

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 Appropriations Subcommittee on Health and Human Services

BILL: CS/SB 1592

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

SUBJECT: Assisted Living Facilities

DATE: April 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>McKnight</u>	<u>Kidd</u>	<u>AHS</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1592 makes a number of changes relating to assisted living facilities (ALFs). The bill authorizes and encourages the use of safety devices to protect residents in ALFs. The bill updates the fire safety code that all ALFs must meet. The bill clarifies the administration of the core training requirements for ALF staff and administrators and provides requirements for the medical examination that residents must undergo to determine appropriate placement in an ALF. Additionally, the bill requires ALFs to provide information in writing on the Long-Term Care Ombudsman Program when providing a notice for eviction.

The bill does not have a fiscal impact on state revenues or expenditures.

The bill takes effect on July 1, 2019.

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

¹ Section 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.

and the self-administration of medication.² Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.³

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, as determined by the facility administrator or health care provider, a resident no longer meets the criteria for continued residency or the facility is unable to meet the resident's needs, the resident must be discharged in accordance with the Resident Bill of Rights.⁶

There are 3,081 licensed ALFs in Florida having a total of 106,016 beds.⁷ An ALF must have a standard license issued by the Agency for Health Care Administration (AHCA) under part I of ch. 429, F.S., and part II of ch. 408, F.S. In addition to a standard license, an ALF may have one or more specialty licenses that allow an ALF to provide additional care. These specialty licenses include limited nursing services (LNS),⁸ limited mental health services (LMH),⁹ and extended congregate care services (ECC).¹⁰

ALF Staff Training

Administrators and Managers

Administrators and other ALF staff must meet minimum training and education requirements established in rule by the Department of Elder Affairs (DOEA),¹¹ that are intended to assist ALFs in appropriately responding to the needs of residents, maintaining resident care and facility standards, and meeting licensure requirements.¹²

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 three months after becoming an ALF administrator or manager. The minimum passing score for the competency test is 75 percent.¹³

Administrators and managers must participate in 12 hours of continuing education in topics related to assisted living every two years.¹⁴ A newly-hired administrator or manager, who has

² Section 429.02(17), F.S.

³ Section 429.02(1), F.S.

⁴ See Rule 58A-5.0182, F.A.C., for specific minimum standards.

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

⁶ Section 429.28, F.S.

⁷ Agency for Health Care Administration, Health Care Finder see <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx>, (last visited April 3, 2019).

⁸ Section 429.07(3)(c), F.S.

⁹ Section 429.075, F.S.

¹⁰ Section 429.07(3)(b), F.S.

¹¹ Rule 58A-5.0191, F.A.C.

¹² Section 429.52(1), F.S.

¹³ 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.

¹⁴ Rule 58A-5.0191(1)(c), F.A.C.

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.¹⁵

Staff with Direct Care Responsibilities

Facility administrators or managers are required to provide or arrange for six hours of in-service training for facility staff who provide direct care to residents.¹⁶ Staff training requirements must generally be met within 30 days after staff begin employment at the facility; however, staff must have at least one hour of infection control training before providing direct care to residents. Nurses, certified nursing assistants, and home health aides who are on staff with an ALF are exempt from many of the training requirements. In addition to the standard six hours of in-service training, staff must complete one hour of elopement training and one hour of training on “do not resuscitate” orders. The staff may be required to complete training on special topics such as self-administration of medication and Alzheimer’s disease, if applicable.

Inspections and Surveys

The 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 ALFs licensed to provide Limited Nursing Services or Extended Congregate Care services;
- To monitor ALFs cited in the previous year for a class I or class II violation or for four or more uncorrected class III violations;
- Upon receipt of an oral or written complaint of practices that threaten the health, safety, or welfare of residents;
- If the AHCA has reason to believe an ALF 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; or
- To determine if an ALF is operating without a license.¹⁷

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

- Class I, class II, or uncorrected class III violations;
- Confirmed complaints from the long-term care ombudsman council which were reported to the AHCA by the council; or
- Confirmed licensing complaints within the two licensing periods immediately preceding the current renewal date.¹⁸

¹⁵ Rule 58A-5.0191, F.A.C.

¹⁶ *Id.*

¹⁷ Section 429.34, F.S.

¹⁸ Rule 58A-5.033(1), F.A.C.

An abbreviated survey allows for a quicker and less intrusive survey by narrowing the range of items the AHCA must inspect.¹⁹ The AHCA must expand an abbreviated survey or conduct a full survey if violations that threaten or potentially threaten the health, safety, or security of residents are identified during an abbreviated survey.²⁰

III. Effect of Proposed Changes:

Section 1 amends s. 429.02, F.S., providing definitions which govern ALFs to add a definition of “assistive device.” The term is defined as any device designed or adapted to help a resident perform an action, a task, an activity of daily living, or a transfer, but does not include lifts such as a total body lift or a chair lift. The bill revises the definition of a “physical restraint” to exclude devices that the resident is able to remove themselves.

Section 2 amends s. 429.11, F.S., relating to obtaining an initial ALF license, to update the term occupational license with the term “business tax receipt” to reflect the current terminology used by local governments.

Section 3 amends s. 429.176, F.S., relating to a change of administrators in an ALF to require new administrators to provide documentation that they meet educational requirements (GED or high school diploma) and have completed the core training and passed the core competency test.

Section 4 amends s. 429.23, F.S., relating to risk management and quality assurance for ALFs. The bill clarifies the requirement that ALFs investigate an adverse incident in the facility within 24 hours of the incident and provide a report to the AHCA within 15 days of the incident.

Section 5 amends s. 429.255, F.S., relating to use of ALF staff and emergency care. The bill clarifies that a resident or resident’s representative, designee, surrogate, guardian, or attorney in fact may contract with a third party for services to be provided at the ALF. The third party must coordinate care with the ALF and the ALF must document such services.

Section 6 amends s. 429.256, F.S., relating to assistance with self-administration of medication. The bill requires that the ALF confirm that the medication is for the resident and advise the resident of the medication name and purpose.

Section 7 amends s. 429.26, F.S., relating to the appropriate placements and examinations of residents in an ALF. The bill:

- Provides an alternative option for residents by authorizing a medical examination to be performed 30 days after admission to an ALF. Residents are currently limited to having a medical examination performed within 60 days prior to admission.
- Specifies the information required on the medical examination form.
- Establishes the criteria applied to the determination and appropriateness for an individual’s residency and continued residency in an ALF, allowing an ALF to admit or retain a resident that receives health care services from a third party provider; who requires the use of assistive devices; and receives hospice services if the arrangement is agreed to by the ALF

¹⁹ *Id.*

²⁰ *Id.*

and the resident, additional care is provided by a licensed hospice, and the resident is under the care of a physician who agrees that the physical needs of the resident can be met at the facility.

- Provides for the placement of a resident who is bed ridden for seven or less consecutive days in an ALF. For ALFs with a specialty license for Extended Congregate Care, the bill allows an ALF to retain a resident who is bed ridden for 14 or less consecutive days. These changes would allow ALF residents needing more acute care to be served in an ALF rather than a nursing home. Currently persons who require 24-hour nursing care would need to be placed in a nursing home.
- Requires an ALF to notify a licensed physician in writing when a resident exhibits signs of dementia or cognitive impairment or has a change in condition in order to rule out the presence of an underlying physiological condition that may be contributing to such dementia or impairment, and to notify the resident's representative or designee in writing of the need for health care services and assist in making appointments for the necessary care and services to treat the condition.
- Revises provisions relating to the placement of residents by the DOEA and the Department of Children and Families.

Section 8 amends s. 429.28, F.S., relating to the ALF resident bill of rights. The bill requires ALFs to provide information in writing on the Long-Term Care Ombudsman Program when providing a notice for eviction.

Section 9 amends s. 429.41, F.S., relating to rules establishing standards. The bill:

- Revises the legislative intent that licensure standards “promote” rather than “ensure” quality care for residents and to allow for technological advances, including the use of devices, equipment and other security measures, in the provision of care, safety, and security of residents, staff, and the facility.
- Removes references to national fire safety standards. Instead, section 10 of the bill requires an ALF to meet the uniform fire safety standards in s. 633.206, F.S.
- Requires the AHCA to use an abbreviated inspection under certain circumstances. Current law provides discretion to the AHCA on when to use an abbreviated inspection. The bill also changes the criteria for using an abbreviated inspection from having no confirmed complaints to the long-term care ombudsman to having no confirmed complaints that led to a licensure violation.
- Deletes an outdated requirement for the DOEA to provide copies of proposed rules to the Legislature.
- Requires the AHCA to adopt by rule key quality-of-care standards.

Section 10 creates s. 429.435, F.S., to establish uniform fire safety standards for ALFs. The bill:

- Requires the State Fire Marshal to establish uniform fire safety standards for ALFs and provides certain requirements. A fire safety evacuation test must be made by the fire marshal within six months after the date of initial licensure.
- Requires the National Fire Protection Association, Life Safety Code to be used in determining the uniform ALF fire safety standards.
- Prohibits a local government from charging a fee beyond that which would cover the cost for an inspection of an ALF sprinkler system.

- Requires local fire marshals to annually inspect ALFs for compliance with fire safety standards.
- Authorizes ALFs operating before July 1, 2016, to continue being subject by the previous fire safety standards.

Section 11 amends s. 429.52, F.S., relating to ALF staff training and educational requirements.

The bill:

- Clarifies the educational requirements and core training requirements for ALF administrators. The current DOEA rule requires a GED or high school diploma.²¹ The bill establishes core training requirements for administrators consisting of core training learning objectives and successful passage of the core competency test.
- Revises the training and continuing education requirements for facility staff who assist resident with the self-administration of medications, requiring a minimum of six completed hours of training before providing assistance and thereafter, two hours annually.
- Requires the DOEA to contract with another entity to administer the competency test.
- Requires the DOEA to develop rules regarding the administration of the training competency test and an outline of the training curriculum, as well as rules to establish core trainer removal requirements.

Section 12 amends s. 429.07, F.S., related to establishing license fees for ALFs. The bill corrects a cross-reference for the required medical examination of ALF residents.

Section 13 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

²¹ Agency for Health Care Administration bill analysis, dated March 11, 2019. On file with the Committee on Children, Families and Elder Affairs.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 429.02, 429.07, 429.11, 429.176, 429.23, 429.255, 429.256, 429.26, 429.28, 429.41, and 429.52.

This bill creates section 429.435 of the Florida Statutes.

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

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

CS by Children, Families, and Elder Affairs on April 8, 2019:

- The CS removes changes to s. 429.19, F.S., relating to ALF violations of licensure standards and fines, to clarify that ALFs are not to be fined under parts II, III, and IV of chapter 400. Part II of that chapter governs nursing homes, part III governs home health agencies, and part IV governs hospice providers.
- The CS amends s. 429.02, providing definitions for part I of chapter 429, F.S., governing ALFs to add a definition of “assistive device.” The term is defined as any device to help a resident perform an activity of daily living, but does not include lifts such as a total body lift or a chair lift. The bill revises the definition of a “physical restraint” to exclude devices that the resident is able to remove themselves.
- The CS amends s. 429.176, F.S., relating to change of administrators in an ALF to require new administrators provide documentation that they meet educational requirements (GED or high school diploma) and has completed the core competency training and passed the test.

- The CS removes language that would have eliminated the educational requirements of ALF administrators.
- The bill requires that the written notice to residents who are to be evicted include information on obtaining assistance from the Long-Term Care Ombudsman Program.

B. Amendments:

None.