

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 Committee on Health Policy

BILL: CS/SB 316

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Bean

SUBJECT: Certification of Assisted Living Facility Administrators

DATE: March 28, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Fav/CS
2.	Looke	Stovall	HP	Pre-meeting
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 316 requires that effective July 1, 2014, all administrators of Assisted Living Facilities (ALFs) meet the minimum training and education requirements established by the Department of Elder Affairs (DOEA) or a third party credentialing entity selected by the department. The bill requires the DOEA to approve one or more third party credentialing entities. The approved credentialing entity is required to develop a competency test and minimum required score to indicate successful completion of the training and educational requirements.

II. Present Situation:

An ALF is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.¹ An ALF does not include an adult family-care home or a non-transient public lodging establishment. 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.³

¹ Section 429.02(5), F.S.

² Section 429.02(16), F.S.

³ Section 429.02(1), F.S.

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility.⁴ The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on a number of criteria.⁵ If a resident no longer meets the criteria for continued residency, or the facility is unable to meet the resident's needs, as determined by the facility administrator or health care provider, the resident must be discharged in accordance with the Resident Bill of Rights.⁶

Department of Elder Affairs Rules

In addition to ch. 429, F.S., ALFs are subject to regulation pursuant to Rule 58A-5 of the Florida Administrative Code. These rules are adopted by the DOEA in consultation with the Agency for Health Care Administration (AHCA), the Department of Children and Families, and the Department of Health.⁷ In June 2012, the DOEA initiated negotiated rulemaking to revise many of its rules regarding ALFs. A committee that consisted of agency staff, consumer advocates, and industry representatives voted on numerous changes to Rule 58A-5, Florida Administrative Code. The DOEA held five public hearings around the state and on February 20, 2014, submitted the proposed rules to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees of substance for review and comment prior to the adoption thereof.⁸

ALF Administrators

Administrators and other ALF staff must meet minimum training and education requirements established by rule of the DOEA.^{9,10} This training and education is intended to assist facility employees in responding appropriately to the needs of residents, maintaining resident care and facility standards, and meeting licensure requirements.¹¹

The current ALF core training requirements established by the DOEA consist of a minimum of 26 hours of training and passing a competency test. Administrators must successfully complete the core training requirements within 3 months from the date of becoming a facility administrator or manager. The minimum passing score for the competency test is 75 percent.

Administrators must also participate in 12 hours of continuing education on topics related to assisted living every 2 years. A newly-hired administrator who has successfully completed the ALF core training and continuing education requirements is not required to retake the core training. An administrator who has successfully completed the core training, but has not

⁴ For specific minimum standards see Rule 58A-5.0182, F.A.C.

⁵ Section 429.26, F.S., and Rule 58A-5.0181, F.A.C.

⁶ Section 429.28, F.S.

⁷ Section 429.41(1), F.S.

⁸ Letter from Secretary Charles T. Corley, DOEA to The Honorable Don Gaetz, President, Florida Senate, (Feb. 20, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁹ Rule 58A-5.0191, F.A.C.

¹⁰ Many of the training requirements in rule may be subject to change due to the negotiated rulemaking process undertaken by DOEA.

¹¹ Section 429.52(1), F.S.

maintained the continuing education requirements must retake the ALF core training and the competency test.¹²

Currently, the DOEA approves registration of core trainers based on the qualifications established in s. 429.52, F.S., and is authorized to adopt rules to define additional qualification criteria for becoming a core trainer and maintaining that status.

III. Effect of Proposed Changes:

Section 1 amends s. 429.52, F.S., to provide that effective July 1, 2014, administrators must meet the minimum training and education requirements established by a third party credentialing entity pursuant to s. 429.55, F.S., or by the DOEA by rule. This section directs that the third-party credentialing entity must develop a competency test and minimum score to indicate successful completion of the training and educational requirements in addition to the competency test developed by the department.

The section also provides that a facility administrator hired on or after July 1, 2014, must either complete the required training and education, including the competency test, within a reasonable time after being employed as an administrator as determined by the department or earn and maintain certification as an assisted living facility administrator from a third-party credentialing entity that has been approved by the department. If the facility administrator does not comply with these requirements, it is a violation subject to an administrative fine under s. 429.19, F.S.

Certification under s. 429.55, F.S., also exempts an ALF administrator from potential additional training as prescribed by the DOEA.

Section 2 creates s. 429.55, F.S., which provides each ALF administrator the option to earn and maintain professional certification from a third-party credentialing entity approved by the DOEA. This section provides a definition of third-party credentialing entity as an organization that develops and administers certification programs according to standards established by the National Commission for Certifying Agencies. The DOEA is required to approve one or more third-party credentialing entities to develop and administer a professional credentialing program for administrators within 90 days after receiving documentation that demonstrates the third-party credentialing entity's compliance with certain minimum standards including:

- The establishment of ALF administrator core competencies, certification standards, testing instruments, and recertification standards;
- A demonstrated ability to administer a professional code of ethics, disciplinary process, biannual continuing education and certification renewal requirements, and an education provider program;
- Establishment of a process to administer the certification application, award, and maintenance processes according to nation psychometric standards; and,
- Establishment of, and ability to maintain a publicly accessible Internet-based database that contains information on each person who applies for and is awarded certification, such as the person's first and last name, certification status, and ethical or disciplinary history.

¹² Rule 59A-5.0191, F.A.C.

Additionally, this section provides a grandfather clause that allows certain people who are employed as assisted living facilities administrators and are in compliance with the requirements in s. 429.52, F.S., including continuing education requirements in place before July 1, 2014, and persons who have completed the required training as an administrator, including the competency test and continuing education requirements as of July 1, 2014, to be enrolled in a third-party credentialing entity certification program at no cost. Such ALF administrators must be allowed to enroll in the certification offered by the third-party credentialing entity at no cost to the person or department for up to 12 months immediately after the credentialing entity is approved by the department.

The bill also enumerates categories for which the credentialing entity must establish minimum standards including formal education, training, on-the-job work experience, supervision, testing, and continuing education.

Section 3 provides for an effective date of July 1, 2014.

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 allows ALF administrators the option to be certified by a third party credentialing entity. The costs of this certification is not specified in the bill, but would be borne by the administrators or the ALF owners. The third-party credentialing entity would presumably set the fees. The bill provides for existing ALF administrators who have completed the competency test as of the effective date of the bill to enroll in the certification program at no cost if they enroll within 12 months after DOEA approves a credentialing entity.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill states that ALF administrators that fail to be certified or to meet training and educational requirements by July 1, 2014, are subject to an administrative fine pursuant to s. 429.19, F.S. Fines in this section are separated into four classes based on the severity of the violation. The newly-created violation of an ALF administrator that does not meet certification or training and educational requirements does not specify what class of violation so AHCA would not have direction on what penalty to assess.

The bill creates s. 429.55(3)(3), F.S., to require a third-party credentialing entity to demonstrate the ability to administer continuing education and certification renewal requirements on a “biannual” basis. This terms means twice a year.¹³ Current law requires ALF administrators to have 12 hours of continuing education every 2 years.¹⁴ The bill should read “biennial” or “every 2 years” if the intent is to continue the frequency of continuing education requirements for ALF administrators.

VII. Related Issues:

Section 2 of the bill directs the third-party credentialing entity to administer a professional code of ethics and a disciplinary process that applies to all certified persons. No guidance or criteria is provided regarding the code of ethics or the disciplinary process. The decisions left to the third-party entity by this language may be an unconstitutional delegation of authority.

VIII. Statutes Affected:

This bill substantially amends s. 429.52, Florida Statutes.
This bill creates s. 429.55 of the Florida Statutes.

IX. 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 25, 2014:

The Committee Substitute:

- Establishes an effective date of July 1, 2014, that administrators have the option to meet the minimum training and education requirements established by the department or the certification provided by a third-party credentialing entity approved by the department pursuant to s. 429.55, F.S.
- Directs the third-party credential entity approved by the department to develop a competency test and a minimum required score to indicate successful completion of the training and educational requirements. The competency test and minimum required score is in addition to the test and score established by the department.
- A facility administrator hired on or after July 1, 2014, must complete the training and education requirements of the department or earn and maintain certification from the

¹³ American Heritage College Dictionary (3rd ed. 1993).

¹⁴ Section 429.52(4), F.S.

third-party credentialing entity. Failure to comply with this requirement subjects the violator to an administrative fine.

- Provides that a third-party credentialing entity is an organization that develops and administers certification programs according to standards established by the National Commission for Certifying Agencies.
- Provides a grandfather clause that allows persons employed as an ALF administrator and are in compliance with the training and education requirements in place before July 1, 2014, or who has completed the required training, competency test and continuing education requirements as of July 1, 2014, to enroll in the third-party credentialing entity's certification program at no cost to the person or the department in the 12 months immediately after the entity is approved by the department.
- Creates the right of appeal to the department for final determination by an individual adversely affected by the third-party credentialing entity.

B. Amendments:

None.