

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: SB 694

INTRODUCER: Senator Richter

SUBJECT: Assisted Living Facilities

DATE: April 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.			HR	
3.			BI	
4.				
5.				
6.				

I. Summary:

This bill removes the statutory requirement that all assisted living facilities report monthly to the Agency for Health Care Administration any liability claim filed against it.

This bill substantially amends section 429.23, Florida Statutes.

II. Present Situation:

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. An ALF may be operated for profit or not-for-profit, and can range from small houses resembling private homes to larger developments with hundreds of residential beds.

Assisted living facilities are currently 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. Assisted living facilities are also subject to regulation under chapter 58A-5 of the Florida Administrative Code. These rules are adopted by the Department of Elder Affairs (DOEA or department) in

¹ Section 429.02(5), F.S.

² Section 429.02(16), F.S.

consultation with AHCA, the Department of Children and Family Services, and the Department of Health.

There are currently 2,947 ALFs licensed in Florida.³ The licensure process requires that each ALF maintain liability insurance coverage at all times.⁴ Assisted living facilities are required to submit a monthly report to AHCA that includes any liability claim filed against it.⁵ The report must include the name of the resident, the dates of the incident leading to the claim, and the type of injury or violation of rights alleged to have occurred.⁶ The report is not discoverable in any civil or administrative proceeding, except in cases brought by AHCA to enforce ch. 429, F.S.⁷

In addition to the monthly report to AHCA, all ALFs are required to maintain adverse incident reports. An adverse incident is defined in statute to mean “an event over which facility personnel could exercise control rather than as a result of the resident’s condition and results in:

- Death;
- Brain or spinal damage;
- Permanent disfigurement;
- Fracture or dislocation of bones or joints;
- Any condition that required medical attention to which the resident has not given his or her consent;
- Any condition that requires the transfer of the resident from the facility to a unit providing more acute care due to the incident rather than the resident’s condition before the incident; or
- An event that is reported to law enforcement or its personnel for investigation.⁸

Liability claims can also be made for alleged violation of rights. There are 11 specific rights guaranteed to residents of ALFs, such as the right to unrestricted private communication, sharing a room with a spouse if both are residents of the facility; and the right to present grievances and recommend changes.⁹

The agency publishes a report on its website providing monthly, quarterly, and annual aggregate data of the number of liability claims intended to be filed against ALFs licensed in the state.¹⁰

The agency produces two reports: one that shows the number of intended liability claim reports by fiscal year, broken down by quarter from 2001 through 2011, and one that shows the number of intended claims filed from March 2010 to February 2011. See charts below.¹¹

³ Agency for Health Care Admin., *2011 Bill Analysis and Economic Impact Statement SB 694* (received Mar. 8, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁴ Section 429.275, F.S.

⁵ Section 429.23(5), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ Section 429.23(2), F.S. Resident elopement, if the elopement places the resident at risk of harm or injury is also included in the definition of “adverse incident.”

⁹ See s. 429.28, F.S.

¹⁰ Agency for Health Care Admin., *supra* note 3.

¹¹ Agency for Health Care Admin.,

http://ahca.myflorida.com/MCHQ/Long_Term_Care/FDAU/docs/LiabilityClaims/ALF_Chart.pdf (last visited Mar. 29, 2011).

**Assisted Living Facility Notices of Intent
Number Received by Fiscal Year and Quarter**

	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11
Qtr 1	11	8	12	4	6	3	1	3	8	5
Qtr 2	32	9	9	4	6	5	5	4	3	2
Qtr 3	22	19	3	7	9	4	8	3	1	n/a
Qtr 4	15	10	5	7	9	12	8	2	4	n/a

**Assisted Living Facility Notices of Intent
March 2010 – February 2011**

	3/10	4/10	5/10	6/10	7/10	8/10	9/10	10/10	11/10	12/10	1/11	2/11
NOIs Rec'd by month	0	3	0	1	0	3	2	0	2	0	2	2

The information reported to AHCA is not used in any regulatory manner.¹²

III. Effect of Proposed Changes:

This bill amends s. 429.23, F.S., to remove the requirement that all assisted living facilities report monthly to the Agency for Health Care Administration any liability claim filed against it.

The bill provides an effective date of July 1, 2011.

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.

¹² Agency for Health Care Admin., *supra* note 3.

B. Private Sector Impact:

This bill amends s. 429.23, F.S., to remove the requirement that all assisted living facilities (ALFs) report monthly to the Agency for Health Care Administration any liability claim filed against it. This bill may reduce reporting costs to ALFs associated with submitting the data.¹³

C. Government Sector Impact:

According to the Agency for Health Care Administration (AHCA or agency), duties associated with collecting and posting the information relating to liability claims are minimal and eliminating the requirement that ALFs report monthly to AHCA would have a neutral effect on the agency.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹³ *Id.*

¹⁴ *Id.*