

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1001 Assisted Living Facilities

**SPONSOR(S):** Health & Human Services Committee; Health Care Appropriations Subcommittee; Ahern

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 382

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	12 Y, 0 N	Guzzo	Poche
2) Health Care Appropriations Subcommittee	9 Y, 0 N, As CS	Clark	Pridgeon
3) Health & Human Services Committee	16 Y, 0 N, As CS	Guzzo	Calamas

### SUMMARY ANALYSIS

Assisted Living Facilities (ALFs) are regulated by the Agency for Health Care Administration (AHCA) under part I of ch. 429, F.S., and part II of ch. 408, F.S. CS/HB 1001 strengthens the regulation of ALFs and makes other regulatory changes to improve the quality of ALFs. Specifically, the bill:

- Clarifies who is responsible for assuring that mental health residents in an ALF receive necessary services;
- Requires ALFs to inform new residents upon admission that retaliatory action cannot be taken against a resident for presenting grievances or for exercising any other resident right;
- Allows licensed registered nurses to practice to the full scope of their professional license in ALFs that have a Limited Nursing Services specialty license;
- Creates a provisional Extended Congregate Care (ECC) license for new ALFs and specifies when the Agency for Health Care Administration (AHCA) may deny or revoke a facility's ECC license;
- Requires facilities with one or more, rather than three or more, state-supported mental health residents to obtain a Limited Mental Health license;
- Specifies circumstances under which AHCA must impose an immediate moratorium on admissions to a facility;
- Requires AHCA to impose a \$500 fine against a facility that does not comply with the background screening requirements of s. 408.809, F.S.;
- Allows AHCA to impose a \$2,500 fine against a facility that does not show good cause for terminating the residency of an individual;
- Authorizes ALF staff to perform certain additional duties to assist with self-administration of medication and increases the applicable staff training requirements from 4 hours to 6 hours;
- Adds certain responsible parties and agency personnel to the list of people who must report abuse or neglect to the Department of Children and Families' central abuse hotline;
- Requires AHCA to conduct an additional inspection of a facility cited for certain serious violations.
- Requires new facility staff that have not previously completed core training to attend a 2-hour pre-service orientation before interacting with residents; and
- Requires AHCA to add certain content to its website by November 1, 2015, to assist consumers in selecting an ALF.

The bill appears to have no fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Assisted Living Facility Reform

In April of 2011, the Miami Herald completed a three part investigative series relating to assisted living facilities (ALFs). This series highlighted concerns with the management and administration of ALFs and garnered the attention of not only the public, but many state lawmakers, stakeholders, and facility residents and their families.

##### *Assisted Living Facility Workgroups*

In July 2011, Governor Rick Scott directed the Agency for Health Care Administration (AHCA) to examine the regulation and oversight of ALFs. In response, AHCA created the ALF workgroup. The workgroup's objective was to make recommendations to the Governor and Legislature that would improve the monitoring of safety in ALFs to help ensure the well-being of residents. After a series of meetings, the workgroup produced a final report and recommendations that they felt could strengthen oversight and reassure the public that ALFs are safe. Such recommendations included increasing administrator qualifications, expanding training for administrators and other staff, increasing survey inspection activity, and improving the integration of information among all agencies involved in the regulation of ALFs. The workgroup also noted several other issues that would require more time to evaluate and recommended they be examined by a Phase II workgroup.

Phase II of the workgroup began meeting in June 2012 to resume examining those issues not addressed by Phase I of the workgroup. Phase II of the workgroup will concluded in October, 2012 and produced a final report and recommendations to the Governor and the Legislature on November 26, 2012.

The issue of improving inter-agency communication was included in the workgroup's recommendations. Specifically, the workgroup recommended improving coordination between various federal, state and local agencies with any role in long-term care facilities oversight, especially ALFs. This includes AHCA, the Long Term Care Ombudsman Program, local fire authorities, local health departments, the Department of Children and Families (DCF), the Department of Elder Affairs (DOEA), local law enforcement and the Attorney General's Office.<sup>1</sup>

##### *Assisted Living Facility Negotiated Rulemaking Committee*

In June, 2012, DOEA, in consultation with AHCA, DCF, and DOH, began conducting negotiated rulemaking meetings to address ALF regulation. The purpose of the meetings was to draft and amend mutually acceptable proposed rules addressing the safety and quality of services and care provided to residents within ALFs. Most of the issues addressed by the Committee were identified by Phase I of the workgroup as areas of concern that could be reformed via the rulemaking process. The Committee produced a Final Summary Report containing all the proposed rule changes agreed upon by the Committee. These proposed rule changes are currently in the final stages of the standard proposed rule making process required by law.

---

<sup>1</sup> Florida Assisted Living Workgroup, Phase II Recommendations, November 26, 2012, available at <http://www.ahca.myflorida.com/SCHSCommitteesCouncils/ALWG/index.shtm>.

## Assisted Living Facility - Licensure

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.<sup>2,3</sup> A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.<sup>4</sup> Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.<sup>5</sup>

ALFs are licensed and regulated by AHCA under part I of ch. 429, F.S., and part II of ch. 408, F.S. ALFs are also regulated by DOEA under Rule 58A-5, F.A.C. The DOEA is responsible for developing and enforcing training requirements for ALF administrators and staff under Rule 58A-5, F.A.C.

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility.<sup>6</sup> The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on certain criteria.<sup>7</sup> 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.<sup>8</sup>

As of March 7, 2015, there are 3,042 licensed ALFs in Florida with 88,879 beds.<sup>9</sup> An ALF must have a standard license issued by AHCA, pursuant to part I of ch. 429, F.S., and part II of ch. 408, F.S.

## Specialty Licensed Facilities

In addition to a standard license, an ALF may have one or more specialty licenses that allow the ALF to provide additional care. These specialty licenses include: limited nursing services,<sup>10</sup> limited mental health services,<sup>11</sup> and extended congregate care services.<sup>12</sup>

### *Limited Mental Health License*

A mental health resident is "an individual who receives social security disability income due to a mental disorder as determined by the Social Security Administration or receives supplemental security income due to a mental disorder as determined by the Social Security Administration and receives optional state supplementation."<sup>13</sup> A limited mental health (LMH) license is required for any facility serving 3 or more mental health residents.<sup>14</sup> To obtain this license, the facility may not have any current uncorrected deficiencies or violations and facility administrator, as well as staff providing direct care to residents must complete 6 hours of training related to LMH duties, which is either provided by or approved by DCF.<sup>15</sup> A LMH license can be obtained during initial licensure, during relicensure, or upon request of the licensee.<sup>16</sup> There are 913 facilities in Florida with LMH licenses, providing 14,172 beds.<sup>17</sup>

---

<sup>2</sup> S. 429.02(5), F.S.

<sup>3</sup> An ALF does not include an adult family-care home or a non-transient public lodging establishment.

<sup>4</sup> S. 429.02(16), F.S.

<sup>5</sup> S. 429.02(1), F.S.

<sup>6</sup> For specific minimum standards see Rule 58A-5.0182, F.A.C.

<sup>7</sup> S. 429.26, F.S., and Rule 58A-5.0181, F.A.C.

<sup>8</sup> S. 429.28, F.S.

<sup>9</sup> Agency for Health Care Administration, *Facility/Provider Search Results-Assisted Living Facilities*, available at <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (report generated on March 7, 2015).

<sup>10</sup> S. 429.07(3)(c), F.S.

<sup>11</sup> S. 429.075, F.S.

<sup>12</sup> S. 429.07(3)(b), F.S.

<sup>13</sup> S. 429.02, F.S.

<sup>14</sup> S. 429.075, F.S.

<sup>15</sup> S. 429.075, F.S.

<sup>16</sup> S. 429.075, F.S.

<sup>17</sup> Agency for Health Care Administration, *Assisted Living Facilities with Limited Mental Health*, as of March 2, 2015, available at [http://ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Assisted\\_Living/docs/alf/Directory\\_ALF\\_LMH.pdf](http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Assisted_Living/docs/alf/Directory_ALF_LMH.pdf) (last viewed on March 7,

## *Extended Congregate Care License*

The ECC specialty license allows an ALF to provide, directly or through contract, services performed by licensed nurses and supportive services to individuals who would otherwise be disqualified from continued residency in an ALF.<sup>18</sup>

In order for ECC services to be provided, AHCA must first determine that all requirements in law and rule are met. ECC licensure is regulated pursuant to s. 429.07, F.S., and Rule 58A-5, F.A.C.

The primary purpose of ECC services is to allow residents, as their acuity level rises, to remain in a familiar setting. An ALF licensed to provide ECC services may also admit an individual who exceeds the admission criteria for a facility with a standard license, if the individual is determined appropriate for admission to the ECC facility. A licensed facility must adopt its own requirements within guidelines for continued residency set forth by rule. However, the facility may not serve residents who require 24-hour supervision.

Licensed ECC facilities may provide the following additional services:

- Total help with bathing, dressing, grooming, and toileting;
- Nursing assessments conducted more frequently than monthly;
- Measuring and recording basic vital functions and weight;
- Dietary management, including providing special diets, monitoring nutrition, and observing the resident's food and fluid intake and output;
- Assisting with self-administered medications;
- Supervising residents with dementia and cognitive impairments;
- Health education, counseling, and implementing health-promoting programs;
- Rehabilitative services; and
- Escort services to health-related appointments.<sup>19</sup>

Before being admitted to an ECC licensed facility to receive ECC services, the prospective resident must undergo a medical examination.<sup>20</sup> The ALF must develop a service plan that sets forth how the facility will meet the resident's needs and must maintain a written progress report on each resident who receives ECC services.

ALFs with an ECC license must meet the following staffing requirements:

- Specify a staff member to serve as the ECC supervisor if the administrator does not perform this function;
- The administrator of an ECC licensed facility must have a minimum of 2 years of managerial, nursing, social work, therapeutic recreation, or counseling experience in a residential, long-term care, or acute care setting; and
- A baccalaureate degree may be substituted for one year of the required experience and a nursing home administrator licensed under chapter 468, F.S., shall be considered qualified.<sup>21</sup>

An ECC administrator or supervisor, if different from the administrator, must complete the core training required of a standard licensed ALF administrator (26 hours plus a competency test), and 4 hours of initial training in ECC care within 3 months of beginning employment. The administrator must complete a minimum of 4 hours of continued education every 2 years.<sup>22</sup>

---

2015).

<sup>18</sup> S. 429.07(3)(b), F.S.

<sup>19</sup> Rule 58A-5.030(8)(b), F.A.C.

<sup>20</sup> Rule 58A-5.030(6), F.A.C.

<sup>21</sup> Rule 58A-5.030(4), F.A.C.

<sup>22</sup> Rule 58A-5.0191(7), F.A.C.

All staff providing direct ECC care to residents must complete at least 2 hours of initial service training, provided by the administrator, within 6 months of beginning employment.<sup>23</sup>

ALFs with a standard license must pay a biennial license fee of \$300 per license, with an additional fee of \$50 per resident. The total fee may not exceed \$10,000. In addition to the total fee assessed for standard licensed ALFs, facilities providing ECC services must pay an additional fee of \$400 per license, with an additional fee of \$10 per resident.<sup>24</sup> There are 261 facilities in Florida with ECC licenses, providing 16,161 beds.<sup>25</sup>

### *Limited Nursing Services License*

Limited nursing services are services beyond those provided by standard licensed ALFs. A licensed registered nurse in a facility with a LNS specialty license may only perform certain acts, as specified by rule.<sup>26</sup> Pursuant to Rule 58A-5.031, F.A.C., a licensed registered nurse may provide the following services in an ALF with an LNS license:

- Passive range of motion exercises;
- Ice caps or heat relief;
- Cutting toenails of diabetic residents;
- Ear and Eye irrigations;
- Urine dipstick tests;
- Replacement of urinary catheters;
- Digital stool removal therapies;
- Applying and changing routine dressings that do not require packing or irrigation;
- Care for stage 2 pressure sores;
- Caring for casts, braces and splints;
- Conducting nursing assessments;
- Caring for and monitoring the application of anti-embolism stockings or hosiery;
- Administration and regulation of portable oxygen;
- Applying, caring for and monitoring a transcutaneous electric nerve stimulator; and
- Catheter, colostomy, ileostomy care and maintenance.

A facility holding only a standard or LNS license must meet the admission and continued residency criteria contained in Rule 59A-5.0181, F.A.C.<sup>27</sup> The following admission and continued residency criteria for potential residents must be met:

- Be at least 18 years of age;
- Be free from signs and symptoms of any communicable disease;
- Be able to perform the activities of daily living;
- Be able to transfer, with assistance if necessary;
- Be capable of taking their own medications with assistance from staff if necessary;
- Not be a danger to themselves or others;
- Not require licensed professional mental health treatment on a 24-hour a day basis;
- Not be bedridden;
- Not have any stage 3 or 4 pressure sores;
- Not require nursing services for oral or other suctioning, assistance with tube feeding, monitoring of blood gases, intermittent positive pressure breathing therapy, or treatment of surgical incisions or wounds;
- Not require 24-hour nursing supervision;

---

<sup>23</sup> Id.

<sup>24</sup> S.429.07(4), F.S.

<sup>25</sup> Agency for Health Care Administration, *Assisted Living Facilities with Extended Congregate Care*, as of March 2, 2015, available at [http://ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Assisted\\_Living/docs/alf/Directory\\_ALF\\_ECC.pdf](http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Assisted_Living/docs/alf/Directory_ALF_ECC.pdf) (last viewed on March 7, 2015).

<sup>26</sup> S. 429.02(13), F.S.

<sup>27</sup> Rule 58A-5.031(2), F.A.C.

- Not require skilled rehabilitative services; and
- Have been determined by the administrator to be appropriate for admission to the facility.<sup>28</sup>

Facilities licensed to provide limited nursing services must employ or contract with a nurse to provide necessary services to facility residents.<sup>29</sup> Licensed LNS facilities must maintain written progress reports on each resident receiving LNS. A registered nurse representing AHCA must visit these facilities at least twice a year to monitor residents and determine compliance.<sup>30</sup> A nursing assessment must be conducted at least monthly on each resident receiving limited nursing services.<sup>31</sup>

Facilities licensed to provide LNS must pay the standard licensure fee of \$300 per license, with an additional fee of \$50 per resident and the total fee may not exceed \$10,000. In addition to the standard fee, in order to obtain the LNS specialty license facilities must pay an additional biennial fee of \$250 per license, with an additional fee of \$10 per bed.<sup>32</sup> There are 775 facilities with LNS licenses, offering 31,062 slots.<sup>33</sup>

## Staff Training

### *Administrators and Managers*

Administrators and other ALF staff must meet minimum training and education requirements established by the DOEA by rule.<sup>34,35</sup> This training and education is intended to assist facilities to appropriately respond to the needs of residents, maintain resident care and facility standards, and meet licensure requirements.<sup>36</sup>

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 and managers must successfully complete the core training requirements within 3 months after becoming a facility administrator or manager. The minimum passing score for the competency test is 75 percent.<sup>37</sup>

Administrators and managers must participate in 12 hours of continuing education in topics related to assisted living every 2 years. A newly hired administrator or manager, who has successfully completed the ALF core training and continuing education requirements, is not required to retake the core training. An administrator or manager, who has successfully completed the core training but has not maintained the continuing education requirements, must retake the ALF core training and retake the competency test.<sup>38</sup>

### *Staff with Direct Care Responsibilities*

Facility administrators or managers are required to provide or arrange for 6 hours of in-service training for facility staff who provide direct care to residents. The training covers a variety of topics as provided by rule.<sup>39</sup> Staff training requirements must generally be met within 30 days after staff begin employment at the facility, however, staff must have at least 1 hour of infection control training before providing direct care to residents. Also, nurses, certified nursing assistants, and home health aides who are on

<sup>28</sup> Rule 58A-5.0181(1), F.A.C.

<sup>29</sup> Rule 58A-5.031(2), F.A.C.

<sup>30</sup> S. 429.07(2)(c), F.S.

<sup>31</sup> Id.

<sup>32</sup> S. 429.07(4)(c), F.S.

<sup>33</sup> Agency for Health Care Administration, *Assisted Living Facilities with Limited Nursing Services*, as of March 2, 2015, available at [http://ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Assisted\\_Living/docs/alf/Directory\\_ALF\\_LNS.pdf](http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Assisted_Living/docs/alf/Directory_ALF_LNS.pdf) (last viewed on March 7, 2015).

<sup>34</sup> Rule 58A-5.0191, F.A.C.

<sup>35</sup> Many of the training requirements in rule may be subject to change due to the recent DOEA negotiated rulemaking process.

<sup>36</sup> S. 429.52(1), F.S.

<sup>37</sup> Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, are not required to take the competency test. Administrators licensed as nursing home administrators in accordance with Part II of Chapter 468, F.S., are exempt from this requirement.

<sup>38</sup> Rule 58A-5.0191, F.A.C.

<sup>39</sup> Id.

staff with an ALF are exempt from many of the training requirements. In addition to the standard 6 hours of in-service training, staff must also complete 1 hour of elopement training and 1 hour of training on do not resuscitate orders, and may have to complete training on special topics such as self-administration of medication and persons with Alzheimer's disease, if applicable.

### *ECC Specific Training*

The administrator and ECC supervisor, if different from the administrator, must complete 4 hours of initial training in extended congregate care prior to the facility receiving its ECC license or within 3 months after beginning employment in the facility as an administrator or ECC supervisor. They must also complete a minimum of 4 hours of continuing education every 2 years in topics relating to the physical, psychological, or social needs of frail elderly and disabled persons, or persons with Alzheimer's disease or related disorders.<sup>40</sup>

All direct care staff providing care to residents in an ECC program must complete at least 2 hours of in-service training, provided by the facility administrator or ECC supervisor, within 6 months after beginning employment in the facility. The training must address ECC concepts and requirements, including the delivery of personal care and supportive services in an ECC facility.<sup>41</sup>

### *LMH Specific Training*

Administrators, managers, and staff, who have direct contact with mental health residents in a licensed LMH facility must receive a minimum of 6 hours of specialized training in working with individuals with mental health diagnoses and a minimum of 3 hours of continuing education dealing with mental health diagnoses or mental health treatment every 2 years.<sup>42</sup>

### *Assistance with Self-Administration of Medication Training*

Staff involved with the management of medications and assisting with the self-administration of medications under s. 429.256, F.S., must complete a minimum of 4 additional hours of training provided by a registered nurse, licensed pharmacist, or department staff. The department shall establish by rule the minimum requirements of this additional training.<sup>43</sup> Unlicensed persons who will be providing assistance with self-administered medications must meet the training requirements pursuant to s. 429.52(5), F.S., prior to assuming this responsibility.

Courses provided in fulfillment of this requirement must meet the following criteria: Training must cover state law and rule requirements with respect to the supervision, assistance, administration, and management of medications in assisted living facilities; procedures and techniques for assisting the resident with self-administration of medication including how to read a prescription label; providing the right medications to the right resident; common medications; the importance of taking medications as prescribed; recognition of side effects and adverse reactions and procedures to follow when residents appear to be experiencing side effects and adverse reactions; documentation and record keeping; and medication storage and disposal.<sup>44</sup>

Training shall include demonstrations of proper techniques and provide opportunities for hands-on learning through practice exercises.<sup>45</sup>

The training must be provided by a registered nurse or licensed pharmacist who shall issue a training certificate to a trainee who demonstrates an ability to read and understand a prescription label and provide assistance with self-administration in accordance with Section 429.256, F.S., and Rule 58A-5.0185, F.A.C., including:

---

<sup>40</sup> Rule 58A-5.0191(7)(b), F.A.C.

<sup>41</sup> Rule 58A-5.0191(7)(c), F.A.C.

<sup>42</sup> S. 429.075, F.S. and Rule 58A-5.0191(8), F.A.C.

<sup>43</sup> S. 429.52(5), F.S.

<sup>44</sup> Rule 58A-5.0191(5)(a), F.A.C.

<sup>45</sup> Id.

- Assisting with oral dosage forms, topical dosage forms, and topical ophthalmic, otic and nasal dosage forms;
- Measuring liquid medications, breaking scored tablets, and crushing tablets in accordance with prescription directions;
- Recognizing the need to obtain clarification of an “as needed” prescription order;
- Recognizing a medication order which requires judgment or discretion, and advising the resident, resident’s health care provider or facility employer of inability to assist in the administration of such orders;
- Completing a medication observation record;
- Retrieving and storing medication; and
- Recognizing the general signs of adverse reactions to medications and reporting such reactions.<sup>46</sup>

Unlicensed persons, as defined in Section 429.256(1)(b), F.S., who provide assistance with self-administered medications and have successfully completed the initial 4 hour training, must obtain, annually, a minimum of 2 hours of continuing education training on providing assistance with self-administered medications and safe medication practices in an ALF. The 2 hours of continuing education training shall only be provided by a licensed registered nurse, or a licensed pharmacist.<sup>47</sup>

### Inspections and Surveys

AHCA is required to conduct a survey, investigation, or monitoring visit of an ALF:

- Prior to the issuance of a license.
- Prior to biennial renewal of a license.
- When there is a change of ownership.
- To monitor facilities licensed to provide LNS or ECC services, or facilities cited in the previous year for a class I or class II, or four or more uncorrected class III, violations.<sup>48</sup>
- Upon receipt of an oral or written complaint of practices that threaten the health, safety, or welfare of residents.
- If AHCA has reason to believe a facility is violating a provision of part III of ch. 429, F.S., relating to adult day care centers, or an administrative rule.
- To determine if cited deficiencies have been corrected.
- To determine if a facility is operating without a license.<sup>49</sup>

### *Abbreviated Surveys*

An applicant for licensure renewal is eligible for an abbreviated biennial survey by AHCA if the applicant does not have any:

- Class I or class II violations or uncorrected class III violations.
- Confirmed long-term care ombudsman council complaints reported to AHCA by the council.
- Confirmed licensing complaints within the two licensing periods immediately preceding the current renewal date.<sup>50</sup>

An abbreviated survey allows for a quicker and less intrusive survey by narrowing the range of items that AHCA must inspect.<sup>51</sup> AHCA is required to expand an abbreviated survey or conduct a full survey if violations which threaten or potentially threaten the health, safety, or security of residents are identified during an abbreviated survey.<sup>52</sup>

<sup>46</sup> Rule 58A-5.0191(5)(b), F.A.C.

<sup>47</sup> Rule 58A-5.0191(5)(c), F.A.C.

<sup>48</sup> See *below* information under subheading “Violations and Penalties” for a description of each class of violation.

<sup>49</sup> S. 429.34, F.S., and Rule 58A-5.033, F.A.C.

<sup>50</sup> Rule 58A-5.033(2), F.A.C.

<sup>51</sup> Rule 58A-5.033(2)(b)

<sup>52</sup> *Id.*



## Monitoring Visits

Facilities with LNS or ECC licenses are subject to monitoring visits by AHCA in which the agency inspects the facility for compliance with the requirements of the specialty license type. An LNS licensee is subject to monitoring inspections at least twice a year. At least one registered nurse must be included in the inspection team to monitor residents receiving LNS and to determine if the facility is complying with applicable regulatory requirements.<sup>53</sup> An ECC licensee is subject to quarterly monitoring inspections. At least one registered nurse must be included in the inspection team. AHCA may waive one of the required yearly monitoring visits for an ECC facility that has been licensed for at least 24 months, if the registered nurse who participated in the monitoring inspections determines that the ECC services are being provided appropriately, and there are no serious violations or substantiated complaints about the quality of service or care.<sup>54</sup>

## Violations and Penalties

Part II of ch. 408, F.S., provides general licensure standards for all facilities regulated by AHCA. Under s. 408.813, F.S., ALFs may be subject to administrative fines imposed by AHCA for certain types of violations. Violations are categorized into four classes according to the nature of the violation and the gravity of its probable effect on residents.

- Class I violations are those conditions that AHCA determines present an imminent danger to residents or a substantial probability of death or serious physical or emotional harm. Examples include resident death due to medical neglect, risk of resident death due to inability to exit in an emergency, and the suicide of a mental health resident in an ALF licensed for Limited Mental Health. AHCA must issue a fine between \$5,000 and \$10,000 for each violation.
- Class II violations are those conditions that AHCA determines directly threaten the physical or emotional health, safety, or security of the clients. Examples include having no qualified staff in the facility, the failure to call 911 in a timely manner for resident in a semi-comatose state, and rodents in food storage area. AHCA must issue a fine between \$1,000 and \$5,000 for each violation.
- Class III violations are those conditions that AHCA determines indirectly or potentially threaten the physical or emotional health, safety, or security of clients. Examples include missing or incomplete resident assessments, erroneous documentation of medication administration, and failure to correct unsatisfactory DOH food service inspection findings in a timely manner. AHCA must issue a fine between \$500 and \$1,000 for each violation, but no fine may be imposed if the facility corrects the violation.
- Class IV violations are those conditions that do not have the potential of negatively affecting clients. Examples include failure to file an adverse incident report, incorrect phone numbers posted for advocacy resources, and failure to post current menus. AHCA can only fine a facility (between \$100 and \$200 for each violation) if the problem is not corrected.<sup>55,56</sup>

### Violations for Fiscal Years 2013-14

	<b>Class I Violations</b>	<b>Class II Violations</b>	<b>Class III Violations</b>	<b>Class IV Violations</b>
<b>Total Violations</b>	39	335	260	3
<b>Average Fine Amount: ALFs With Less than 100 beds</b>	\$7,033	\$1,862	\$602	\$300
<b>Average Fine Amount: ALFs With More Than 100 Beds</b>	\$6,056	\$1,909	\$639	\$0

<sup>53</sup> S. 429.07(3)(c), F.S.

<sup>54</sup> S. 429.07(3)(b), F.S.

<sup>55</sup> When fixing the amount of the fine, AHCA must consider the following factors: the gravity of the violation and the extent to which any laws or rules were violated, actions taken to correct the violations, any previous violations, the financial benefit of committing or continuing the violation, and the licensed capacity of the facility. S. 429.19(3), F.S.

<sup>56</sup> S. 429.19(2), F.S.

In addition to financial penalties, AHCA can take other actions against a facility. AHCA may deny, revoke, and suspend any license for any of the actions listed in s. 429.14(1)(a)-(k), F.S. AHCA is required to deny or revoke the license of an ALF that has two or more class I violations that are similar to violations identified during a survey, inspection, monitoring visit, or complaint investigation occurring within the previous 2 years.<sup>57</sup> AHCA may also impose an immediate moratorium or emergency suspension on any provider if it determines that any condition presents a threat to the health, safety, or welfare of a client.<sup>58</sup> AHCA is required to publicly post notification of a license suspension or revocation, or denial of a license renewal, at the facility.<sup>59</sup> Finally, Florida's Criminal Code, under ch. 825, F.S., provides criminal penalties for the abuse, neglect, and exploitation of elderly persons<sup>60</sup> and disabled adults.<sup>61</sup>

**ALF License Suspensions, Revocations, Denials, Failed to Renew and Closed**

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	Total
<b>Suspensions</b>	1	2	5	6	3	17
<b>Revocations</b>	12	7	17	15	14	65
<b>Denials</b>	7	5	9	12	14	47
<b>Closed/Failed to Renew During Legal Case</b>	40	46	30	28	29	173
<b>Total</b>	60	60	61	61	60	302

Central Abuse Hotline

The Department of Children and Families is required under s. 415.103, F.S., to establish and maintain a central abuse hotline to receive reports, in writing or through a single statewide toll-free telephone number, of known or suspected abuse, neglect, or exploitation of a vulnerable adult<sup>62</sup> at any hour of the day or night, any day of the week.<sup>63</sup> Persons listed in s. 415.1034, F.S., who know, or have reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited are required to immediately report such knowledge or suspicion to the central abuse hotline.<sup>64</sup>

Personal Property of Residents

Facilities are required under s. 429.27(3), F.S., upon mutual consent with the resident, to provide for the safekeeping of a resident's personal effects not in excess of \$500 in value and funds not in excess of \$200 cash. The facility must keep complete and accurate records of all such funds and personal effects received. If a resident is absent from a facility for 24 hours or more, the facility may provide for the safekeeping of the resident's personal effects in excess of \$500.

<sup>57</sup> S. 429.14(4), F.S.

<sup>58</sup> S. 408.814, F.S.

<sup>59</sup> S. 429.14(7), F.S.

<sup>60</sup> "Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired. S. 825.101(5), F.S. It does not constitute a defense to a prosecution for any violation of this chapter that the accused did not know the age of the victim. S. 825.104, F.S.

<sup>61</sup> "Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living. S. 825.101(4), F.S.

<sup>62</sup> "Vulnerable adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. S. 415.102(27), F.S.

<sup>63</sup> The central abuse hotline is operated by the DCF to: accept reports for investigation when there is a reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited; determine whether the allegations require an immediate, 24-hour, or next-working-day response priority; when appropriate, refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might better resolve the reporter's concerns; immediately identify and locate prior reports of abuse, neglect, or exploitation through the central abuse hotline; Section 415.103(1), F.S.

<sup>64</sup> S. 415.1034, F.S.

## Long-Term Care Ombudsman Program

The Federal Older Americans Act (OAA) requires each state to create a Long-Term Care Ombudsman Program to be eligible to receive funding associated with programs under the OAA.<sup>65</sup> In Florida, the program is a statewide, volunteer-based system of district councils that protect, defend, and advocate on behalf of long-term care facility residents, including residents of nursing homes, ALFs, and adult family-care homes. The ombudsman program is administratively housed in the DOEA and is headed by the State Long-Term Care Ombudsman, who is appointed by the DOEA Secretary.<sup>66</sup>

The ombudsman program administers a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents of ALFs, nursing homes, and adult family care homes. Every resident or representative of a resident must receive, upon admission to a long-term care facility, information regarding the program and the statewide toll-free telephone number for receiving complaints.<sup>67</sup> The names or identities of the complainants or residents involved in a complaint, including any problem identified by an ombudsman council as a result of an investigation, are confidential and exempt from Florida's public records laws, unless the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure, or the disclosure is required by court order.<sup>68</sup> In addition to investigating and resolving complaints, ombudsmen conduct unannounced visits to assess the quality of care in facilities, referred to as administrative assessments.

---

<sup>65</sup> 42 U.S.C. 3058, et. seq.. *See also* s. 400.0061(1), F.S.

<sup>66</sup> S. 400.0063, F.S.

<sup>67</sup> S. 400.0078(2), F.S.

<sup>68</sup> S. 400.0077(1)(b), F.S.

## Effect of Proposed Changes

### Limited Mental Health License

The bill amends s. 394.4574, F.S., to clarify that Medicaid managed care plans are responsible for enrolled state-supported mental health residents and that managing entities under contract with the DCF are responsible for such residents who are not enrolled with a Medicaid health plan. This section requires a mental health resident and his or her mental health case manager to complete the mental health resident's community living support plan and provide it to the administrator of the ALF within 30 days of admitting a mental health resident. The plan must be updated when there is a significant change to the resident's behavioral health status. The resident's case manager must keep a 2-year record of any face-to-face interaction with the resident and make the records available for inspection. Finally, this section charges the case manager responsible for a mental health resident to ensure that there is adequate and consistent monitoring of the community living support plan and to report any concerns about a regulated provider failing to provide services or otherwise acting in a manner with the potential to cause harm to the resident.

The bill amends s. 429.075, F.S., to require facilities with one or more, instead of three or more, mental health residents to obtain a LMH license. It also permits a facility with a LMH license, if it does not have a copy of the resident's community living support plan and cooperative agreement, to provide written evidence that it requested the plan and agreement from the Medicaid managed care plan or the managing entity within 72 hours of the resident's admission.

### Long-Term Care Ombudsman Program

#### *Administrative Assessment*

The bill amends s. 400.0074, F.S., to require any administrative assessment of an ALF performed by the Long-Term Care Ombudsman to be comprehensive. Further, the bill requires the local Ombudsman to conduct an exit consultation with the long-term care facility administrator to discuss issues and concerns affecting residents and make recommendations for improvement, if necessary.

#### *Resident Grievances*

The bill amends s. 400.0078, F.S., to require that ALFs inform new residents upon admission to the facility that retaliatory action cannot be taken against a resident for presenting grievances or for exercising any other resident right. An ALF can also provide this information to the resident's representative.

### Extended Congregate Care License

The bill amends s. 429.07, F.S., to make changes to improve the regulation of facilities with ECC and LNS specialty licenses. These changes include:

- Requiring that an ALF be licensed for 2 or more years before being issued an ECC license that is not provisional.
- Clarifying under what circumstances AHCA may deny or revoke a facility's ECC license.
- Creating a provisional ECC license for ALFs that have been licensed for less than 2 years.
- The provisional license lasts for a period of 6 months.
- The facility must inform AHCA when it has admitted one or more residents requiring ECC services.
- After the facility admits one or more ECC residents, AHCA must inspect the facility for compliance with the requirements of the ECC license.
- If the licensee demonstrates compliance with the requirements of an ECC license, AHCA must grant the facility an ECC license.

- If the licensee fails to demonstrate compliance with the requirements of an ECC license or fails to admit an ECC resident within 3 months, the licensee must immediately suspend ECC services and the provisional ECC license expires.
- Authorizing AHCA to extend a provisional ECC license for 1 month in order to complete a follow-up visit.
- Reducing monitoring visits for facilities with ECC licenses from quarterly to twice a year, and for facilities with LNS licenses from twice a year to once a year.
- Clarifying under what circumstances AHCA may waive one of the required monitoring visits for facilities with ECC licenses and also allowing AHCA to waive the required monitoring visit for facilities with an LNS license under the same conditions.

### Violations and Penalties

The bill amends s. 429.14, F.S., to:

- Add additional criteria under which AHCA must deny or revoke a facility's license. The criteria include:
  - There are 2 moratoria issued and imposed by final order within a 2-year period.
  - The facility is cited for 2 or more class I violations arising from unrelated circumstances during the same survey or investigation.
  - The facility is cited for 2 or more class I violations within 2 years.
- Require AHCA to impose an immediate moratorium on a facility that fails to provide AHCA with access to the facility or prohibits a regulatory inspection;
- Prohibit a licensee from restricting AHCA staff access to records or prohibiting the confidential interview of facility staff or residents.
- Exempt a facility from the 45-day notice requirement in s. 429.28(k), F.S., if that facility is required to relocate all or some of its residents due to action by AHCA.

The bill amends s. 429.19, F.S., to require AHCA to impose an administrative fine of \$500 if a facility is found to be not in compliance with the background screening requirements of s. 408.809, F.S.

### Assistance with Self-Administration of Medication

The bill amends s. 429.256, F.S., to allow all facility staff who received the required training to provide several additional services in assisting with self-administration of medication.<sup>69</sup> Specifically, the additional duties are:

- Taking a prefilled insulin syringe from its place of storage and bringing it to a resident;
- Removing the cap of a nebulizer, opening the unit dose of nebulizer solution, and pouring the pre-measured dose of medication into the dispensing cup of the nebulizer;
- Assisting a resident in using a nebulizer;
- Using a glucometer to perform blood glucose checks;
- Assisting with anti-embolism stockings;
- Assisting with applying and removing an oxygen cannula;
- Assisting with the use of a continuous positive airway pressure device;
- Assisting with the measuring of vital signs; and
- Assisting with the use of colostomy bags.

### Personal Property of Residents

The bill amends s. 429.27(3), F.S., to increase the amount of cash that a facility may provide safe-keeping of for a resident from \$200 to \$500.

### Resident Bill of Rights

The bill amends s. 429.28, F.S., to require that the telephone number of Disability Rights Florida<sup>70</sup> (DRF) be included in the posted notice of a resident's rights, obligations, and prohibitions, and that the facility ensure each resident have access to a telephone to call DRF. The notice must also specify that complaints made to the ombudsman program, as well as the names and identities of the complainant and any residents involved in the complaint, are confidential and that retaliatory action cannot be taken against a resident for presenting a grievance or exercising a right. This section also creates a fine of \$2,500, which is imposed if a facility cannot show good cause in state court for terminating the residency of an individual who has exercised an enumerated right.

The bill requires AHCA to adopt rules for uniform standards and criteria that will be used to determine a facility's compliance with facility standards and residents' rights.

### Right of Entry and Inspection

The bill amends s. 429.34, F.S., to require certain state officials, such as Medicaid Fraud investigators and state or local fire marshals, to report any knowledge or reasonable suspicion that a vulnerable adult has been or is being abused, neglected, or exploited to the DCF central abuse hotline.

The bill requires AHCA to inspect each licensed ALF at least once every 24 months to determine compliance with statute and rules. The bill provides that a facility having one or more class I violations, three or more class II violations arising from separate surveys within a 60-day period, or three or more unrelated class II violations cited during one survey be subject to an additional inspection within 6 months.

### Staffing and Training Requirements

The bill amends s. 429.41, F.S., to clarify that ALF staffing requirements for a continuing care facility or retirement community apply only to residents who receive personal limited nursing services or extended congregate care services. The facility must keep a log of the names and unit numbers of residents receiving such services and make the log available to surveyors upon request.

The bill amends s. 429.52, F.S., to require facilities to provide a 2-hour pre service orientation for all new facility employees who have not previously completed core training. The pre-service orientation must cover topics that help the employee provide responsible care and respond to the needs of the residents. The employee and the facility's administrator must sign a statement that the new ALF staff member has completed the pre-service orientation. The signed statement must be kept in that staff member's file. The bill clarifies that the pre-service orientation can be provided by the ALF instead of a trainer registered with DOEA.

### Consumer Information Resources

The bill creates s. 429.55, F.S., which provides Legislative findings that consumers need additional information in order to select an ALF. To facilitate this, the bill requires AHCA to create a consumer guide website which contains information on each licensed ALF. By November 1, 2015, the website must include:

- The name and address of the facility;
- The name of the owner or operator of the facility;
- The number and type of licensed beds in the facility;
- The types of licenses held by the facility;
- The facility's license expiration date and status;
- The total number of clients that the facility is licensed to serve and the most recent occupancy levels;

---

<sup>70</sup> Disability Rights Florida is the designated protection and advocacy agency required as a condition of certain federal funding under 42 U.S.C. 15041-15045 and 45 C.F.R. 1386.20. The protection and advocacy designation is made by gubernatorial executive order.

- The number of private and semi-private rooms offered;
- The bed-hold policy;
- The religious affiliation, if any, of the ALF;
- The languages spoken by the staff;
- Availability of nurses;
- Forms of payment accepted;
- Identification if the licensee is operating under bankruptcy protection;
- Recreational and other programs available;
- Special care units or programs offered;
- Whether the facility is part of a retirement community that offers other services;
- Links to the State Long-Term Care Ombudsman Program website and the program's statewide toll-free telephone number;
- Links to the internet websites of the providers;
- Other relevant information currently collected by AHCA; and
- Survey and violation information including a list of the facility's violations committed during the previous 60 months, which must be updated monthly and include for each violation:
  - A summary of the violation, with all licensure, revisit, and complaint survey information;
  - Any sanctions imposed by final order; and
  - The date the corrective action was confirmed by AHCA; and
- Links to inspection reports on file with AHCA.

The bill provides an effective date of July 1, 2015.

**B. SECTION DIRECTORY:**

- Section 1:** Amends s. 394.4574, F.S., relating to department responsibilities for a mental health resident who resides in an assisted living facility that holds a limited mental health license.
- Section 2:** Amends s. 400.0074, F.S., relating to local ombudsman council onsite administrative assessments.
- Section 3:** Amends s. 400.0078, F.S., relating to citizen access to State Long-Term Care Ombudsman Program services.
- Section 4:** Amends s. 409.212, F.S., relating to optional supplementation.
- Section 5:** Amends s. 429.02, F.S., relating to definitions.
- Section 6:** Amends s. 429.07, F.S., relating to license required; fee.
- Section 7:** Amends s. 429.075, F.S., relating to limited mental health license.
- Section 8:** Amends s. 429.14, F.S., relating to administrative penalties.
- Section 9:** Amends s. 429.178, F.S., relating to special care for persons with Alzheimer's disease or other related disorders.
- Section 10:** Amends s. 429.19, F.S., relating to violations; imposition of administrative fines; grounds.
- Section 11:** Amends s. 429.256, F.S., relating to assistance with self-administration of medication.
- Section 12:** Amends s. 429.27, F.S., relating to property and personal affairs of residents.
- Section 13:** Amends s. 429.28, F.S., relating to resident bill of rights.
- Section 14:** Amends s. 429.34, F.S., relating to right of entry and inspection.
- Section 15:** Amends s. 429.41, F.S., relating to rules establishing standards.
- Section 16:** Amends s. 429.52, F.S., relating to staff training and educational programs; core educational requirements.
- Section 17:** Creates s. 429.55, F.S., relating to consumer information website.
- Section 18:** Provides an effective date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Facilities would be required to provide new employees that have not already gone through the ALF core training program with a 2 hour pre-service training session before they work with residents. The cost of this training is not expected to be significant and in many cases is already provided.

Facilities with specialty licenses that meet licensure standards would see fewer monitoring visits from the AHCA. This will positively impact the facilities as they will have less interruption of staff time due to such visits.

Facilities with any state supported mentally ill residents would have to meet limited mental health licensure requirements with one or more mental health residents. Facilities with one or two state supported mentally ill residents that do not meet these requirements may see increased costs to comply. Some facilities with one or two such residents however, may already meet the requirements for a limited mental health license.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides AHCA with sufficient rulemaking authority, as necessary, to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.



#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 24, 2015, the Health Care Appropriations Subcommittee adopted one amendment to HB 1001. The amendment made the following changes to the bill:

- Removed language related to having the Office of Program Policy Analysis and Government Accountability conduct a study related to intersurveyor reliability for assisted living facilities.
- Removed an appropriation and two full-time equivalent (FTE) positions with associated salary and rate that were included in the bill.

On April 1, 2015, the Health and Human Services Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment required an ALF that has been cited for three or more, instead of two or more, class II violations within a 60-day period or due to unrelated circumstances during the same survey to undergo an additional inspection within 6 months.

The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.