

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 2216

INTRODUCER: Senator Storms

SUBJECT: Adult Protection and Care

DATE: March 13, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Jameson	CF	Fav/CS
2.	_____	_____	HR	_____
3.	_____	_____	HA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Senate Bill 2216 amends current law to add protections for the elderly as follows:

- Providing the Department of Children and Families (DCF) with access to records of the Department of Highway Safety and Motor Vehicles (DHSMV) to be used to conduct protective investigations;
- Expanding who must have a criminal background screen, and expanding the types of crimes that are classified as disqualifying offenses for employment purposes in long-term care facilities;
- Modifying provisions related to unannounced visits by the Agency for Health Care Administration (AHCA);
- Requiring posters providing information on resident resources and advocates in all long-term care facilities;
- Requiring specified adult abuse reports be immediately transferred to the county sheriff;
- Authorizing DCF to file a petition to determine incapacity in adult protection proceedings, and providing DCF with rulemaking authority;
- Requiring facilities to maintain a service plan for each resident;

- Providing that the owner or administrator of a facility is responsible for the provision and quality of care and services provided to the residents of the facility;
- Requiring residents be periodically assessed for competency;
- Prohibiting assisted living facility (ALF) personnel from making decisions for a resident or acting as the resident's representative or surrogate;
- Requiring notice of termination of residency be provided, in writing with copies to specified individuals, including the local ombudsman council and to AHCA. The notice must include the reason for the termination, and AHCA shall compile an annual report summarizing the information received;
- Requiring a "written" grievance policy for ALFs, and requiring grievances to be reported to the local ombudsman council within three business days. The local ombudsman council shall periodically transmit the grievance records to the State Long-Term Care Ombudsman (SLTCO);
- Requiring AHCA to conduct at least one unannounced inspection of ALFs every 15 months. If a facility is cited for a class I deficiency or two or more class II deficiencies arising from separate surveys or investigations within a 60-day period, then two additional surveys must be conducted every six months for the next year. AHCA shall assess a fine of \$160 per bed for each of the additional two surveys. In addition, the fine shall be adjusted based upon any change in the Consumer Price Index; and
- Strengthening the requirement that an adult family-care home provider who owns or rents the home must live in the home.

The bill repeals ss. 400.141(13), 429.08(2), 429.19(7), and 429.41(5), F.S.

The bill amends the following sections of Florida Statutes: 322.142, 400.141, 400.19, 400.215, 408.810, 408.811, 415.103, 415.1051, 415.112, 429.02, 429.07, 429.08, 429.174, 429.255, 429.26, 429.27, 429.28, 429.294, 429.34, 429.41, 429.67, 429.69, 429.73, 430.80, 435.03, 435.04, and 651.118.

II. Present Situation:

This bill addresses concerns raised as a result of cases involving elder abuse, neglect, or exploitation. A few examples follow.

- According to the State Long Term Ombudsman, Mr. Ronald Larsen was admitted to the Palmetto Guest Home in Palmetto, FL in May of 2005. Mr. Larsen was an autistic man who was hard of hearing and had a difficult time speaking. On February 9, 2006, a small nodule was noticed on Mr. Larsen's face. This health care need was largely ignored until it became a large sore taking over the entire side of Mr. Larsen's face. Many notations that Mr. Larsen needed a guardian to make medical decisions for him were reportedly ignored.¹

¹ Michael A. Scarcella, *Neglect charge dropped in Palmetto*, Herald Tribune, September 28, 2007.

- On December 3, 2007, the State Long-Term Care Ombudsman noted the verbal and psychological abuse of individuals living in a Miami ALF and the alleged rape of an elderly resident inside the same facility.²
- On July 23, 2002, a 77-year old resident of a Jacksonville nursing home was raped by another resident, an 83-year old man with a history of criminal activity, including sexually related crimes in 1963 and 1965.³
- On October 8, 2005, an 88-year-old resident of an Altamonte Springs nursing home was beaten with a wheelchair foot rest by a 76-year-old resident. According to the Altamonte Springs police, the attacker had a history of aggression.⁴

Adult Protective Investigations

Section 415.101, F.S., relating to the Adult Protective Services Act, provides the Legislature's intent for comprehensive protective services for Florida's elderly and abused adults. Several issues have been identified by DCF that if implemented may improve those services.

Reports alleging child abuse, abandonment, or neglect by a person who is not a family member, household member, or caregiver are required to be immediately transferred to the appropriate County Sheriff's office.⁵ There is no such requirement for reports of adult abuse, neglect, or exploitation. Currently, the Florida Abuse Hotline will accept a report on a vulnerable adult when the vulnerable adult, is a resident of Florida or currently located in Florida, and is:⁶

- Believed to have been neglected or abused by a caregiver in Florida;
- Suffering from the ill effects of neglect by self and is in need of service; or
- Being exploited by any person who stands in a position of trust or confidence, or any person who knows or should know that a vulnerable adult lacks capacity to consent and who obtains or uses, or endeavors to obtain or use their funds, assets or property.

The department reports that during some adult services investigations the subject of the investigation denies his or her identity, eluding the investigators. According to DCF, access to the DHSMV Driver and Vehicle Information Database (DAVID) system would provide a photograph of the victim or the subject of the investigation. This may assist in the positive identification of victims and/or the subject of an adult protective investigation. Section 322.142(4), F.S., currently provides for access to this information by the Department of State, Department of Revenue, and the Department of Financial Services. Current law does not permit DCF to have access to the DAVID system.

² State Long-Term Care Ombudsman, Munne Center Assisted Living Facility Issues Paper, (2008), (on file with the committee).

³ A Perfect Cause, America's Disability & Elder Rights Advocates, *Criminal Acts Committed by Predators While Residing in America's Long-Term Care Facilities*, page 11: http://www.aperfectcause.com/PDF_APC/APC-US_CongressReport-CriminalOffendersOffensesInLTC-April2006.pdf (last visited March 4, 2008).

⁴ *Id.* at page 40.

⁵ Section 39.201(2)(b), F.S.

⁶ Department of Children and Families, *Reporting Abuse of Children and Vulnerable Adults*, found at: <http://www.dcf.state.fl.us/abuse/publications/mandatedreporters.pdf>, (2007).

The department's current rule making authority relating to adult protective services is limited to pre-service and in-service training for adult protective investigators⁷ and general authority granted in s. 415.112, F.S. The department does not have specific authority to adopt rules relating to background screenings and drug testing for adult protective investigators.

Section 415.1051, F.S., provides DCF the ability, in an emergency situation, to petition the court for protective services when a vulnerable adult lacks capacity. After 60 days, DCF must petition the court to determine whether:⁸

- Emergency protective services will be continued with the consent of the vulnerable adult;
- Emergency protective services will be continued for the vulnerable adult who lacks capacity;
- Emergency protective services will be discontinued; or
- A petition should be filed under ch. 744, F.S.

Nursing Homes

A nursing home⁹ is considered a medical facility and treats individuals who require 24-hour care and services. According to AHCA, in order to admit a person into a nursing home, the licensee must decide if it can meet the needs of the resident. Federal law requires that once a person is admitted, the individual's care and safety is the responsibility of the nursing home. Within 14 days of admission, the nursing home must assess each resident and develop a plan of care. There is no regulatory requirement that this assessment include background screening.

There are currently 672 licensed nursing facilities in Florida with a total of 82,356 beds. In 2003, 177,609 individuals entered a nursing home. Eighty-five percent of the individuals admitted to nursing homes were transferred from a hospital, five percent transferred from another nursing home, and two percent transferred from an ALF.¹⁰

Section 400.141(13), F.S., requires that each nursing home publicly display a poster that contains the name, address, telephone number and a brief description of services for various health care consumer resources.¹¹

Assisted Living Facilities

There are 2,583 licensed ALFs in Florida, with 76,834 beds.¹² Potential residents of an ALF must first undergo a health assessment 60 days prior to admission. The assessment is designed to address the physical and mental status of the individual, the individual's potential need for

⁷ Section 415.1105, F.S.

⁸ Section 415.1051(2)(g)1, F.S.

⁹ Section 400.021(12), F.S.

¹⁰ Agency for Health Care Administration, 2008 Bill Analysis & Economic Impact Statement, SB 2216, page 5.

¹¹ This poster is provided by AHCA and contains the names, addresses, and telephone numbers for the state's abuse hotline, the State Long-Term Care Ombudsman, AHCA's consumer hotline, the Advocacy Center for Persons with Disabilities, the Florida Statewide Advocacy Council, and the Medicaid Fraud Control Unit.

¹² Agency for Health Care Administration, 2008 Bill Analysis & Economic Impact Statement, SB 2216, page 5.

supervision or assistance, and the individual's dietary needs.¹³ Potential residents of an ALF must meet the admission criteria established in rule.¹⁴ These criteria include that a person:

- Be at least 18 years of age and able to perform activities of daily living with supervision or assistance if necessary;
- Be capable of taking medication with supervision or assistance from staff;
- Not be a danger to self or others, require licensed professional mental health treatment on a 24-hour basis, or be bedridden; and
- Not have any stage three or four pressure sores or require 24-hour supervision.

Residents are not currently required to undergo a background check prior to being admitted to an ALF.

Licenses

A standard license is issued to an ALF that provides one or more personal services.¹⁵ A facility operating under a standard license may also employ or contract with an individual licensed to administer medications and perform other tasks as specified in s. 429.255, F.S., relating to the use of personnel. Once an ALF receives a standard license, the ALF may apply for specialty licenses including:

- Limited Nursing Services (LNS):¹⁶ An ALF with an LNS license allows the licensee to provide the basic services of an ALF and specific nursing services including nursing assessments, wound dressing care, care of casts, braces and splints, administration of portable oxygen, care of catheters and colostomies, and other specific nursing services.¹⁷
- Extended Congregate Care (ECC):¹⁸ An ALF with an ECC license allows a resident to age in place by providing the basic services of an ALF and other services including limited nursing services and assessments, total help with activities of daily living, measurement and recording of vital signs, dietary management, and supervision of residents with dementia or cognitive impairments.¹⁹
- Limited Mental Health (LMH):²⁰ An ALF with an LMH license is required to serve more than two mental health residents. An LMH facility consults with residents' mental health care managers and develops community supported living plans for residents.²¹

¹³ Chapter 58A-5.0181, F.A.C.

¹⁴ *Id.*

¹⁵ Section 429.02(16), F.S., defines the term "personal services" as direct physical assistance with or supervision of the activities of daily living and the self-administration of medication and other similar services which the DOEA may define by rule. The term "personal services" shall not be construed to mean the provision of medical, nursing, dental, or mental health services.

¹⁶ Section 429.07(3)(c), F.S.

¹⁷ Agency for Health Care Administration, 2008 Bill Analysis & Economic Impact Statement, SB 2216, page 5.

¹⁸ Section 429.07(3)(b), F.S.

¹⁹ Agency for Health Care Administration, 2008 Bill Analysis & Economic Impact Statement, SB 2216, page 5.

²⁰ Section 429.075, F.S.

²¹ Agency for Health Care Administration, 2008 Bill Analysis & Economic Impact Statement, SB 2216, page 5.

Inspections

The agency conducts regulatory inspections every two years for assisted living facilities with a standard license.²² Quarterly monitoring visits are required for those facilities with a standard ECC license.²³ Facilities with a standard LNS license are monitored at least twice a year.²⁴ Complaint investigations are conducted as received and prioritized by AHCA.²⁵

Service Plan

A service plan is a written plan, developed and agreed upon by the resident and their applicable representatives, and the facility administrator which addresses the unique physical and psychosocial needs, abilities, and personal preferences of each resident receiving extended congregate care services. The plan includes a brief written description, in easily understood language, of what services need to be provided, who must provide the services, when the services must be given, and the purposes and benefits of the services.²⁶ Service plans are currently required for individuals receiving extended congregate care.

Resident Bill of Rights

Section 429.28, F.S., provides for an ALF resident's rights within the facility. Among these rights is the resident's right to at least 45 days' notice of relocation or termination of residency. This notice is not required for relocation or termination for medical reasons, emergency reasons, or if a resident engages in conduct deemed harmful or offensive. In non-emergency situations, a resident's guardian is given 45 days' notice in cases where the resident has been determined mentally incapacitated.²⁷

According to the Office of the State Long-Term Care Ombudsman Program's statewide complaint data, involuntary discharge investigations surfaced last year as one of the top ten complaints in assisted living facilities.²⁸

The ALF resident bill of rights also requires that each resident be able to present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. Each facility is required to establish a grievance procedure to facilitate the residents' exercise of this right. This right includes access to ombudsman volunteers and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.²⁹ According to the agency, regulations do not specify how grievances are presented, so each facility may develop its own policy. The agency reports that some ALFs require residents to submit his or her grievance in writing. As well, some facilities reportedly have "open door" grievance policies that are not in writing.

²² Section 429.28(3)(b), F.S.

²³ Section 429.07(3)(b)2, F.S.

²⁴ Section 429.07(3)(c)2, F.S.

²⁵ Agency for Health Care Administration, 2008 Bill Analysis & Economic Impact Statement, SB 2216, page 5.

²⁶ *Id.*

²⁷ Section 429.28(1)(k), F.S.

²⁸ 2008 Department of Elder Affairs, *2008 Legislative Proposal Suggestion Form*, (2008) on file with the committee.

²⁹ Section 429.28(1)(l), F.S.

Assisted living facilities are not required to implement risk management programs; however, they must report adverse incidents to the agency within one business day by email, facsimile, or U.S. mail. The ALF must include information regarding the identity of the affected resident, the type of incident, and the status of the ALF's investigation of the incident.³⁰

Adult Family Care Homes

There are 480 licensed AFCHs in Florida. Adult family care home licensees are required to live in the home with the residents. However, there is no specific definition of the phrase "living in the home." The agency reports that some regulatory problems have been identified where licensees do not live in the home but merely maintain an appearance of residency, and do not oversee the residents and their care.³¹

Section 429.67(4), F.S., requires AHCA to conduct a level one background screening on an AFCH provider, designated relief person, adult household member(s), and each staff member.

Employee Background Screening

Chapter 435, F.S., was created in 1995 to provide guidelines to conduct criminal background screening for employment purposes.³² The statute identifies two types of screenings:

- Level one screening: A demographic search of the statewide criminal history repository through the Florida Department of Law Enforcement (FDLE);³³ and
- Level two screening: A fingerprint search through FDLE and the Federal Bureau of Investigations (FBI).³⁴

Each level of screening has a list of specific disqualifying criminal offenses and their respective statutory reference.³⁵ Any person required by law to undergo screening must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under the listed statutes or under any similar statute of another jurisdiction.³⁶

Chapter 435, F.S., includes an exemption process to allow regulatory agencies to grant exemptions from disqualification from employment under certain circumstances.³⁷

Pursuant to s. 408.809, F.S., all health care provider administrators, owners, directors and chief financial officers must undergo a level two screening, with the exception of the owner or director of a Health Care Clinic who is subject to the screening requirements found in s. 400.991(5), F.S.

According to AHCA nursing home screening requirements for employees are the most stringent. Any nursing home employee that has access to residents or resident property must undergo a

³⁰ Section 429.23(3), F.S.

³¹ Agency for Health Care Administration, 2008 Bill Analysis & Economic Impact Statement, SB 2216, page 5.

³² Chapter 95-228, Laws of Florida.

³³ Section 435.03, F.S.

³⁴ Section 435.04, F.S.

³⁵ Sections 435.03(2)(a)-(ff) and 435.04(2)(a)-(uu), F.S.

³⁶ Sections 435.03(2) and 435.04(2), F.S.

³⁷ Section 435.07, F.S.

level one screening prior to working in a nursing home.³⁸ Potential employees that have not lived in the state for more than five years are required to undergo a level two screening prior to working in a nursing home.³⁹

Background screening of Residents

Currently, Florida law does not require background screening of residents in long-term care facilities. According to a report published in March, 2006, by the United States Government Accountability Office, 700 registered sex offenders were identified living in nursing homes or intermediate care facilities for people with mental retardation (ICF-MR). Three percent of nursing homes and less than one percent of ICF-MRs housed at least one sex offender in 2005.

Several states including Illinois,⁴⁰ Minnesota,⁴¹ Oklahoma,⁴² California,⁴³ and Virginia⁴⁴ have adopted state policies relating to residential background screenings in ALFs, nursing homes, and other long-term care facilities.

III. Effect of Proposed Changes:

Section 1

The bill amends s. 322.142(4), F.S., to authorize DCF to obtain copies of driver's license files from DHSMV. The bill requires an interagency agreement between DCF and DHSMV and specifies that the information is to be used for the purpose of conducting protective investigations. According to DCF, this investigative tool will allow the investigator quick access to the location of individuals, to the investigation and verification of the identity of an individual, and will facilitate the ultimate goal of assuring safety for disabled or vulnerable adults.

Section 2

The bill amends s. 400.141(25), F.S., to require a level one background screening of each prospective resident of a nursing home facility at the time of admission or immediately following admission, at the resident's expense. The results of the background screening may be used to assess the needs of the resident and to provide adequate and appropriate health care and protective and support services. The bill prohibits the use of AHCA's employee background screening database for resident screening, and provides that a resident's background screening results transfers with the resident when he or she transfers between facilities.

Sections 3 and 7

The bill moves the provision that allows AHCA to suspend an employee that discloses an unannounced nursing home inspection from s. 400.19 to s. 408.811(1), F.S., so that the ability to suspend will apply for the disclosure of an unannounced inspection for all providers licensed by AHCA, not just nursing homes. The bill requires violations found during inspections be

³⁸ Sections 400.215(1)-(2)(a), F.S.

³⁹ Section 400.215(2)(b), F.S.

⁴⁰ Sections 45/2-201.5, 2-201.6, 2-216, 2-110, IL.C.S.

⁴¹ MN ST s. 243.166.

⁴² 57 Okl.St. Ann. §584.

⁴³ Section 1312, California Health and Safety Code.

⁴⁴ Sections 9.1-194, 32.1-127 and 138, 63.2-1732 and 1808, Virginia Code.

corrected within 30 days unless specified by AHCA and allows AHCA to require an applicant or licensee to submit a plan of correction for deficiencies within ten days unless otherwise designated.

The bill provides that AHCA may provide electronic access to information in lieu of sending the written reports required in Part II of Chapter 408, relating to health care licensing, or authorizing statute.

Section 4

The bill amends the personnel screening requirements for nursing homes found in s. 400.215, F.S. This provision requires a background screening as provided in ch. 435, F.S., for any contract worker or employee whose duties require him or her to provide personal care to residents; access resident living areas; or access resident funds or personal property. The cost of the background screening is to be born by the person being screened.

The bill repeals a provision that exempted individuals employed by a nursing home prior to October 1, 1998 from background screening. This repeal would require anyone hired prior to October 1, 1998 who had not submitted to a background screening to do so.

The bill prohibits a nursing home facility from employing an individual until the facility has complied with the provisions of s. 435.05, F.S., that require an employer to submit within five working days, the information necessary for conducting a level one or level two screening to the Florida Department of Law Enforcement. The provision also requires each employer, required to conduct a level two background screening, to sign an affidavit annually stating that all covered employees have been screened or are newly hired and awaiting his or her screening results.

The bill provides that a contract worker who has not been a Florida resident for the five years immediately preceding the request for background screening must complete a level two screening. The contracted worker may work under the direct and visual supervision of a person meeting the screening requirement provisions of s. 400.215, F.S., while the contracted worker awaits the completion of his or her level two screening.

The bill provides that a contract worker, who does not provide personal care and services to residents or have access to a resident's funds or other personal property, is not required to be screened, but must do the following instead:

- Sign in upon entering the facility;
- Wear an identification badge; and
- Sign out before leaving the facility.

The bill provides that a nursing home, maintain a log of the information collected.

Section 5

The bill allows AHCA to establish a schedule of fees to pay for the costs of background screening processing and adopt necessary rules to carry out the screenings and for the schedule of fees.

Section 6

The bill amends s. 408.810(5), F.S., to require each facility licensed by AHCA to publicly display a poster listing the names, addresses, and telephone number for the state's central abuse hotline, the State Long-Term Care Ombudsman, the AHCA's consumer hotline, the Advocacy Center for Persons with Disabilities, the Florida Statewide Advocacy Council, the Medicaid Fraud Control Unit, and the Statewide Public Guardianship Office, with a description of each entity's area of assistance. Currently, the statute only requires nursing homes to display this poster. This provision will require the information to be displayed in all facilities licensed by AHCA, including ALF's and nursing homes. The bill allows AHCA to approve the format of the poster and charge a fee to cover the cost of producing and distributing the poster. **(See Fiscal Impact Statement)**

Section 8

The bill amends s. 415.103(2), F.S., requiring that a report to the state's central abuse hotline of the known or suspected abuse of a vulnerable adult by someone other than a relative, caregiver, or household member must be immediately transferred to the appropriate sheriff's office. This provision is similar to the provision relating to reports of child abuse, abandonment, and neglect found in s. 39.201(2)(b), F.S., requiring a report of known or suspected child abuse by someone other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare be immediately transferred to the appropriate county sheriff's office by the central abuse hotline.

Section 9

The bill amends s. 415.1051, F.S., to allow DCF to file a petition to determine incapacity in emergency and nonemergency cases, if DCF believes, in good faith, that the vulnerable adult lacks capacity. The bill prohibits DCF from being appointed guardian or providing legal counsel for the guardian once the petition to determine incapacity is filed.

According to DCF, the authority to petition for determination of incapacity in non-emergency situations will enhance DCF's ability to protect vulnerable adults from abuse, neglect, and exploitation until a guardian can be appointed.

Section 10

The department's current rule-making authority relating to adult protective services is limited. The bill amends s. 415.112, F.S., to require DCF to adopt rules relating to ch. 415, F.S., including but not limited to: **(See Fiscal Impact Statement)**

- Background screening of DCF employees and employee applicants including the criminal record check and drug testing of adult protective investigators and their supervisors;
- Reporting of adult abuse, neglect, exploitation, a vulnerable adult's need for services, false reporting, and adult protective investigations;
- Confidentiality, retention, and availability of DCF records;
- Injunctions and other protective orders;
- Emergency and nonemergency protective service intervention;
- Agreements with law enforcement agencies and other states;
- Legal and casework procedures; and

- Legal and casework management.

Section 11

The bill amends the definition of the term “service plan” found in s. 429.02, F.S., to require a service plan for all ALF residents and not just a resident receiving extended congregate care services. The bill requires AHCA to develop a service plan form for use by providers.

Section 12

The bill amends s. 429.07(3)(b) and (c), F.S., relating to the ECC and LNS licenses. The bill requires that an ALF operator have a standard license and not have been subject to administrative sanctions for two years before obtaining or while maintaining an ECC or LNS specialty license. These sanctions include:

- A class I or II violation;
- Three or more repeat or recurring class III violation for identical or similar reasons that represent a pattern of noncompliance;
- Three or more class III violations that were not corrected in accordance with a corrective action plan approved by AHCA;
- Violation of resident care standards requiring the facility to employ a consultant pharmacist or consultant dietitian; or
- Denial, suspension, or revocation of a license for another facility in which the applicant for an ECC license has at least 25 percent ownership interest.

The bill deletes a provision that requires the Department of Elder Affairs (DOEA) and AHCA to prepare and submit an annual report to the Governor, President of the Senate, Speaker of the House of Representatives, and the chairs of the appropriate legislative committees relating to extended congregate care services. According to AHCA, the ECC license has been effective since 1991. Initially, the annual report was to provide information to evaluate the effectiveness and usefulness of the license. The agency reports that there are currently 305 standard licensed ALF's with ECC specialty licenses. The agency believes that the continuation of the annual report is unnecessary.

Section 13

The bill amends the background screening requirement for assisted living facilities found in s. 429.174, F.S. The bill requires an ALF to conduct level one screenings on each contract worker or employee who performs a personal service or has access to resident living areas at the cost of the contract worker. The bill allows a facility to reimburse an employee or contract worker for this cost. The bill prohibits an ALF from employing an employee or contract worker who does not meet the background screening requirements. The bill exempts contract workers who do not provide personal care or services to residents or have access to resident funds or personal property from the background screening requirements, and requires contract workers to sign in upon entering the facility, wear an identification badge, and sign out before leaving the facility. The bill provides that each ALF is required to maintain a log of the information collected.

Currently, s. 429.174, F.S., relating to background screenings, requires the owner or administrator of an ALF to conduct a level one background screening on every employee hired after October 1, 1998, who perform personal services for residents.

The bill authorizes AHCA to establish a fee schedule to cover the costs of level one and level two screening and requires the Florida Department of Law Enforcement to charge AHCA a rate sufficient to cover the cost of the level one and level two screenings.

Section 14

The bill provides that the owner or administrator of an ALF is responsible not only for the determining that a resident is receiving appropriate services for residence in the facility, but also for the provision and quality of care and services for the resident. The bill provides that volunteers are required to report resident observation to a facility employee so and that the facility employee is required to not the volunteer's observation in the appropriate resident's chart.

Section 15

The bill amends s. 429.26, F.S., relating to the appropriateness of placement and the examination of residents. The bill provides that the person conducting a medical examination on a potential ALF resident may not have a financial interest in the ALF.

The bill provides that a resident of an ALF may not be transferred or moved without consultation with and agreement from the resident or one of the representatives listed within the section, unless it is done as provided in s. 429.28(1)(k), F.S., relating to an ALF's discharge policy.

The bill requires ALFs to develop a service plan for every resident. This requirement currently exists only for residents receiving extended congregate care.

The bill requires ALFs to conduct a criminal background check of a prospective resident prior to admission or immediately following admission, at the resident's expense. The bill clarifies that the information obtained from this check may be used to assess an individual's needs and the care and services offered by the ALF. According to AHCA, some providers may be hesitant to admit an individual with a criminal history for liability reasons or because of concerns regarding the cost of additional staff to ensure appropriate services. The bill prohibits the use of AHCA's employee background screening database for the purpose of resident screening.

The bill provides that a resident's background screening results transfers with the resident when he or she transfers between facilities.

The bill requires an ALF to periodically assess the competency of a resident to handle his or her personal and financial affairs and to consider whether a person such as a resident representative designee, guardian, surrogate, or attorney is available to make decision for the resident. The bill requires the owner or administrator of an ALF to contact an individual's representative or designee, guardian, surrogate, or attorney-in-fact if that person is having difficulty handling his or her personal or financial affairs due to a decline in abilities. If a resident does not have family or a legal representative, the bill requires the owner or administrator to contact the Florida Abuse Hotline.

Section 16

The bill amends s. 429.27, F.S., to ensure the safekeeping of a resident's personal property. The bill prohibits an ALF, its owner, administrator, staff, or representative from making financial or health care decisions on a resident's behalf and from acting as the resident's representative or designee, health care, or health care surrogate, unless the person is a relative of the resident.

Section 17

The bill amends s. 429.28(1), F.S., relating to the resident's bill of rights. Current law requires that when noticing a resident of his or her relocation or termination of residency from an ALF, the facility must provide 45 day's notice in writing. The bill adds a provision requiring that the written notice specify the reason for relocation or termination, and requiring that a copy of the notice be sent by registered mail, at the same time the resident is noticed, to the resident's representative designee, guardian, surrogate, attorney in fact, the local ombudsman council, and AHCA.

The bill requires AHCA to summarize the information received in the discharge notices and report annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives. This report must include the number and reasons for relocation or termination of residents, the type and size of a facility, and any other information that AHCA considers relevant.

The bill requires that each ALF establish a written grievance procedure, which includes at a minimum, maintaining a written record of each grievance, the stated reason for the grievance, and responsive actions taken by the facility. The bill requires that each grievance be reported, within three business days, to the local ombudsman council. The bill requires the local ombudsman council to maintain a record of all grievances received from each facility in the local area and submit that information to the State Long-Term Care Ombudsman. The bill requires that an ALF accept grievances orally, and provides that an ALF may accept grievances in writing.

The bill deletes ss. 429.28(3)(a) and (c) through (e), F.S., relating to the Agency's responsibility for conducting surveys to determine general compliance with residents' rights; monitoring visits during any calendar year in which no survey is conducted; conducting periodic follow-up inspections to monitor compliance of facilities with a history of any Class I, II, or III violation; and conducting complaint investigations as warranted. This information is added to and amended in s. 429.34(2), F.S.

Section 18

The bill amends s. 429.294(1), deleting an unnecessary cross reference.

Section 19

The bill amends s. 429.34, F.S. relating to the right of entry and inspection. The bill requires the agency to conduct at least one unannounced inspection every 15 months, as opposed to every two years which is the current requirement, to determine compliance with licensure regulations.

The bill provides that two additional surveys must be conducted every six months for the next year if an ALF is cited for a class I deficiency or two or more class II deficiencies from separate surveys within a 60-day period.

The bill gives AHCA the authority to assess a fine of \$160 per bed for each of the additional two surveys and requires that the agency adjust the fine based upon a change in the Consumer Price Index. The bill provides that the agency is responsible for verifying through inspections that each deficiency identified is corrected. The agency may verify the correction of a class III or class IV deficiency that is unrelated to resident rights or care without reinspecting.

According to a preliminary analysis of the bill by AHCA, the bill will create an additional 822 surveys a year. The agency will need additional surveying and licensing staff and legal FTEs to meet this requirement. **(See Fiscal Impact Statement)**

Section 20

The bill amends s. 429.41, F.S., to require that each resident of an ALF have a service plan that is reviewed and updated annually and when a resident experiences a significant change in condition. The bill provides for the plan to be reviewed and updated quarterly if a resident is receiving nursing services ordered by a physician, except for administration of medication. Currently, only resident's receiving extended congregate care are required to have a service plan.

Section 21

The bill adds a definition for the term "reside" to s. 429.65, F.S., relating to AFCHs. The definition clarifies that the home of an AFCH licensee or applicant must be the primary residence. The bill specifies documentation that may be accepted as proof of the AFCH licensee or applicant's residency.

Section 22

The bill requires that any person who provides personal services to a resident or who has routine access to an AFCH must submit to a level one background screening. Section 429.67, F.S., currently requires that a level one background screening be conducted on the provider, designated relief person, adult household members, and staff members of an AFCH.

Section 23

The agency reports that some regulatory problems have been identified where AFCH licensees do not live in the home as required, but merely maintain an appearance of residency, and do not oversee the residents and their care. The bill authorizes AHCA to deny, revoke, and suspend the license of an adult family-care home if the provider who owns or rents the home does not live in the home.

Section 24

The bill amends s. 429.73, F.S., relating to rules and standards relating to an AFCH, to require the periodic assessment of each resident to determine if the resident is competent to handle his or her personal and financial affairs, and if not, whether a guardian, surrogate, or attorney in fact is available to make decisions on behalf of the resident. This is the same requirement that is being added for ALFs.

Section 25 and 26

The bill amends ss. 435.03 and 435.04, F.S., relating to level one and level two screening standards, by adding several offenses that will disqualify an individual from being an employee or employer licensed or registered pursuant to chapter 408, part II, developmental disabilities institutions and mental health treatment facilities.

The bill provides that an individual may not have been convicted of, or entered a plea of guilty or nolo contendere, to offenses prohibited under specific statutes or similar statute of another jurisdiction. The bill adds the following statutory references to the list of disqualifying offenses:

- Sections 409.920 and 409.9201, F.S., relating to Medicaid fraud;
- Chapter 429, F.S., relating to assisted care communities;
- Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense is a felony;
- Section 810.02, F.S., relating to burglary, if the offense is a felony;
- Section 817.034, F.S., relating to communications fraud;
- Section 817.234, F.S., relating to fraudulent insurance claims;
- Section 817.505, F.S., relating to patient brokering;
- Section 817.568, F.S., relating to identification theft;
- Sections 817.60 and 817.61, F.S., relating to credit cards, if the offense is a felony; and
- Sections 831.01, 831.02, 831.07, 831.09, 831.30, and 1278 831.31, F.S., relating to forgery, uttering, and counterfeiting.

The expansion of disqualifying criminal offenses encompasses common crimes committed upon vulnerable populations. The bill prohibits any individual charged with one of the crimes mentioned above from being eligible for employment by a health care provider.

Section 27

The bill repeals s. 400.141(13), F.S., relating to a requirement to post certain information in nursing homes. This provision is added in Section 5 to s. 408.810(5), F.S., to apply to all facilities regulated by AHCA, not just nursing homes.

The bill repeals s. 408.809(3), F.S., relating to the granting of a provisional license that may be issued for up to 180 days pending the results of a background screening. According to AHCA, this provision is un-needed.

The bill repeals s. 429.08(2), F.S., deleting a provision creating a workgroup on unlicensed facilities. According to the agency, this provision was put into law in 2000⁴⁵ and is no longer needed.

The bill repeals s. 429.41(5), F.S., authorizing the agency to use an abbreviated survey process. According to AHCA, the agency never uses an abbreviated survey process.

⁴⁵ Chapter 2000-318, F.A.C.

Section 28

The bill amends s. 430.80(3), F.S., to update a statutory reference.

Section 29

The bill amends s. 651.118(13), F.S., to update a statutory reference.

Section 30

The bill provides an effective date of October 1, 2008.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill provides significant resident protections for individuals living in long-term care facilities.

The bill would have an indeterminate fiscal impact on the private sector because of the increased costs associated with provisions relating to:

- Background screening requirements for contracted employees of nursing homes and ALFs, and individuals with access to AFCH;
- Background screening requirements for nursing home and ALF residents; and
- The imposition of a \$160 per bed fine on ALF's for the two additional surveys that must be conducted every six months for the next year if an ALF is cited for a class I deficiency or two or more class II deficiencies.

C. Government Sector Impact:

A preliminary report by AHCA, indicates that the bill will have a substantial fiscal impact. The fiscal impact as reported by AHCA is as follows:

Assisted Living Facility Additional Survey and Legal Staff

According to AHCA, the bills survey requirements will require an additional 822 surveys per year. The addition of 822 surveys a year will require 26 surveyor and licensure FTEs and 1.5 FTEs for handling additional legal actions at a cost of \$1,904,360, and a recurring fiscal impact of \$1,757,160. The attorney position as well as each surveyor position requires a tablet laptop (\$2,500.00 each x 26 = \$65,000) due to the extensive travel and report writing required in their positions. In addition, ten of the surveyor positions are Registered Nurses (RN). Due to the hardships associated with hiring and maintaining RNs in this position, AHCA recommends the starting salary be increased to \$50,000 annually. It is unclear whether the fiscal impact reported by AHCA was calculated using the increased salary recommendation for RNs.

Assisted Living Facility Annual Report

According to AHCA, three FTEs are needed to collect, analyze, maintain and publish the data for the annual report summarizing the discharge and relocation of assisted living facility residents at a cost of \$165,249 the first year with a recurring cost of \$156,249.

Total Fiscal

According to AHCA, the combined staffing of 46.5 FTEs to accomplish the changes in this bill totals \$1,815,608 the first year with a recurring \$1,659,408 annually.

Fee revenues will increase for background screening of contractors and staff by \$200,493, plus fines from the six-month inspection cycle of \$345,600, less \$254,000 based on a repeal of the \$500 fee for complaint inspections with deficiencies. Fees and fines will net \$292,093 annually. These numbers are reflected in the totals above.

According to DCF, criminal background checks, as well as drug testing, would potentially require the department to re-screen all current Adult Protective Investigations staff at a non-recurring cost of \$24,309. The department will absorb these costs within their current department resources.⁴⁶

According to DOEA, The Statewide Public Guardianship Office staff currently consists of an executive director, a government analyst, and an administrative assistant. The Statewide Public Guardianship Office may not be able provide the service as intended by the bill without additional funds to increase its staffing levels.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁴⁶ Department of Children and Families, Staff Analysis and Economic Impact, SB 2216, February 28, 2008.

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 Children Families, and Elder Affairs on March 12, 2008:**

- Designates a level one background screening be used to screen prospective residents, and that a resident’s background screening results transfer with the resident when he or she transfers between facilities;
- Provides that a contract worker in a nursing home or ALF who does not provide personal care or services or have access to resident funds or personal property is not required to submit to a background screening and must instead sign in and wear an identification badge;
- Provides that nursing homes and ALFs must maintain a log of the collected contract worker data;
- Amends s. 408.809, F.S., providing that AHCA may establish a schedule of fees to pay for the costs of background screening processing and adopt necessary rules;
- Provides that the posters required in s. 408.810, F.S., may be simply approved by AHCA, and that AHCA may charge a fee;
- Amends s. 408.811, F.S., to require that violations found during inspections be corrected within 30 days unless otherwise specified by AHCA, and allows AHCA to post inspection reports online;
- Amends the definition of the term “service plan” in s. 429.02, F.S., to require that AHCA develop a service plan form;
- Amends s. 429.26, F.S., to require the owner or administrator of an ALF to contact a resident’s representative or designee, guardian, surrogate, or attorney-in-fact if the resident is having difficulty handling his or her personal or financial affairs due to a decline in abilities. The bill requires the owner or administrator to contact the Florida Abuse Hotline if a resident does not have family or a legal representation to answer on his or her behalf;
- Requires ALFs to accept grievances orally and allows them to accept grievances in writing;
- Requires that an ALF resident’s service plan required in s. 429.41, F.S., be updated when a resident experiences a significant change in condition;
- Provides that any level I or II background screening of any provider regulated by the Agency must not have certain disqualifying criminal offenses;
- Retains s. 429.19(7), F.S., which imposes an administrative fine of up to \$500 to cover the cost of conducting complaint investigations that result in the findings of a violation; and
- Changes the effective date to October 1, 2008.

B. Amendments:

None.