

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 6, 1998 Revised: _____

Subject: Assisted Living Facilities

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Crosby	Whiddon	CF	Favorable/CS
2.	_____	_____	WM	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 1960 revises definitions; provides additional exemptions from licensure as an assisted living facility; reorganizes and revises those provisions relating to unlawful facilities; revises requirements for license renewal; increases fines; and provides fines for the operation of an unlicensed facility and for failure to apply for change of ownership license.

This bill substantially amends the following sections of the Florida Statutes: 400.402, 400.404, 400.407, 400.408, 400.411, 400.414, 400.415, 400.417, 400.4174, 400.4176, 400.418, 400.419, 400.4195, 400.422, 400.4256, 400.428, 400.442, 400.452, 400.474, 400.618, and 408.036.

II. Present Situation:

Pursuant to s. 400.402(3), F.S., assisted living facilities (ALFs) provide housing, meals, and personal assistance to individuals with physical and mental disabilities who need support to live in the community but do not require institutionalization. Currently, the Agency for Health Care Administration (AHCA) is responsible for licensing and monitoring ALFs. The Department of Elderly Affairs (DOEA) is responsible for adopting rules related to assisted living facilities and for ensuring the provision of training for the administrators of these facilities. AHCA has developed the required policies, procedures, forms, and documentation used to implement the ALF program pursuant to rule and with input from DOEA.

Currently, the term *relative* is not defined in the definitions section of the Florida Statutes, but the statutes do provide that homes or facilities caring for relatives are not ALFs. See s. 400.402(3), F.S. According to AHCA, some ALF owners and administrators claim a resident is a relative even when the degree of relationship is obscure.

ALFs are licensed by AHCA. Pursuant to s. 400.411, F.S., relating to the initial application, an applicant may be the owner or the persons appointed by a business entity to apply for a license. This section of law specifies that the application is made under oath and also specifies the content of the application form, but it does not specifically require the applicant to sign the application. By rule, an ALF administrator must be 18 years of age or older. Information is requested by AHCA to provide a source to establish the suitable character, financial stability, and competency of the applicant and others specified in the application, but it is not required in statute that the applicant or financial officer disclose prior involvement with facilities that have had a receiver appointed or a license denied, suspended or revoked, a moratorium on admissions imposed, or an injunctive proceeding initiated against it; this information, however, is used by AHCA to deny a license to an applicant if such actions occurred 2 to 5 years previously. See s. 400.414(5), F.S. No references are required of any financial officer. The owner is required to list on the application all other facilities he or she owns or operates. An individual may be administrator for up to three facilities but is not required to disclose that information on the application form.

Currently, the ALF statute does not specifically state that renewal applications must be issued within 90 days of receipt. The number of class I (very serious) and class 2 (serious) deficiencies (discussed in greater detail below) that would result in AHCA taking action against the facility license is not specified. AHCA has the discretion to include any such serious violations as grounds for licensure denial under s. 400.414(2)(a), F.S.

The statute does not address denial of an application based upon the applicant's prior operation of an unlicensed facility. AHCA does not have the authority to deny, revoke, or suspend a license of an applicant who has had any state administrative action prior to the application, even if such an individual has been officially sanctioned by another administrative entity.

Though the statutes do not authorize AHCA to evaluate the financial records to determine the facility's financial stability at the time of initial licensure and at licensure renewal, AHCA must consider the financial ability of the owner or administrator. See s. 400.411, F.S., Furthermore, s. 400.414(2)(b), F.S., provides AHCA authority to deny the application based upon financial instability.

Section 400.411, F.S., regarding initial application for licensure, requires that owners, administrators, partners, directors, and corporate officers be of suitable character to operate an ALF. This requirement is satisfied by the Florida Department of Law Enforcement (FDLE) criminal, and Florida Department of Children and Family Services (DCF) abuse background screenings, with the cost included in the ALF license fee; screening requests are processed by AHCA. Also, s. 400.411, F.S., requires individuals, corporations, or partners owning 10 percent or more of a facility be disclosed on the initial application. AHCA reports that background screening is completed on such entities, even if the individual does not live in Florida and has no direct contact with residents in the ALF. An individual may have a disqualifying history in another state and AHCA would not typically have access to that history. AHCA may deny an ALF license if it determines that the facility owner or administrator is not of suitable character or competency

or that the owner lacks financial ability to provide continuing care to residents. See s. 400.414(2)(b), F.S.

Neither the statute nor administrative rule requires the ALF to screen employees who have direct contact with residents. Some ALFs voluntarily screen staff. It is not known how many facilities choose to conduct such screening, what information such screening may disclose, or what remedial action facilities take against employees who are determined to have a criminal history. However, failure to terminate an employee who has a confirmed report of adult abuse, neglect, or exploitation will result in denial or revocation of the ALF license. See s. 400.414(2)(f), F.S.

The individual who is responsible for maintaining the facility's financial books, records, and other financial documents is not required to undergo background screening. The prior ownership and employment history is not reviewed to determine any potential conflicts of interest or history of problems in handling financial matters, unless this individual is also an owner, a partner, an officer of the corporation, or the administrator. In the case of a large ALF, this individual may be the comptroller or the accountant for the facility. The financial officer has significant responsibility in seeing that the cash flow of the facility is handled responsibly and appropriately. In a smaller ALF, an accountant may be hired to fulfill this responsibility on a fee-for-service basis.

AHCA may charge for copies of the ALF statute and rule but does not have the authority to charge for copies of the remainder of the application package. AHCA currently absorbs the cost of printing forms, providing lists of required contact persons or agencies, and providing the instructions for completing the application package.

Regarding deficiencies and violations, the following penalties are prescribed at s. 400.419, F.S.:

a class I deficiency	a minimum of \$1,000 and a maximum of \$5,000 for each violation
a class II deficiency	a minimum of \$500 and a maximum of \$1,000 for each violation
a class III deficiency	a minimum of \$100 and a maximum of \$500 for each violation
a class IV deficiency	a minimum of \$50 and a maximum of \$200 for each violation
an unclassified deficiency	a minimum of \$500 for each violation not to exceed \$5,000

AHCA does not have statutory authority to double administrative fines for repeat or uncorrected identical violations during the previous biennial inspection, monitoring visit, or complaint investigation.

Section 400.419(1), F.S., provides that an owner or administrator is subject to a fine set and levied by AHCA for operating a facility without a license. There is no statutory direction to impose a fine for failure to file a timely change of ownership license application.

The ALF administrative rule, Chapter 58A-5.024(6), Florida Administrative Code, requires that notice of a moratorium on admissions or denial, revocation, or suspension of a license be posted in a prominent location in the facility. That requirement, however, is not in the statute.

Finally, while it is a felony of the third degree to operate or maintain an unlicensed ALF, there are no penalties listed for owning an unlicensed ALF unless the owner has an interest in more than one facility and fails to license it. s. 400.407(1)(b)5., F.S.

III. Effect of Proposed Changes:

Section 1. Section 400.402, F.S., relating to definitions, is amended to add a requirement that assisted living facility (ALF) administrators be at least 21 years of age. The definition of *aging in place*, is revised to provide that services are adjusted to compensate for the mental or physical decline associated with aging. The definition of *assisted living facility* is clarified to include facilities with one or more persons. The requirement for facilities that present themselves to the public as offering ALF services be licensed is deleted. A definition for *relative* is added. The term *personal services* is amended to include the self-administration of medication. The term *assistance with activities of daily living* is deleted. The term *community living support plan* is amended to put all that is ‘resident-specific’ into that plan; the term *cooperative agreement* is amended to allow a mental health provider to have a single cooperative agreement for all mental health residents who are clients of that provider.

Section 2. Section 400.404, F.S., relating to exemptions from ALF licensure, is amended to exempt Adult Family Care Homes from licensure as an ALF. Any person providing housing, meals, and one or more personal care services in the person’s own home, to not more than two adults, is not required to be licensed as an ALF.

Section 3. Section 400.407, F.S., relating to licensure, is amended to provide that an ALF must be licensed.

Section 4. Section 400.408, F.S., relating to unlicensed facilities, is amended to add provisions relating to operating without a license (language moved from s. 400.407). Application for licensure within 10 working days is an affirmative defense the first time an operator is found operating an ALF without a license. Failure to license and owning, operating, or maintaining an unlicensed ALF is the commission of a felony of the third degree, punishable as provided in s. 775.082, related to re-offenders previously released from prison; s. 775.083, related to violent offenders; or s. 775.084, related to violent career offenders. This is not so for second and subsequent violations; second or subsequent offenders commit a felony of the second degree. Any person who knows of an unlicensed ALF must report that facility to AHCA. AHCA will provide a list of licensed ALFs to DCF and elder care providers to assist persons looking for an ALF. Finally, DCF must notify contract providers that it is unlawful to refer persons to an unlicensed facility.

Section 5. Section 400.411(1), F.S., relating to the initial application, is amended. The “applicant” is defined as an individual, a corporation, partnership, firm, association, or governmental entity. The applicant must sign the application. Corporations must provide information about the directors, officers, and each person having a 5 percent interest in the corporation. Entities that would provide services to the facility must identify persons who own at least a 5 percent interest if that person would also be required to be named on the application. Sufficient information on the character of the applicant is required and applicants, including the financial officer, must provide certain information about their past experience with long term care facilities. Applicants certified under chapter 651, F.S., as a continuing care retirement community must provide a copy of the certificate of authority. Proof of liability insurance, as defined in s. 624.605, F.S., and documentation showing a satisfactory sanitation inspection must be provided. A certificate of authority may be provided as proof of financial ability.

Section 6. Section 400.414, F.S., amends, renumbers, and adds subparagraphs relating to AHCA's ability to deny, revoke, or suspend the license, impose administrative fines, and the grounds for these actions.

AHCA may take action against a licensee or license applicant for:

- ▶ A determination that the facility owner, administrator, or financial officer is not of suitable character or competency;
- ▶ Failure of the license applicant or holder of a provisional license to meet minimum licensing standards or related rules;
- ▶ A fraudulent statement or the omission of any material fact on an application for licensure or of any other required document; or
- ▶ Operating an unlicensed facility or providing an unlicensed service.

Administrative proceedings challenging agency action under this subsection must be reviewed on the facts and conditions that caused AHCA action. The notice of license suspension, revocation, or denial of a license must be posted and visible to the public in the facility.

Language provides that AHCA may deny a license to any applicant owning 5 percent or more of the facility, is or had a 25 percent or greater financial or ownership interest in a like entity, or in any entity licensed by this state or another state to provide health or residential care if, during the previous 5 years, that facility or entity was closed due to financial inability to operate, had a receiver appointed, had a license suspended, denied or revoked, was subject to a moratorium on admissions, had an injunctive proceeding initiated against it, or has an outstanding fine assessed under this chapter.

Section 7. Section 400.415, F.S., relating to a moratorium on admissions, is amended to create a new subparagraph (2) providing that the notice of a moratorium be posted until the moratorium is

lifted so that it is visible to the public at the facility. The department is authorized to establish the conditions that would be grounds for a moratorium and procedures for imposing and lifting a moratorium.

Section 8. Section 400.417, F.S., relating to expiration of license, provides that a limited nursing, extended congregate care, and limited mental health license expires at the same time as the facility's standard license. AHCA is directed to mail renewal notices at least 120 days before the license would expire. The late fee for failure to timely mail the application would be one half of the current licensure fee. A license would be renewed within 90 days of timely filing an application. The department is authorized to establish by administrative rule the renewal procedures, forms, and documentation necessary to implement this section.

Section 9. Section 400.4174, F.S., regarding reports of abuse, is amended to provide that when an employee, volunteer, administrator, or owner of a facility has a confirmed report of adult abuse, neglect or exploitation, AHCA must be notified and to delete the outdated reference to child abuse classifications.

Section 10. Section 400.4176, F.S., relating to a notice of change of administrator, is amended to require a facility owner to notify AHCA within 10 days of a change of administrator and to provide documentation to AHCA within 90 days of the administrator's hiring that the ALF core educational requirements have been met. The bill continues to require screening for new administrators pursuant to requirements listed in conjunction with the initial application for licensure.

Section 11. Corrects a cross reference.

Section 12. Section 400.419, F.S., relating to violations, is amended to change the term "civil penalty" to "administrative fine" throughout. It provides for an increase in all fines except class IV fines. Subsection (4) lists the factors that must be considered when determining a fine. Facilities are liable for fines plus interest when they are upheld after judicial review. Fines are provided for facilities that continue to operate without having applied for a license after 10 days, and additional fines are provided for each day after the 20th day. Fines for owners or administrators who operate one licensed and one unlicensed facility, have previously operated a licensed facility, or who have been employed in a licensed facility shall immediately be fined \$5,000 and \$500 per day for each day in which the facility continued to operate without a license retroactive to the date of AHCA notification. Operating an ALF after a change of ownership without applying for a change of ownership license would result in a \$5,000 fine. Additionally, AHCA will assess a survey fee to cover the cost of conducting certain complaint or follow up investigations. The survey fee would be \$500 or one-half of the facility's standard license fee, whichever is less. AHCA may negotiate a corrective action plan with a facility instead of assessing an administrative fine.

AHCA is required to send a list of all sanctioned facilities at no charge to the Department of Children and Family Services in addition to the others specified in current law. The Department of

Children and Family Services shall disseminate the list to service providers under contract to the department responsible for referring persons for residency to a facility.

Section 13. Section 400.4195, F.S., relating to the prohibition of rebates, is amended to delete department rule authority in this area and to provide that a violation of this section is patient brokering and is punishable pursuant to s. 817.505, F.S.

Section 14. Corrects a cross reference.

Section 15. A new section of law is created providing criteria for assistance with the self-administration of medication. Such assistance will include bringing the resident the medication; reading the label, opening the container, removing the medication from the container, and closing the container; placing the dosage in the hand of the resident and helping the resident lift it to her mouth; applying topical medications; returning the medicine container to its proper place of storage; and keeping a record of assistance with medication. Assistance with the self-administration of medication does **not** include mixing or calculating medication doses; preparing syringes for the injection of medication by any injectable route; the administration of medications through breathing machines, body cavity tubes, or rectally, via the urethra or vaginally; or the administration of medication for which the time, strength, dosage, method of administration, or reason for administration would require judgement or discretion on the part of an unlicensed person. Rule authority is given to DOEA to establish facility procedures or interpret terms for this program.

Section 16. Section 400.428, F.S., relating to the resident bill of rights, is amended primarily for purposes of clarification. An amendment to this section provides that AHCA can conduct a monitoring based only on the violations of the previous year rather than just those violations that led to a conditional license or a moratorium on admissions.

Section 17. Section 400.442, F.S., relating to pharmacy and dietary services, is amended to provide that an ALF with deficiencies related to dispensing medication will hire a professional consultant.

Section 18. Section 400.452, F.S., relating to staff training and education, is amended to conform this section to the self-administration of medication program. For example, training and records maintenance requirements are stated.

Section 19. Section 400.474(2), F.S., related to Home Health Care, is amended to provide that, if a home health agency knowingly provides home health services in an unlicensed assisted living facility or adult family care home, it is subject to disciplinary action by AHCA unless the unlicensed facility is reported within 72 hours.

Section 20. Section 400.618, F.S., definitions, is amended to clarify language regarding the definition of an adult family care home to include a requirement that the provider own or rent the home and that he or she provide room, board, and one or more personal services on a 24-hour

basis for no more than five aged or disabled adults who are not relatives. It clarifies that a person who owns or rents their home and provides room, board, and personal services to one or two adults who are not receiving optional state supplementation or one who provides such services to relatives are not required to be licensed.

Section 21. Section 408.036, F.S., is amended to provide a conforming cross-reference.

Section 22. Section 394.4574, F.S., relating to department responsibilities for a mental health resident residing in an assisted living facility, is amended to provide that the Secretary of the Department of Children and Family Services annually require each district administrator to develop a plan to ensure the provision of state funded mental health and substance abuse treatment services to residents of assisted living facilities which hold a limited mental health license.

Section 23. Provides an effective date of October 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Fines for violations are increased substantially.

B. Private Sector Impact:

Fines for violations are increased substantially.

C. Government Sector Impact:

Because the CS for SB 1960 eliminated the enhanced background screening requirements, AHCA reports there is no fiscal impact with CS/SB 1960.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
