HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 945 Automated External Defibrillators in Assisted Living Facilities
SPONSOR(S): Elder & Family Services Policy Committee; Anderson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2008

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Elder & Family Services Policy Committee	14 Y, 0 N, As CS	Shaw	Shaw
2)	Health Care Appropriations Committee		Edwards	Pridgeon
3)	Health & Family Services Policy Council			
4)				
5)				

SUMMARY ANALYSIS

An assisted living facility (ALF) is a residential establishment for adults that provides housing, meals, and one or more personal services relating to the activities of daily living. Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.

Automated external defibrillators (AED) are computerized devices that are used by healthcare providers and by lay rescuers to revive victims who are thought to be in cardiac arrest.

The bill amends s. 429.255, F.S., to provide that an ALF with 17 or more beds must have on the premises at all times a functioning AED. The bill encourages the location of the AED to be registered with the medical director of the local emergency medical service.

The bill directs that facility staff may withdraw or withhold the use of an AED if presented with an order not to resuscitate in the same manner as they can now withdraw or withhold cardiopulmonary resuscitation. The civil immunity provisions of the Cardiac Arrest Survival Act and the Good Samaritan Act will apply to both the ALF and the facility staff.

The bill provides that the Department of Elder Affairs may adopt rules relating to the use of an automated external defibrillator in an ALF.

The bill appears to have a significant fiscal impact on state government (See Fiscal Comments).

The bill is effective upon July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Assisted Living Facilities

An assisted living facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.[1,] A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.[2] Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks. Florida currently has 2,851 licensed assisted living facilities with 909 of them having 17 or more licensed beds.[3] A typical resident is age 83 or older, is female, and is either widowed or single. [4]

ALFs are licensed by the Agency for Health Care Administration (AHCA) pursuant to part I of ch.429, F.S., relating to assisted care communities and part II of ch.408, F.S., relating to the general licensing provisions for health care facilities. ALFs are also subject to regulation under Rule Chapter 58A-5, F.A.C. These rules are adopted by the Department of Elder Affairs in consultation with the AHCA, the Department of Children and Family Services, and the Department of Health. An ALF must also comply with the Uniform Fire Safety Standards for ALFs contained in Rule Chapter 69A-40, F.A.C., and standards enforced by the DOH concerning food hygiene, physical plant sanitation, biomedical waste, and well, pool, or septic systems. Rules adopted to regulate ALFs are required to make distinct standards for facilities based upon the size of the facility; the types of care provided; the physical and mental capabilities and needs of the residents; the type, frequency, and amount of services and care offered; and the staffing characteristics of the facility.

In general, an ALF does not provide medical services to its residents. An ALF may obtain a limited nursing license which enables the facility 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.

---

[1] s. 429.02(5), F.S.
[2] s. 429.02(16), F.S.
[3] *Agency for Health Care Administration, 2010 Bill Analysis & Economic Impact Statement for HB 945*, on file with the Elder & Family Services Policy Committee
[4] Florida Assisted Living Association, http://www.falausa.com/what_is_an_alf.php (last visited on March 8, 2010).

The nursing services authorized to be provided with this license are limited to acts specified in administrative rules.[5]

The Department of Elder Affairs provides by rule[6] the core training requirements and a competency test for ALF facility staff. The training consists of a minimum of 26 hour and includes areas such as assistance with medications, HIV/AIDS, infection control, including universal precautions, and facility sanitation procedures prior to providing personal care to residents. Additionally, staff must have training in facility emergency procedures including chain-of-command and staff roles relating to emergency evacuation.[7]

A staff member who has completed courses in First Aid and CPR and holds a currently valid card documenting completion of such courses must be in the facility at all times.[8] In an emergency situation, persons licensed under the nurse practice act may carry out their professional duties until emergency medical personnel assume responsibility for care.[9]

An order not to resuscitate (DNRO) is a document executed by a resident and the resident's physician indicating that the resident does not want resuscitation during an emergency situation.[10] If a resident of an ALF has an order not to resuscitate, facility staff may withhold or withdraw cardiopulmonary resuscitation.[11] If a resident has a DNRO, then the ALF and facility staff shall not be subject to criminal or civil liability, or be considered to have acted negligently or unprofessionally, for withholding or withdrawing cardiopulmonary resuscitation.[12]

Automated External Defibrillators

The American Heart Association provides the following description of cardiac arrest:

> "Cardiac arrest is the sudden, abrupt loss of heart function. The victim may or may not have diagnosed heart disease. . . .Sudden death (also called sudden cardiac death) occurs within minutes after symptoms appear."[13]

Time is of the essence in responding to cardiac arrest because brain death begins in just 4 to 6 minutes. Cardiac arrest can be reversed if it is treated within a few minutes with an electric shock to the heart to restore a normal heartbeat – a procedure known as *defibrillation*. According to the American Heart Association, a victim's chances of survival are reduced by 7 to 10 percent with every minute that passes without defibrillation, and few attempts at resuscitation succeed after 10 minutes have elapsed.[14]

---

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

[6] s. 429.52, F.S and Rule 58A-5.0191, F. A. C.

[7] Id.

[8] Id.

[9] s. 429.255(1)(c), F.S.

[10] s. 401.45, F.S.

[11] s. 429.255(3), F.S., directs the Department of Elder Affairs to adopt rules providing for the implementation of DNROs in assisted living facilites. The Department is in the process of adopting such rules. See Proposed Rule 58A-0183, F.A.C.

[12] s. 429.255(3), F.S.

[13] The American Heart Association, http://www.americanheart.org/presenter.jhtml?identifier=4481 (last visited on March 6, 2010).

[14] *Id.*

Automated external defibrillators (AED)[15] are computerized devices that are used by healthcare providers and lay rescuers on victims who are thought to be in cardiac arrest. Modern AEDs are now about the size of a laptop computer and they provide voice and visual prompts to lead rescuers through the steps of operation. AEDs analyze the victim's heart rhythm, determine if a defibrillation shock is needed, then prompt the rescuer to "clear" the victim and deliver a shock. According to the American Heart Association, with early defibrillation of a person in cardiac arrest, the person's possibility of survival jumps to more than 50 percent.[16]

Prior to July 1, 2008, s. 401.2915, F.S., required all persons who use an AED to have certain training and required all persons in possession of an AED to notify the local emergency medical services director of the location of the AED. Section 401.2915, F.S., was amended and now provides that all persons who use an automated external defibrillator are encouraged to obtain appropriate training, which includes completion of a course in cardiopulmonary resuscitation or successful completion of a basic first aid course that includes cardiopulmonary resuscitation training, and demonstrated proficiency in the use of an automated external defibrillator.[17] Additionally, the notification of the medical director of the local emergency medical services of the location of the automated external defibrillator is now only encouraged.

Cardiac Arrest Survival Act

The Cardiac Arrest Survival Act[18] provides civil immunity for any person[19] who uses or attempts to use an AED on the victim of a perceived medical emergency. However, this civil immunity will not apply if:

- The harm involved was caused by that person's willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;
- The person is a licensed or certified health professional who used the automated external defibrillator device while acting within the scope of the license or certification of the professional and within the scope of the employment or agency of the professional;
- The person is a hospital, clinic, or other entity whose primary purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent;
- The person is an acquirer of the device who leased the device to a health care entity, or who otherwise provided the device to such entity for compensation without selling the device to the entity, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent; or
- The person is the manufacturer of the device.

The act also provides civil immunity to any person who acquired the AED and makes it available for use. However, immunity will not apply if the person:

- Fails to properly maintain and test the device; or
- Fails to provide appropriate training in the use of the device to an employee or agent of the acquirer when the employee or agent was the person who used the device on the victim, except that such requirement of training does not apply if:
  - The device is equipped with audible, visual, or written instructions on its use, including any such visual or written instructions posted on or adjacent to the device;
  - The employee or agent was not an employee or agent who would have been reasonably expected to use the device; or

[15] s. 786.1325 (2)(b), F.S., provides: "Automated external defibrillator device" means a lifesaving defibrillator device that: Is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act; is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed; and upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual.
[16] The American Heart Association, http://www.americanheart.org/presenter.jhtml?identifier=4483 (last visited on March 6, 2010).
[17] s. 1, ch. 2008-101, L.O.F.
[18] s. 768.1325, F.S.
[19] s. 1.01(3), F.S., provides the word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

- The period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm, or between the acquisition of the device and the occurrence of the harm in any case in which the device was acquired after engagement of the employee or agent, was not a reasonably sufficient period in which to provide the training.

Good Samaritan Act

The Good Samaritan Act[20] also provides immunity to any person that gratuitously renders medical care or treatment in direct response to an emergency. More specifically, the Good Samaritan Act provides immunity from civil liability to:

- Any persons, including those licensed to practice medicine, who gratuitously and in good faith render emergency care or treatment either in direct response to emergency situations related to and arising out of a public health emergency declared pursuant to s. 381.00315, F.S., or a state of emergency which has been declared pursuant to s. 252.36, F.S., or at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment. The immunity applies if the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

- Any health care provider, including a licensed hospital providing emergency services pursuant to federal or state law. The immunity applies to damages as a result of any act or omission of providing medical care or treatment, including diagnosis, which occurs prior to the time that the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency, in which case the immunity applies to any act or omission of providing medical care or treatment which occurs prior to the stabilization of the patient following surgery, or which is related to the original medical emergency. The act does not extend immunity from liability to acts of medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of another.

- Any health care practitioner who is in a hospital attending to a patient of his or her practice or for business or personal reasons unrelated to direct patient care, and who voluntarily responds to provide care or treatment to a patient with whom at that time the practitioner does not have a then existing health care patient practitioner relationship, and when such care or treatment is necessitated by a sudden or unexpected situation or by an occurrence that demands immediate medical attention, unless that care or treatment is proven to amount to conduct that is willful and wanton and would likely result in injury so as to affect the life or health of another. The immunity extended to health care practitioners does not apply to any act or omission of providing medical care or treatment unrelated to the original situation that demanded immediate medical attention.

Effect of Proposed Changes

The bill amends s. 429.255, F.S., to provide that an ALF with 17 or more beds must have on the premises at all times a functioning AED. The bill encourages the location of the AED to be registered with the medical director of the local emergency medical service.

The bill directs that facility staff may withdraw or withhold the use of an AED if presented with an order not to resuscitate in the same manner as they now can withdraw or withhold cardiopulmonary resuscitation.

The civil immunity provisions of the Cardiac Arrest Survival Act and the Good Samaritan Act will apply to both the ALF and the facility staff.

---

[20] s. 678.13, F.S.

The bill provides that the Department of Elder Affairs may adopt rules relating to the use of an automated external defibrillator in an ALF.

B. SECTION DIRECTORY:

Section 1: Amends s. 429.0255, F.S.

Section 2: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

ESTIMATED NON-RECURRING EXPENDITURES	Amount Year 1 FY 10-11	Amount Year 2 FY 11-12
Salaries	$0	$0
OPS	$0	$0
Expense	$6,200	$0
Operating Capital Outlay	$5,000	$0
TOTAL Non-Recurring Expenditures	$11,200	

ESTIMATED RECURRING EXPENDITURES		Amount Year 1 FY 09-10	Amount Year 2 FY 10-11
Salaries (2.0 FTE's)	**Rate**		
Health Facility Evaluator II	34,634	$44,280	$44,280
Health Facility Evaluator II	35,595	$45,508	$45,508
Total Salary and Benefits	**70,229**	**$89,788**	**$89,788**
OPS		$0	$0
Expense		$22,440	$22,440
Human Resources Services		$802	$802
TOTAL RECURRING EXPENDITURES	**70,229**	**$113,030**	**$113,030**

Non-Recurring Expenditures	$11,200	$0
Recurring Expenditures	$113,030	$113,030
TOTAL EXPENDITURES	**$124,230**	**$113,030**

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

ALFs will be required to purchase AEDs. Most AEDs cost between $1,500 and $2,000.[21] Additionally, the ALFs may have costs for training employees in the use of AEDs.

D. FISCAL COMMENTS:

The Agency for Health Care Administration will have to complete on-site inspections to verify that the ALFs have a functioning AED on their premises. The agency believes the bill will increase the number of complaints or inquires related to the use of AEDs in assisted living facilities.

Miami-Dade and Pinellas Counties currently have 1200 assisted living facilities, totaling 42% of the states assisted living facilities. The agency bill analysis states that it does not believe it can fulfill the requirements of the bill within its existing resources. The agency estimated that it would need two FTEs (two Health Facility Evaluator II's, one each for the Miami-Dade and Pinellas Counties) at a cost of $124,230 in FY 2010-2011 with a recurring cost of $113,030. These estimates include the competitive area differential amount for one Health Facility Evaluator II for the surveyor in Miami and two tablet notebooks with docking stations.

---

[21] American Heart Association, http://www.americanheart.org/presenter.jhtml?identifier=3011859, (last viewed March 6, 2010)

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill provides the Department of Elder Affairs may adopt rules relating to the use of automated external defibrillators.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 9, 2010, the Elder & Family Services Policy Committee adopted a strike-all amendment to the bill. The amendment removed from the original bill the requirements that:

- All facility staff must be trained in the use of an AED.
- Only facility staff who are trained may use the AED.
- The owner or administrator of the ALF must establish requirements for the use of the AED.
- The location of the AED must be registered with the medical director of the local emergency medical service.

The original bill provided that the Department of Health shall adopt rules relating to the use of automated external defibrillators. The amendment transferred the rulemaking authority to the Department of Elder Affairs, and makes such rulemaking discretionary.

The original bill provided an effective date of upon becoming a law. The amendment provides an effective date of July 1, 2010.

The bill was reported favorably as a Committee Substitute. This analysis reflects the committee substitute.