

(11) If, during the period for which a standard license is issued, the facility owner changes administrators, the owner must notify the agency of the change within 10 days and provide

documentation that the administrator is licensed or has been granted a provisional license ~~within 90 days that the new administrator has completed the applicable core educational requirements under s. 429.52~~.

Section 10. Paragraphs (a) and (b) of subsection (2) of section 429.178, Florida Statutes, are amended to read:

429.178 Special care for persons with Alzheimer's disease or other related disorders.—

(2)(a) Staff members, including administrators, ~~An individual~~ who are ~~is~~ employed by a facility that provides special care for residents with Alzheimer's disease or other related disorders, and who provide ~~has~~ regular or direct care to ~~contact with~~ such residents, must complete up to 4 hours of initial dementia-specific training developed or approved by the department. The training must ~~shall~~ be completed within 3 months after beginning employment ~~and shall satisfy the core training requirements of s. 429.52(2)(g)~~.

(b) A direct caregiver who is employed by a facility that provides special care for residents with Alzheimer's disease or other related disorders, and who provides direct care to such residents, must complete the required initial training and 4 additional hours of training developed or approved by the department. The training must ~~shall~~ be completed within 6 months ~~9 months~~ after beginning employment ~~and shall satisfy the core training requirements of s. 429.52(2)(g)~~.

Section 11. Subsections (1) and (2) of section 429.19, Florida Statutes, are amended to read:

429.19 Violations; imposition of administrative fines; grounds.—

(1) In addition to the requirements of part II of chapter 408 and s. 429.28(6), the agency shall impose an administrative fine in the manner provided under ~~in~~ chapter 120 for the violation of any provision of this part, part II of chapter 408, and applicable rules by an assisted living facility~~;~~ ~~,~~ for the actions of any person subject to level 2 background screening under s. 408.809~~;~~ ~~,~~ for the actions of any facility employee~~;~~ ~~,~~ or for an intentional or negligent act seriously affecting the health, safety, or welfare of a resident of the facility.

(2) Each violation of this part and adopted rules shall be classified according to the nature of the violation and the gravity of its probable effect on facility residents as provided in s. 408.813.

(a) The agency shall indicate the classification on the written notice of the violation as follows:

1.~~(a)~~ For class "I" violations, ~~are defined in s. 408.813.~~ the agency shall impose an administrative fine ~~for a cited class I violation~~ in an amount not less than $5,000 and not exceeding $10,000 for each violation.

2.~~(b)~~ For class "II" violations, ~~are defined in s. 408.813.~~ the agency shall impose an administrative fine ~~for a cited class II violation~~ in an amount not less than $1,000 and not exceeding $5,000 for each violation.

3.~~(c)~~ For class "III" violations, ~~are defined in s. 408.813.~~ the agency shall impose an administrative fine ~~for a cited class III violation~~ in an amount not less than $500 and not exceeding $1,000 for each violation.

4.~~(d)~~ For class "IV" violations, ~~are defined in s. 408.813.~~ the agency shall impose an administrative fine ~~for a cited class IV violation~~ in an amount not less than $100 and not exceeding $200 for each violation.

(b) The agency shall impose the maximum penalty for the class of violation which results in the death of a resident. If the facility is cited for a second or subsequent violation that is in the same class as a prior violation that the facility has been cited for at, or since, the last inspection, the agency shall double the fine for the second or subsequent violation even if the fine exceeds the maximum amount authorized. Notwithstanding s. 408.813(c) and (d), the agency shall impose a fine for a class III or class IV violation.

Section 12. Subsection (1) of section 429.23, Florida Statutes, is amended to read:

429.23 Internal risk management and quality assurance program; adverse incidents and reporting requirements.—

(1) As part of its administrative functions, an assisted living ~~Every~~ facility licensed under this part shall ~~may, as part of its administrative functions, voluntarily~~ establish a risk management and quality assurance program, the purpose of which is to assess resident care practices, facility incident reports, deficiencies cited by the agency, adverse incident reports, and resident grievances and develop plans of action to correct and respond quickly to identify quality differences.

Section 13. Paragraph (b) of subsection (1) of section 429.256, Florida Statutes, is amended to read:

429.256 Assistance with self-administration of medication.—

(1) For the purposes of this section, the term:

(b) "Unlicensed person" means an individual not currently licensed to practice nursing or medicine who is employed by or

under contract to an assisted living facility and who has received training with respect to assisting with the self-administration of medication in an assisted living facility, as provided under s. 429.521, before ~~429.52 prior to~~ providing such assistance as described in this section.

Section 14. Subsection (2), paragraph (d) of subsection (3), and subsection (6) of section 429.28, Florida Statutes, are amended to read:

429.28 Resident bill of rights.—

(2) The administrator of a facility shall ensure that a written notice of the rights, obligations, and prohibitions set forth in this part is posted in a prominent place in each facility and read or explained to residents who cannot read. The ~~This~~ notice must ~~shall~~ include the name, address, and telephone numbers of the local ombudsman council and central abuse hotline and, if ~~when~~ applicable, the Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council, where complaints may be lodged. The notice must state that the subject matter of a complaint made to the Office of State Long-Term Care Ombudsman or a local long-term care ombudsman council and the names and identities of the residents involved in the complaint and the complainants are confidential pursuant to s. 400.0077. The facility must ensure a resident's access to a telephone to call the local ombudsman council, central abuse hotline, Advocacy Center for Persons with Disabilities, Inc., and the Florida local advocacy council.

(3)

(d) The agency shall conduct periodic followup inspections to monitor the compliance of facilities having a history of

class I violations that threaten the health, safety, or security of residents and may conduct periodic followup inspections as necessary to monitor the compliance of facilities having ~~with~~ a history of ~~any class I,~~ class II~~,~~ or class III violations that threaten the health, safety, or security of residents.

(6) A ~~Any~~ facility that ~~which~~ terminates the residency of an individual who participated in activities specified in subsection (5) must ~~shall~~ show good cause in a court of competent jurisdiction. If good cause is not shown, the agency shall impose a fine of $2,500 in addition to any other penalty assessed against the facility.

Section 15. Section 429.34, Florida Statutes, is amended to read:

429.34 Right of entry and inspection.—

(1) In addition to the requirements of s. 408.811, a ~~any duly~~ designated officer or employee of the department, the Department of Children and Family Services, the Medicaid Fraud Control Unit of the Office of the Attorney General, the state or local fire marshal, or a member of the state or local long-term care ombudsman council may ~~shall have the right to~~ enter unannounced upon and into the premises of any facility licensed pursuant to this part in order to determine the state of compliance with the provisions of this part, part II of chapter 408, and applicable rules. Data collected by the state or local long-term care ombudsman councils or the state or local advocacy councils may be used by the agency in investigations involving violations of regulatory standards.

(2) The agency is designated the central agency for receiving and tracking complaints to ensure that allegations

regarding facilities are timely responded to and that licensure enforcement action is initiated if warranted. Any other state agency regulating, or providing services to residents of, assisted living facilities must report any allegations or complaints that have been substantiated or are likely to have occurred to the agency as soon as reasonably possible.

(3) The agency shall have lead surveyors in each field office who specialize in assessing assisted living facilities. The lead surveyors shall provide initial and ongoing training to surveyors who will be inspecting and monitoring facilities. The lead surveyors shall ensure that consistent inspection and monitoring assessments are conducted.

(4) The agency shall have one statewide lead surveyor who specializes in assisted living facility inspections. The lead surveyor shall coordinate communication between lead surveyors of assisted living facilities throughout the state and ensure statewide consistency in applying facility inspection laws and rules.

Section 16. Paragraph (l) of subsection (1) subsections (2) and (5) of section 429.41, Florida Statutes, are amended to read:

429.41 Rules establishing standards.—

(1) It is the intent of the Legislature that rules published and enforced pursuant to this section shall include criteria by which a reasonable and consistent quality of resident care and quality of life may be ensured and the results of such resident care may be demonstrated. Such rules shall also ensure a safe and sanitary environment that is residential and noninstitutional in design or nature. It is further intended

that reasonable efforts be made to accommodate the needs and preferences of residents to enhance the quality of life in a facility. The agency, in consultation with the department, may adopt rules to administer the requirements of part II of chapter 408. In order to provide safe and sanitary facilities and the highest quality of resident care accommodating the needs and preferences of residents, the department, in consultation with the agency, the Department of Children and Family Services, and the Department of Health, shall adopt rules, policies, and procedures to administer this part, which must include reasonable and fair minimum standards in relation to:

(l) The establishment of specific policies and procedures on resident elopement. Facilities shall conduct a minimum of two resident elopement drills each year. All administrators and direct care staff shall participate in the drills. Facilities shall document the drills. Facilities shall notify the agency at least 15 calendar days before conducting the two drills. Each calendar year, the agency shall randomly select 10 percent of the licensed facilities and have an agency employee attend and observe a resident elopement drill at each of the selected facilities. Such attendance must be unannounced. If the employee observes an elopement drill that does not meet standards established by rule, the agency shall provide notice of the deficiencies to the facility within 15 calendar days after the drill. The facility shall submit a corrective action plan to the agency within 30 calendar days after receiving such notice.

(2) In adopting any rules pursuant to this part, the department, in conjunction with the agency, shall make distinct standards for facilities based upon facility size; the types of

care provided; the physical and mental capabilities and needs of residents; the type, frequency, and amount of services and care offered; and the staffing characteristics of the facility. Rules developed pursuant to this section may ~~shall~~ not restrict the use of shared staffing and shared programming in facilities that are part of retirement communities that provide multiple levels of care and otherwise meet the requirements of law and rule. The department may require additional staffing for facilities that have specialty licenses, but the additional staffing must correlate with the number of residents receiving special care and the type of special care required. Except for uniform firesafety standards, the department shall adopt by rule separate and distinct standards for facilities with 16 or fewer beds and for facilities with 17 or more beds. The standards for facilities with 16 or fewer beds must ~~shall~~ be appropriate for a noninstitutional residential environment if~~, provided that~~ the structure is no more than two stories in height and all persons who cannot exit the facility unassisted in an emergency reside on the first floor. The department, in conjunction with the agency, may make other distinctions among types of facilities as necessary to enforce the provisions of this part. If ~~Where~~ appropriate, the agency shall offer alternate solutions for complying with established standards, based on distinctions made by the department and the agency relative to the physical characteristics of facilities and the types of care offered ~~therein~~.

(5) In order to allocate resources efficiently, the agency shall conduct ~~may 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 a facility that has a good record of past performance. However, a full inspection must be conducted in a facility that has a history of class I or class II violations, uncorrected class III violations, confirmed ombudsman council complaints, or confirmed licensure complaints, within the previous licensure period immediately preceding the inspection or if a potentially serious problem is identified during the abbreviated inspection. The agency, in consultation with the department, shall develop the key quality-of-care standards with input from the State Long-Term Care Ombudsman Council and representatives of provider groups for incorporation into its rules.

Section 17. Subsection (1) of section 429.49, Florida Statutes, is amended to read:

429.49 Resident records; penalties for alteration.—

(1) Any person who fraudulently alters, defaces, or falsifies any medical or other record of an assisted living facility, or causes or procures any such offense to be committed, commits a misdemeanor of the first ~~second~~ degree, punishable as provided in s. 775.082 or s. 775.083.

Section 18. Section 429.515, Florida Statutes, is created to read:

429.515 Preservice orientation.—

(1) Effective July 1, 2012, a new employee, including an administrator, of an assisted living facility must attend a preservice orientation provided by the facility which covers topics that will enable the employee to relate and respond to the residents of that facility. The orientation must be for at least 2 hours and, at a minimum, cover the following topics:

(a) Care of persons who have Alzheimer's disease or other related disorders.

(b) Deescalation techniques.

(c) Aggression control.

(d) Elopement prevention.

(e) Behavior management.

(2) Upon completion of the preservice orientation, the employee must sign an affidavit, under penalty of perjury, stating that the employee completed the orientation. The administrator of the facility must maintain the signed affidavit in the employee's work file.

Section 19. Section 429.52, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 429.52, F.S., for present text.)

429.52 Staff member training; tutorial; continuing education.—

(1) Staff members, other than administrators, providing regular or direct care to residents must complete a staff training curriculum, developed by the board under s. 429.55(3)(e). The training must be completed within 30 days after employment and is in addition to the preservice orientation required under s. 429.515. Any cost or fee associated with the training shall be borne by the participant.

(2) Staff members, other than administrators, providing regular or direct care to residents must complete an interactive online tutorial that demonstrates an understanding of the training received under subsection (1). Staff members shall receive a certificate of completion upon completing the

tutorial. The certificate must be maintained in the employee's work file.

(3) Staff members, other than administrators, providing regular or direct care to residents must participate in a minimum of 8 hours of continuing education every 2 years. The continuing education may be offered through online courses and any fee associated with the online service shall be borne by the participant.

Section 20. Section 429.521, Florida Statutes, is created to read:

429.521 Specialty training and education; examinations.—

(1) Administrators and staff members who provide regular or direct care to residents of a facility that holds an extended congregate care license must complete a minimum of 6 hours of board-approved extended congregate care training within 30 days after beginning employment.

(2) Administrators employed by a facility that holds a limited nursing services license must complete a minimum of 4 hours of board-approved courses that train and educate administrators on the special needs and care of those requiring limited nursing services. The training must be completed within 30 days after employment.

(3) Staff, including administrators, who prepare or serve food must receive a minimum of 1 hour of inservice training in safe food handling practices within 30 days after beginning employment.

(4) Staff members, including administrators, must receive at least 1 hour of inservice training on the facility's resident elopement response policies and procedures within 30 days after

beginning employment.

(a) A copy of the facility's resident elopement response policies and procedures must be provided to staff members and the administrator.

(b) Staff members and the administrator must demonstrate understanding and competency in the implementation of the elopement response policies and procedures.

(5) Staff members who provide regular or direct care to mental health residents and administrators who are employed by facility that holds a limited mental health license must complete a minimum of 8 hours of board-approved mental health training within 30 days after beginning employment. Within 30 days after completing such training, a staff member must complete an online interactive tutorial related to the training in order to demonstrate an understanding of the training received. An administrator must pass an examination related to the administrator's training with a minimum score of 80. The participant shall pay any fee associated with taking the tutorial or examination.

(a) A staff member who cannot demonstrate an understanding of the training received or an administrator who fails the examination may not provide regular or direct care to residents until he or she successfully completes the tutorial or passes the examination.

(b) An administrator who does not pass the examination within 6 months after completing the mental health training may not be an administrator of a facility that holds a limited mental health license until the administrator achieves a passing score.

(6) Staff members, including the administrator, involved with the management of medications and the assistance with self-administration of medications under s. 429.256 must complete a minimum of 4 additional hours of training provided by a registered nurse, licensed pharmacist, or department staff member. The board shall establish by rule the minimum requirements of this training, including continuing education requirements.

(7) Other facility staff members shall participate in training relevant to their job duties as specified by board rule.

Section 21. Section 429.522, Florida Statutes, is created to read:

429.522 Core training providers; certification.—

(1) Effective January 1, 2013, an individual seeking to provide core training in this state must be certified by the board. The applicant must provide the board with proof of completion of the minimum core training education requirements, successful passage of the assisted living facility administrator licensure examination, and proof of compliance with any continuing education requirements.

(2) A person seeking to be certified as a trainer must also:

(a) Provide proof of completion of a 4-year baccalaureate degree from an accredited college or university and have worked in a management position in an assisted living facility for 3 years after obtaining certification in core training courses;

(b) Have worked in a management position in an assisted living facility for 5 years after obtaining certification in the

core training courses and have 1 year of teaching experience as an educator or staff trainer for persons who work in an assisted living facility or another long-term care setting;

(c) Have been previously employed as a trainer of core training courses for the department;

(d) Have at least 5 years of employment with the agency as a surveyor of assisted living facilities;

(e) Have at least 5 years of employment in a professional position in the agency's assisted living unit;

(f) Have at least 5 years of employment as an educator or staff trainer for persons working in an assisted living facility or another long-term care setting;

(g) Have at least 5 years of employment as a trainer of core assisted living facility courses not directly associated with the department;

(h) Have a 4-year baccalaureate degree from an accredited college or university in the areas of health care, gerontology, social work, education, or human services and at least 4 years of experience as an educator or staff trainer for persons working in an assisted living facility or another long-term care setting after receiving certification in core courses; or

(i) Meet other qualification criteria as defined by rule of the board.

(3) The board shall provide oversight of the core training providers. The board shall adopt rules to establish requirements for trainer certification, disciplinary action that may be taken against a trainer, and a trainer decertification process.

(4) If funding is available, by January 1, 2013, the board shall develop and maintain an electronic database, accessible to

the public, which lists all persons holding certification as a core trainer, including any history of violations. Core trainers shall keep a record of individuals who complete training and shall submit the record to the board within 24 hours after the completion of a course in order for the board to include the information in the database.

Section 22. Section 429.523, Florida Statutes, is created to read:

429.523 Training and testing centers.—In addition to certified trainers under s. 429.522, training and testing centers approved by the board may conduct training and examinations under this part.

(1) The board shall consider the following when reviewing a center applicant:

(a) Whether the center will provide sufficient space for training.

(b) The location of the center and whether another center already provides core training or testing in the approximate area.

(c) The fee to be charged by the center for providing such services.

(d) Whether the center has sufficient staff who meet the qualifications for core training providers under s. 429.522.

(e) Any other consideration that the board deems necessary to approve a center.

(2) The board shall provide a certificate of approval to an applicant that meets with the board's approval. The training and examination center shall keep the certificate on file as long as it provides training and examination services.

(3) The board or the agency may inspect a center to determine whether the training and examination center meets law and rule requirements and may decertify a training and examination center that does not continue to meet such requirements.

Section 23. Section 429.54, Florida Statutes, is amended to read:

429.54 Collection of information; local subsidy; interagency communication; facility reporting.—

(1) To enable the department to collect the information requested by the Legislature regarding the actual cost of providing room, board, and personal care in assisted living facilities, the department may ~~is authorized to~~ conduct field visits and audits of facilities as ~~may be~~ necessary. The owners of randomly sampled facilities shall submit such reports, audits, and accountings of cost as the department may require by rule; however, ~~provided that~~ such reports, audits, and accountings may not be more than ~~shall be~~ the minimum necessary to implement the provisions of this subsection ~~section~~. Any facility selected to participate in the study shall cooperate with the department by providing cost of operation information to interviewers.

(2) Local governments or organizations may contribute to the cost of care of local facility residents by further subsidizing the rate of state-authorized payment to such facilities. Implementation of local subsidy shall require departmental approval and may ~~shall~~ not result in reductions in the state supplement.

(3) Subject to the availability of funds, the agency, the

department, the Department of Children and Family Services, and the Agency for Persons with Disabilities shall develop or modify electronic systems of communication among state-supported automated systems to ensure that relevant information pertaining to the regulation of assisted living facilities and facility staff is timely and effectively communicated among agencies in order to facilitate the protection of residents.

(4) All assisted living facilities shall submit twice a year electronic reports to the agency.

(a) The reports must include the following information and must be submitted in accordance with a reporting cycle established by the agency by rule:

1. The number of beds in the facility;

2. The number of beds being occupied;

3. The number of residents who are younger than 65 years of age, from 65 to 74 years of age, from 75 to 84 years of age, and 85 years of age or older;

4. The number of residents who are mental health residents, who are receiving extended congregate care, who are receiving limited nursing services, and who are receiving hospice care;

5. If there is a facility waiting list, the number of individuals on the waiting list and the type of services or care that they require, if known;

6. The number of residents receiving optional state supplementation; and

7. The number of residents who are Medicaid recipients and the type of waiver used to fund each such resident's care.

(b) The agency may authorize a facility to submit a written report in lieu of an electronic report if the facility provides

written notice at least 30 days before the date the report is due that it cannot provide the report electronically. The notice must provide the reason for noncompliance.

(c) The agency must maintain electronically the information it receives and, at a minimum, use such information to track trends in resident populations and needs.

(d) This subsection expires July 1, 2017.

Section 24. Section 429.55, Florida Statutes, is created to read:

429.55 Board of Assisted Living Facility Administration.—

(1) CREATION.—The Board of Assisted Living Facility Administration is established within the agency, consisting of nine members to be appointed by the Governor and confirmed by the Senate for a term of 4 years or for the remainder of an unexpired term following a vacancy.

(2) BOARD MEMBERSHIP.—

(a) Membership of the board shall include:

1. A representative from the Agency for Health Care Administration.

2. A representative from the Department of Elderly Affairs.

3. A representative from the Department of Children and Family Services.

4. A representative from the Agency for Persons with Disabilities.

5. A representative from the Department of Health.

6. A representative from the Office of State Long-Term Care Ombudsman.

7. A licensed assisted living facility administrator.

8. Two residents or family members of a resident.

(b) A person may not be appointed as a member of the board if a conflict of interest exists, except that an assisted living facility administrator who is appointed to the board may retain a financial interest in the facility he or she administers at the time of appointment.

(c) The board shall maintain its official headquarters in Tallahassee.

(3) DUTIES.—The functions and duties of the board include:

(a) Adopting rules to administer the provisions of this section which confer duties on the board.

(b) With regard to assisted living facility administrator licensure:

1. Developing, imposing, and enforcing specific standards that are designed to ensure that administrators are individuals of good character and otherwise suitable and qualified to serve as administrators by virtue of training or experience in the field of health care facility administration.

2. Developing by appropriate techniques, including investigations and examination, a method for determining whether an applicant meets such standards.

3. Issuing licenses, including provisional licenses, to qualified applicants meeting board standards and revoking or suspending licenses previously issued by the board if the licensee fails to substantially conform to the requirements of such standards.

4. Establishing and carrying out procedures, adopted by rule, which are designed to ensure that administrators comply with and maintain standards adopted by the board.

5. Receiving, investigating, and taking appropriate action

with respect to any charge or complaint filed with the agency alleging that an administrator failed to comply with the requirements or standards adopted by the board.

6. Continually seeking to improve the standards imposed for the licensure of administrators and the procedures and methods for enforcing such standards.

7. Developing a core training curriculum, in consultation with the agency, the department, and the Department of Children and Family Services, to be completed by an applicant for administrator licensure. The curriculum examination must include at least 40 hours of training, be offered in English and Spanish, be reviewed at least annually by the board, and be updated as needed to reflect changes in the law, rules, and best practices, and must, at a minimum, cover the following topics:

a. State law and rules relating to assisted living facilities.

b. Resident rights and the identification and reporting of abuse, neglect, and exploitation.

c. Special needs of elderly persons, persons who have mental illness, and persons who have developmental disabilities and how to meet those needs.

d. Nutrition and food service, including acceptable sanitation practices for preparing, storing, and serving food.

e. Medication management, recordkeeping, and proper techniques for assisting residents who self-administer medication.

f. Firesafety requirements, including procedures for fire evacuation drills and other emergency procedures.

g. Care of persons who have Alzheimer's disease and related

disorders.

h. Elopement prevention.

i. Aggression and behavior management, deescalation techniques, and proper protocols and procedures relating to the Baker Act as provided in part I of chapter 394.

j. Do-not-resuscitate orders.

k. Infection control.

l. Admission and continued residency.

m. Phases of care and interacting with residents.

n. Best practices in the industry.

8. Developing a supplemental course consisting of at least 10 hours of training related to extended congregate care, limited mental health, best practices, and business operations, including, but not limited to, human resources, financial management, and supervision of staff, to be completed by an applicant for assisted living facility administrator licensure.

9. Developing an assisted living facility administrator licensure examination in consultation with the agency, the department, and the Department of Children and Family Services which tests the applicant's knowledge and training of the core and supplemental topics listed in subparagraphs 7. and 8. The examination must be offered in English and Spanish, reviewed at least annually by the board, and updated as needed to reflect changes in the law, rules, and best practices. A minimum score of 80 is required to show successful completion of the training requirements.

(c) Developing a limited mental health curriculum and examination, in consultation with a panel of at least three mental health professionals, which must be completed by an

administrator within 30 days after being employed by a limited mental health licensee. The board must ensure that the examination is available online, offer the examination in English and Spanish, and update the examination as needed, but at least annually. The board may establish a examination fee or a fee may be charged by a testing service. The examination fee may not exceed the cost of administering the examination.

(d) Developing a continuing education curriculum, in consultation with the agency, the department, and the Department of Children and Family Services, for administrators and for staff members who provide regular and direct care to residents. The board shall require additional credit hours for administrators who are employed by extended congregate care, limited nursing services, or limited mental health licensees. The board must also develop a short test for administrators to take upon completing the continuing education curriculum. The board must review the continuing education curriculum and test at least annually, and update the curriculum and examination as needed to reflect changes in the law, rules, and best practices. Continuing education must include topics similar to those of the core training and inservice training in paragraph (e), and may include additional subject matter that enhances the knowledge, skills, and abilities of administrators and staff members, as adopted by rule.

(e) Developing, in consultation with stakeholders, a standardized staff training curriculum for staff members of an assisted living facility, other than an administrator, who provide regular or direct care to residents. Only staff members hired on or after July 1, 2012, are subject to this training

requirement. The board may exempt from this training requirement nurses, certified nursing assistants, and home health aides who can demonstrate that they have already completed such training or substantially similar training. The curriculum must include at least 20 hours of inservice training, with at least 1 hour of training per topic, covering at least the following topics:

1. Reporting major incidents.

2. Reporting adverse incidents.

3. Facility emergency procedures, including chain-of-command and staff member roles relating to emergency evacuation.

4. Resident rights in an assisted living facility.

5. Recognizing and reporting resident abuse, neglect, and exploitation.

6. Resident behavior and needs.

7. Providing assistance with the activities of daily living.

8. Infection control.

9. Aggression and behavior management and deescalation techniques.

(f) Developing an interactive online tutorial, in consultation with the agency, the department, the Department of Children and Family Services, and stakeholders, which must be completed by facility staff members who provide regular or direct care to assisted living facility residents. The tutorial must be based on the training required under paragraph (c). The board must offer the tutorial in English and Spanish and update the tutorial as needed, but at least annually. The board shall provide a certificate to each staff member who completes the tutorial.

(g) Requiring and providing, or causing to be provided, the training or education of staff members of a facility beyond that which is required under this part if the board or agency determines that there are problems in a facility which could be reduced through specific staff training or education.

(h) Approving testing and training centers.

(i) Certifying core training providers who meet the qualifications under s. 429.522.

(4) DISCIPLINARY AUTHORITY OVER ADMINISTRATORS.—

(a) The board may deny licensure or license renewal and may suspend or revoke the license of an administrator who is under investigation for, or who has committed, in this state or another jurisdiction, any of the following:

1. Practicing assisted living facility administration with a revoked, suspended, inactive, or delinquent license.

2. Using the name or title "assisted living facility administrator" if the person has not been licensed pursuant to this part.

3. Presenting as his or her own the license of another.

4. Giving false or forged evidence to the board or a member thereof for the purpose of obtaining a license.

5. Using or attempting to use an administrator's license that has been suspended or revoked.

6. Knowingly employing unlicensed persons in the practice of assisted living facility administration.

7. Knowingly concealing information relative to violations of this part.

8. Attempting to procure a license to practice assisted living facility administration by bribery, fraudulent

misrepresentation, or through an error of the agency or the board.

9. Having an license to practice assisted living facility administration revoked, suspended, or otherwise acted against, including the denial of licensure by the licensing authority of another state, territory, or country.

10. Being convicted or found guilty of, or entered a plea of nolo contendre, regardless of adjudication, to a crime in any jurisdiction which relates to the practice of assisted living facility administration.

11. Making or filing a report or record that the licensee knows to be false, intentionally failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records include only those which are signed in the capacity of a licensed assisted living facility administrator.

12. Advertising goods or services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

13. Committing fraud or deceit or exhibiting negligence, incompetence, or misconduct in the practice of assisted living facility administration.

14. Violating a lawful order of the board or agency previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the board or agency.

15. Repeatedly acting in a manner that is inconsistent with the health, safety, or welfare of the residents of the facility in which he or she is the administrator.

16. Being unable to practice assisted living facility

administration with reasonable skill and safety to residents by reason of illness, drunkenness, use of drugs, narcotics, chemicals, or any other material or substance or as a result of any mental or physical condition. To enforce this subparagraph, upon a finding of the Secretary of Health Care Administration or his or her designee that probable cause exists to believe that the licensee is unable to serve as an assisted living facility administrator due to the reasons stated in this subparagraph, the agency may issue an order to compel the licensee to submit to a mental or physical examination by a physician designated by the agency. If the licensee refuses to comply with such order, the order may be enforced by filing a petition for enforcement in the circuit court where the licensee resides or serves as a facility administrator. The licensee against whom the petition is filed may not be named or identified by initials in any public court records or documents and the proceedings shall be closed to the public. The agency is entitled to the summary procedure pursuant to s. 51.011. At reasonable intervals, the licensee affected must be provided an opportunity to demonstrate that he or she can resume the competent practice of assisted living facility administration with reasonable skill and safety to residents.

17. Paying, giving, causing to be paid or given, or offering to pay or to give to any person a commission or other valuable consideration for the solicitation or procurement, directly or indirectly, of assisted living facility usage.

18. Willfully permitting unauthorized disclosure of information relating to a resident or his or her records.

19. Discriminating with respect to residents, employees, or

staff members on account of race, religion, sex, or national origin.

20. Violating any provision of this part, part II of chapter 408, or rules adopted pursuant to this part.

(b) The board shall revoke the license of an administrator who knowingly participates in intentional misconduct, or engages in conduct that constitutes gross negligence, and contributes to the death of a resident.

(5) RULEMAKING AND OTHER AUTHORITY.—

(a) The board may adopt rules related to education requirements, training curricula, testing requirements, and necessary procedures, forms, and fees.

(b) The board may consult with or contract with a service provider to develop training and to provide online training, testing, or tutorial services.

Section 25. Section 429.56, Florida Statutes, is created to read:

429.56 Assisted living facility rating system.—

(1) The agency, in consultation with the department, the Department of Children and Family Services, and the Office of State Long-Term Care Ombudsman, shall develop and adopt by rule a user-friendly assisted living facility rating system.

(2) The rating system must be publicly available on the Internet in order to assist consumers in evaluating assisted living facilities and the services provided by such facilities.

(3) The rating system must be based on resident satisfaction, the number and class of deficiencies for which the facility has been cited, agency inspection reports, the inspection reports of any other regulatory agency, assessments

conducted by the ombudsman program pursuant to part of chapter 400, and other criteria as determined by the agency.

(4) The Internet home page for the rating system must include a link that allows consumers to complete a voluntary survey that provides feedback on whether the rating system is helpful and suggestions for improvement.

(5) The agency may adopt rules as necessary to administer this section.

Section 26. Assisted living facility streamlining task force.—

(1) The Agency for Health Care Administration shall create a task force consisting of at least one representative from the agency, the Department of Elderly Affairs, the Department of Children and Family Services, the Department of Health, and the Office of State Long-Term Care Ombudsman.

(2) The purpose of the task force is to determine whether agencies currently have overlapping regulatory responsibilities over assisted living facilities and whether increased efficiency and effectiveness may be realized by transferring, consolidating, eliminating, or modifying such oversight between agencies.

(3) The task force shall meet at least three times and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2013, which includes the task force's findings and recommendations pertaining to streamlining agency oversight and improving the effectiveness of regulatory functions.

(4) The task force is terminated effective March 1, 2013.

Section 27. By January 1, 2013, the Agency for Health Care

Administration shall submit a copies of all of its inspection forms used to inspect assisted living facilities to the Office of State Long-Term Care Ombudsman. The office shall create and act as the chair of a task force of up to 11 members, consisting of an ombudsman, one representative of a nonprofit assisted living facility, one representative of a for-profit assisted living facility, at least one resident or family member of a resident, other stakeholders, and one representative of the agency, the Department of Elderly Affairs, the Department of Children and Family Services, and the Department of Health, to review the inspection forms. The task force shall provide recommendations, if any, to modify the forms in order to ensure that inspections adequately assess whether the assisted living facilities are in compliance with the law, meet the needs of residents, and ensure resident safety. The task force must provide its recommendations, including explanations of its recommendations, to the agency within 90 days after receiving the inspection forms. The task force is terminated July 1, 2013.

Section 28. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

COMMITTEE ON HEALTH REGULATION

Location
530 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5824

Senator Rene Garcia, *Chair*
Senator Eleanor Sobel, *Vice Chair*

Professional Staff: Sandra R. Stovall, *Staff Director*

Senate's Website: *www.flsenate.gov*

January 13, 2012

The Honorable Mike Haridopolos
President, Florida Senate
409 The Capitol
Tallahassee, Florida 32399

Dear Mr. President:

I am respectfully requesting your approval to file a preliminary draft of the Health Regulation Committee's proposed committee bill related to Assisted Living Facilities. The issues addressed in the proposed committee bill include the recommendations of my committee's Interim Report 2012-128, Review Regulatory Oversight of Assisted Living Facilities in Florida and the Assisted Living Workgroup, which was appointed by the Governor to study assisted living facilities in Florida.

The Health Regulation Committee and the Children, Families, and Elder Affairs Committee met jointly during the interim to hear presentations on improvements needed to safeguard Florida's residents of assisted living facilities. The committees recommended we proceed with a proposed committee bill. Staff of the two committees have worked jointly and independently to draft proposed language which will be substituted for the preliminary draft.

Please do not hesitate to contact me should you have any questions. Thank you for your consideration.

Sincerely,

Rene Garcia, Senator
District 40

Copy to: Elizabeth Moya
Sandra Stovall

THE FLORIDA SENATE

APPEARANCE RECORD

Spoke

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/12
Meeting Date

Topic License of Administrators Bill Number SPB 7174 *(if applicable)*

Name Neal McGarry Amendment Barcode *(if applicable)*

Job Title Executive Directer - Florida certification Board

Address 1715 South Gadsden Street Phone 850-222-6314
Street

Tallahassee FL 32301 E-mail namcgarry@flcertificationboard.org
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing Florida Certification Board

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

spoke

1/19/11
Meeting Date

Topic DLFs

Bill Number 7174 *(if applicable)*

Name Brian Lee

Amendment Barcode *(if applicable)*

Job Title Consumer Advocate

Address 3488 Cedarwood Trl.
Street

Phone 8502243322

TLH FL 32312
City *State* *Zip*

E-mail brian@floridaconsumeradvocate.com

Speaking: [X] For [ ] Against [X] Information

Representing

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

Spoke

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/19/2012
Meeting Date

Topic ALF's

Bill Number SB 7174 *(if applicable)*

Name Karen Koch (Cook)

Amendment Barcode *(if applicable)*

Job Title Vice President

Address 316 E. Park Ave
Street

Phone 850 - 224-6048

Tallahassee FL 32301
City *State* *Zip*

E-mail karen@fccmh.org

Speaking: ☒ For ☐ Against ☐ Information

Representing FL. Council for Behavioral Healthcare

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Senate Health Regulation **Judge:**

Started: 1/19/2012 10:16:29 AM
Ends: 1/19/2012 11:59:07 AM **Length: 01:42:39**

10:16:29 AM Opening Remarks
10:16:35 AM Roll Call
10:17:10 AM Tab 4 SB 482-Senator Latvala
10:17:31 AM Senator Latvala explains bill
10:22:42 AM Senator Garcia
10:22:49 AM Amendment by Diaz de la Portilla
10:23:02 AM Senator Latvala
10:23:25 AM Senator Jones
10:23:47 AM Senator Diaz de la Portilla
10:25:06 AM Senator Latvala
10:25:41 AM Senator Garcia
10:25:47 AM Molly McKinstry, AHCA
10:26:22 AM Senator Diaz de la Portilla
10:26:57 AM Molly McKinstry
10:27:06 AM Senator Dia de la Portilla
10:27:47 AM Molly McKinstry to answer
10:28:20 AM Senator Garcia
10:28:25 AM Doug Mannheimer, Florida Health Care Association
10:29:48 AM Senator DLP
10:30:28 AM Melvin Wright,
10:32:02 AM Senator Garcia w/question
10:32:14 AM Melvin Wright to answer
10:33:26 AM Senator Fasano
10:34:23 AM Wright to answer
10:34:59 AM Fasano w/question
10:35:06 AM Wright to answer
10:35:50 AM Senator Gaetz w/question
10:36:33 AM Senator Latvala
10:37:32 AM Senator Garcia
10:37:38 AM Senator DLP
10:37:45 AM Garcia amendment adopted
10:38:00 AM Gary Farmen waives in support
10:38:39 AM Victoria Fierro
10:41:41 AM Sylvia Smith, Disability Rights of Florida
10:43:12 AM Jack McRay, AARP
10:44:49 AM Alisa Snow, Florida Nurses Association, waives in support
10:45:13 AM Melvin Wright
10:47:38 AM Senator Garcia w/question
10:47:47 AM Wright to answer
10:48:12 AM Tom Randle, Leading Age Florida, waives in support
10:48:49 AM Senator Diaz de la Portilla
10:49:37 AM Senator Latvala to close
10:50:43 AM Roll Call
10:51:13 AM Tab 1 Senator Hays SB 746
10:52:14 AM Senator Diaz de la Portilla w/question
10:52:32 AM Senator Garcia w/question
10:52:40 AM Senator Hays to answer
10:53:41 AM Senator Jones w/comments
10:53:51 AM Senator Gaetz w/comments
10:54:50 AM Senator Hays to answer
10:54:59 AM Senator Garcia w/comments
10:55:46 AM Senator DLP w/comments

10:56:30 AM Heather Wildermuth, Florida assn of Counties waives in support
10:57:12 AM Rachel Busick, Florida League of Cities, waives in support
10:57:12 AM James Mosteller, American heart Association, waives in support
10:57:12 AM Paul Hull, American Cancer Society, waives in support
10:57:17 AM Susan Harbin, Broward County, waives in support
10:57:17 AM Thomas Harrington, Tobacco Preventio Network of Florida, waives in support
10:57:17 AM Richard Polangin, Florida Alliance for Retired American, waives in support
10:57:25 AM Roll Call
10:57:55 AM Tab 2 SB 774 Senator Hays
10:58:09 AM Senator Hays explains strike-all
10:59:25 AM Roll Call
10:59:40 AM Tab 3 Senator Bogdanoff SB 1040
11:00:37 AM Trevor Mask, Florida Dental Hygiene Association, waives in support
11:00:45 AM JoAnne Hart, Florida Dental Association, waives in support
11:00:56 AM Roll Call
11:01:35 AM Tab 6 SB 1568 Senator Gaetz and Garcia
11:01:53 AM Senator Gaetz explains bill
11:06:20 AM Senator Garcia w/comments
11:07:26 AM Senator Gaetz explains amendment
11:08:03 AM Senator Sobel
11:08:10 AM Senator Garcia/Gaetz, explains amendment
11:08:44 AM Senator Sobel
11:08:50 AM Senator Gaetz explains amendment
11:09:15 AM Senator Sobel
11:09:26 AM Senator Garcia, explains amendment
11:09:47 AM Senator Sobel
11:09:55 AM Senator Garcia
11:10:05 AM Senator Sobel
11:11:12 AM Senator Norman w/question
11:11:34 AM Senator Gaetz to answer
11:12:05 AM Senator Sobel
11:12:14 AM Senator Gaetz explains amendment
11:12:42 AM Senator Garcia
11:13:24 AM Nick Iarossi, Safety Net Hospital Alliance of Florida
11:20:32 AM Senator Sobel
11:20:41 AM Senator Norman
11:21:06 AM Slater Bayliss, Health Management Associates
11:22:22 AM John Ratliff, SEIU
11:26:03 AM Bill Bell, Florida Hospital Association
11:26:23 AM Jose L. Gonzalez, Associated Industries of Florida
11:26:42 AM Steve Ecenia, HCA, waives in support
11:26:42 AM Steve Uhlfelder, Tenet waives in support
11:26:44 AM Senator Sobel w/questions
11:27:53 AM Senator Gaetz w/comments
11:30:41 AM Roll Call
11:31:14 AM Tab 5 Senator Flores SB 730
11:32:49 AM Senator Garcia
11:32:55 AM Amendment by Garcia
11:33:55 AM Jack Cory, American Elder Care
11:34:20 AM Ramon Maury, American Elder Care
11:34:35 AM Jennifer Green, Humana, waives in support
11:34:40 AM Michael Garner, Florida Association of Health Plans
11:35:04 AM Senator Flores to close
11:35:25 AM Roll Call
11:35:52 AM Senator Garcia
11:36:09 AM Senator Sobel
11:36:26 AM Tab 7 Senator Garcia explains PCB 7174
11:47:27 AM Senator Sobel w/comments
11:48:21 AM Senator Jones w/amendment 871608
11:48:40 AM Senator Sobel explains amendment
11:49:02 AM Senator Jones
11:49:14 AM Senator Sobel

11:49:21 AM Karen Koch, Florida Council for Behavioral Healthcare
11:51:27 AM Neal McGarry, Florida Certification Board
11:52:05 AM Brian Lee, Consumer Advocate
11:55:08 AM Senator Sobel
11:55:44 AM Senator Fasano w/comments
11:56:23 AM Senator Garcia to close
11:58:20 AM Motion to submit as Committee Bill
11:58:36 AM Senator Garcia w/closing remarks
11:58:49 AM Meeting Adjourned