

STORAGE NAME: h3667.grr

DATE: March 25, 1998

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3667

RELATING TO: Assisted Living Facilities

SPONSOR(S): Committee on Elder Affairs & Long Term Care, Representative Fischer & others

COMPANION BILL(S): SB 1960

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Elder Affairs & Long Term Care YEAS 6 NAYS 0
 - (2) Community Affairs (W/D)
 - (3) Governmental Rules and Regulations
 - (4) Health & Human Services Appropriations
 - (5)
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I. SUMMARY:

CS/HB 3667 revises and reorganizes chapter 400, Part III related to Assisted Living Facilities (ALFs), Part IV, related to Home Health Agencies (HHAs), and Part VII related to Adult Family Care Homes (AFCH).

HHAs would be subject to disciplinary action for knowingly providing home health services to persons living in an unlicensed ALF or AFCH.

The bill significantly increases the fines Agency for Health Care Administration (AHCA) could impose and allows AHCA to charge for investigative visits or surveys occasioned by a complaint. AHCA could in some instances impose doubled fines. It revises the time frames within which notice of a transfer of ownership must be made to AHCA.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Assisted living facilities provide housing, meals, and personal assistance to individuals with physical and mental disabilities who need support to live in the community but do not require institutionalization.

Resident Requirements

Assisted living facility residents are required to have a health examination completed within 60 days before admission to the facility or 30 days after admission.

Applicants, Administrators & Owners

Applicant is defined in the statute as the owner, or the persons appointed by a business entity to apply for a license. An ALF administrator must be 18 years of age or older. The statute requires that the ALF application form be under oath and specifies the content of the application form, but it does not specifically require the applicant to sign the application.

The ALF statute does not require that the applicant or financial officer disclose prior involvement with facilities that have had a receiver appointed or a license denied, suspended or revoked, a moratorium on admissions imposed, or an injunctive proceeding initiated against it.

Exclusions, permanent suspension, or terminations of the applicant from the Medicare or Medicaid programs is not required to be listed on the ALF application form, and it is not grounds for denial of the application. The list of references to be provided by the applicant does not address providing information regarding the financial responsibility of the owner, administrator, and financial officer. No references have been required for the financial officer. The owner is required to list on the application all other facilities they own or operate. An individual may be administrator for up to three facilities but is not required to disclose that information on the application form.

Relatives & Licensure

The term *relative* is not defined in the statute currently, but the statute provides that homes or facilities caring for relatives are not ALFs. An individual may provide ALF type services to any number of persons related by blood or marriage without being subject to licensure. According to AHCA some ALF owners and administrators claim a resident is a relative even when the degree of relationship is obscure

Licensure

The Agency requires that an ECC, LNS, or LMH license that is issued within a biennial licensing period will expire at the end of that biennial license period. The application fees for these licenses are prorated based upon the date of receipt of the application and the number of months remaining in the biennial license period. The ALF statute does not specifically state that renewal applications must be issued within 90 days of receipt.

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The number of class 1 and class 2 deficiencies that would result in the Agency taking action against the facility license is not specified. The Agency has the discretion to include any such serious violations as grounds for denial under s. 400.414(2)(a).

The statute does not address denial of an application based upon the applicant's prior operation of an unlicensed facility. The Agency does not have the authority to deny, revoke, or suspend a license of an applicant who has had any state administrative action prior to the application, even if such an individual has been officially sanctioned by another administrative entity.

Moratoriums & Other Penalties

The ALF administrative rule, ch. 58A-5.024(6), F.A.C., requires that notice of a moratorium on admissions, or denial, revocation, or suspension of a license be posted in a prominent location in the facility. That requirement, however, is not in the statute.

While it is a felony of the third degree to operate or maintain an unlicensed ALF, there are no penalties listed for owning an unlicensed ALF. There are no increasing penalties for a second or subsequent confirmed finding of owning, operating, or maintaining an unlicensed ALF. The Agency may fine such individuals from \$500 to \$5,000. The Agency may also refer such individuals to the local state's attorney for possible prosecution for operation of an unlicensed ALF.

Financial Stability

During the survey process, the surveyor checks to determine that financial records are maintained appropriately. The statutes do not authorize the Agency to evaluate the financial records to determine the facility's financial stability. However, at the time of initial licensure and at licensure renewal, the agency must consider the financial ability of the owner or administrator. Section 400.414(2)(b), F.S., provides the agency authority to deny the application based upon financial instability.

Health & Fire Safety

Some ALFs are located in rural areas of the state. In such communities, a volunteer fire department may be the only access to fire protection with no qualified local fire safety authority available to conduct the required fire safety inspection. These facilities must request assistance from the State Fire Marshal's office to obtain the required inspection.

The statute does not require that the applicant provide proof of a satisfactory sanitation inspection. The ALF rule, ch. 58A-5.0161, F. A.C., does require that the Department of Health (DOH) inspect all licensed ALFs, but it does not specify that the applicant must provide the Agency proof that the inspection was satisfactory. ALFs that are also a continuing care facility certified under chapter 651 are required to provide the Agency proof of such certification, but the statute does not specifically require that such proof be established by providing a copy of the certificate of authority.

Administration of ALF Program

The Agency for Health Care Administration (AHCA) is responsible for licensing and monitoring these facilities. The Department of Elderly Affairs (DOEA) is responsible for

adopting rules related to assisted living facilities and for ensuring the provision of training for the administrators of these facilities. AHCA has developed the required policies, procedures, forms, and documentation used to implement the ALF program with input from DOEA.

The Agency may charge for copies of the ALF statute and rule but does not have the authority to charge for copies of the remainder of the application package. The Agency currently absorbs the cost of printing forms, providing lists of required contact persons or agencies, and providing the instructions for completing the application package.

Deficiencies & Violations

The following penalties are prescribed in the statute:

a class I deficiency	a minimum of \$1,000 and a maximum of \$5,000 for each violation
a class II deficiency is	a minimum of \$500 and a maximum of \$1,000 for each violation
a class III deficiency	a minimum of \$100 and a maximum of \$500 for each violation
a class IV deficiency	a minimum of \$50 and a maximum of \$200 for each violation
an unclassified deficiency	a minimum of \$500 for each violation not to exceed \$5,000

AHCA does not have statutory authority to double administrative fines for repeat or uncorrected identical violations during the previous biennial inspection, monitoring visit, or complaint investigation.

Section 400.419(1), F.S., provides that an owner or administrator is subject to a fine set and levied by the Agency for operating a facility without a license. There is no statutory direction to impose a fine for failure to file a timely change of ownership license application.

B. EFFECT OF PROPOSED CHANGES:

The bill strengthens AHCA's capacity to cite violators and impose significant fees. AHCA is also granted authority to make monitoring visits in the year the facility would not normally be subject to a licensure survey. It provides that applicants disclose any incidents of administrative action against them in Florida or other states. It allows AHCA to revoke the license or impose a moratorium on any licensed facility owned by a person who also has an ownership interest in an unlicensed facility. Requires AHCA to renew applications within 90 days. The bill allows ALF staff to provide assistance with the self-administration of medication. Home health agencies that provide services in an unlicensed ALF must report that facility to AHCA within 72 hours of providing the services or be subject to disciplinary action.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill does not provide AHCA with new rulemaking authority. However, the bill does amend existing authority of AHCA to prosecute unlicensed facilities and the referral of persons to unlicensed facilities. It also provides authority for Department of Elder Affairs to request additional information as part of an application relating to the background of personnel and if relevant, corporate officers, disclose prior incidents of violations of certification requirements in Florida or other states of operation, and certification as a continuing care facility. It provides AHCA with additional authority for actions against a ALF licensee or license.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

No.

(2) what is the cost of such responsibility at the new level/agency?

No.

(3) how is the new agency accountable to the people governed?

No.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

While the bill does not authorize an increase in fees, it does authorize an increase in fines. The amends s. 400.419, F.S. renaming *civil penalty* as *administrative fines*. It increases the upper limit for fines for class I through class IV violations and imposes a limit on the total amount of fines for other types of violations. The bill describes in detail what criteria AHCA will use in determining a penalty under this section. Finally, the bill allows AHCA to charge for costs associated with investigative visits or surveys occasioned by a complaint

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Chapter 400, Part III, related to Assisted Living Facilities; Part IV, related to Home Health Agencies; and Part VII, related to Adult Family Care Homes.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 400.402, F.S., Definitions. It adds a requirement that ALF administrators be at least twenty-one years old. It revises the definition of *Aging in Place*, providing that services are adjusted to compensate for the mental or physical decline associated with aging. The definition of an *assisted living facility* is clarified. The requirement for facilities that present themselves to the public as offering ALF services to be licensed as an ALF is deleted. *Applicant* is deleted from the list of definitions and *relative* is added. The definition of *supervision* is revised to include reminding residents to self-administer medication.

Section 2. Amends s. 400.404, F.S., to exempt Adult Family Care Homes from licensure as an ALF. Clarifies that any person providing housing, meals, and one or more personal care services in the home they own or rent and live in is not required to be licensed as a family care home.

Section 3. Amends s. 400.407, F.S., to provide that an ALF must be licensed. It deletes provisions relating to persons operating without a license.

Section 4. Amends s. 400.408, F.S., to add provisions relating to operating without a license(moved from s. 400.407, F.S.). Provides that applying for a license within 10 days after notification shall be an affirmative defense to the felony violation of operating without a license and that there is no affirmative defense to a second or subsequent violation. Provides that persons who own, operate, or maintain an unlicensed ALF who fail to comply with the law commit a felony of the third degree, punishable as provided in s. 775.082, F.S., related to re-offenders previously released from prison; s. 775.083, F.S., related to violent offenders; or s. 775.084, F.S., related to violent career offenders. Facilities which do not come into compliance after being notified by the agency can be fined for each day of noncompliance.

When a person owns more than one ALF and fails to license any of them, AHCA may revoke the license or impose a moratorium on admissions on any or all of the licensed facilities.

Provides that any person who knows of the operation of an unlicensed ALF must report the faculty to AHCA. AHCA is to provide information about licensed ALFs to DOEA and to elder information and referral providers.

Section 5. Clarifies s. 400.411, F.S., that the applicant may be an individual, a corporation, partnership, firm, association, or governmental entity. The applicant must sign the application. Corporations must provide information about the directors, officers and each person having a 5% interest in the corporation. Entities that would provide services to the facility must identify persons who own at least a 5% interest if that person would also be required to be named on the application. Applicants, including the financial officer, must provide certain information about their past experience with long term care facilities. The applicant must furnish proof of compliance with background screening requirements and references for the administrator, owner, and financial officer.

Applicants licensed under chapter 651, F.S., as a continuing care retirement community (CCRC) must provide a copy of the certificate of authority and proof of liability insurance as defined in s. 624.605, F.S. DOEA is granted rule making authority to obtain this information.

Section 6. Amends, renumbers, and adds subparagraphs in section 400.414, F.S., regarding the Agency's authority to deny, revoke, suspend the license, impose administrative fines, and the grounds for these actions. Deletes reference to the last "biennial survey" and instead directs AHCA to evaluate if the specified number of violations are similar or identical to violations noted during the **last** survey as the basis for taking action.

AHCA may take action against a licensee or license applicant if:

- ▶ an owner or administrator does not remove a perpetrator of abuse, neglect or exploitation,
- ▶ it submits fraudulent, incomplete, or deceptive applications for licensure or of any other required document,
- ▶ it has had any administrative action taken against the applicant during the previous two years,
- ▶ it has violated standards in another state regarding licensure or certification,
- ▶ the applicant has had a license denied, suspended, or revoked by any licensing or certifying board of any state agency during the previous five years, or
- ▶ it has had two or more similar or identical class I violations identified by the agency during any visit within the previous two years.

It requires that administrative proceedings challenging agency action under this section must be reviewed on the facts and conditions that caused the agency action. The notice of license suspension, revocation, or denial of a license must be posted and visible to the public in the facility.

Section 7. Amends section 400.415, F.S. It provides that the notice of a moratorium be posted so that it is visible to the public at the facility. The department is authorized to establish in rule the conditions that would be grounds for a moratorium and procedures for imposing and lifting a moratorium.

Section 8. Revises s. 400.417, F.S., by renaming the basic ALF license from *Biennial* to *Standard*. It provides that a limited nursing, extended congregate care, and limited mental health license expire at the same time as the facility's standard license. AHCA is directed to mail renewal notices **at least** 120 days before the license would expire. The late fee for failure to mail the application timely would be one half of the current licensure fee. A license would be renewed within 90 days of timely filing an application. The department is authorized to establish by administrative rule the renewal procedures, forms, and documentation necessary to implement this section. It provides that fees would be prorated for an extended congregate care or limited nursing service license requested during the effective period of the biennial license.

Section 9. Provides a technical changes to s. 400.4174, F.S.

Section 10. Amends s. 400.4176, F.S., to require owners to notify AHCA within 10 days when new ALF administrators are appointed and provide proof within 90 days that the educational requirements have been met.

Section 11. Makes technical changes s. 400.418, F.S., to correct a cross reference.

Section 12. Amends s. 400.419, F.S., renaming "civil penalty" as "administrative fine". It provides for an increase in all fines. AHCA is permitted to double the fines imposed in certain instances. Subsection (4) lists the factors that must be considered when determining a fine. Facilities are liable for fines plus interest when they are upheld after judicial review.

Fines are provided for facilities that continue to operate without a license after 10 days and for each day after the twentieth day subsequent to the agency notifying the facility that it was operating without a license. Fines for owners or administrators who operate one licensed and one unlicensed facility would be \$5,000. Unlicensed facilities in which the owner or operator has previously worked in a licensed facility would be immediately fined \$5,000 and \$500 per day for each following day in which the facility continued to operate without a license. Operating an ALF after a change of ownership without applying for a change of ownership license would result in a \$5,000 fine. This section provides criteria for AHCA to consider when determining if a penalty is to be imposed and the amount of a fine.

AHCA would be allowed to assess a survey fee in addition to any administrative fine imposed to cover the cost of conducting certain complaint investigations. The survey fee would be \$500 or one-half of the facility's standard license fee whichever is less. AHCA may negotiate a corrective action plan with a facility instead of assessing an administrative fine.

AHCA would be required to send a list of all sanctioned facilities at no charge to the Department of Business and Professional Regulation and the Department of Children & Family Services in addition to the others specified. DOEA is granted rule making authority.

Section 13. Corrects a cross reference in s. 400.422, F.S.

Section 14. Creates section 400.4256, F.S., "Assistance with Self-administration of Medication". The section defines informed consent, unlicensed person, and assistance with self-administration of medication. It specifies those activities, tasks, and ministrations that are allowed. It grants authority to DOEA to promulgate an administrative rule to implement the provisions related to self-administration of medication.

Section 15. Makes technical and conforming changes to s. 400.428, F.S., the "Resident Bill of Rights".

Section 16. Amends s. 400.442, F.S., relating to pharmacy and dietary services. Facilities would be permitted to hire a licensed nurse as a consultant if deficiencies in the storage, use, delivery, or administration of medications or dietary services. It provides for a corrective action plan for deficiencies related to assistance with the self-administration of medication.

Section 17. Amends s. 400.452, F.S., relating to staff training and education programs.

Section 18. Amends s. 400.474(2), F.S., relating to Home Health Care to provide that, if a home health agency knowingly provides home health services in an unlicensed assisted living facility or adult family care home, its license is subject to disciplinary action including denial, suspension, and revocation, unless the HHA reports the situation to AHCA within 72 hours of providing the service.

Section 19. Amends section 400.618, F.S., relating to AFCHs. It clarifies which family care arrangements do not require licensure as an AFCHs. It clarifies the definition of an AFCH to provide that such an entity provides a family-type living arrangement in a private home owned or rented by the person to be licensed and that the licensee must live in the home.

Section 20. Amends s. 408.036, F.S., to technically correct a reference to retirement communities in current law.

Section 21. Provides an effective date of October 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

The bill does not provide for new revenues or expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

No new private sector costs are anticipated.

2. Direct Private Sector Benefits:

There is no direct private sector benefit determined.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

Monitoring visits:

The mandatory requirement for monitoring visits of facilities that have had class I, II, and three or more class III deficiencies in the prior year will have a workload impact on the Agency's survey staff.

It is estimated that 90 percent of the facilities surveyed each year are cited for at least three class III deficiencies. It is estimated that survey staff will be able to combine approximately 50 percent of these additional monitoring visits with complaint investigations initiated by consumer complaints. However, 50 percent of the monitoring visits will remain to be conducted independently, thereby requiring an additional visit to these facilities.

Estimating that 1,282 surveys will be conducted in FY 98-99, and that 90 percent of these will result in deficiencies that require a monitoring visit in the next year, yields 1,154 additional monitoring visits. However, it is also estimated that 1,284 complaint investigations will be conducted in FY 98-99. Estimating that at least half of the monitoring visits can be combined with a complaint investigation, leaves a workload increase of 577 additional monitoring visits.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require the counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Elder Affairs and Long Term Care reported favorably on the following amendments:

- ▶ Revised s. 400.422, F.S., related to pharmacy and dietary services.
- ▶ Revised the requirements for applicants to include the financial officer and requires the license applicant to disclose information related to any administrative actions taken against a facility the applicant was previously associated with.
- ▶ Deletes background screening requirements.
- ▶ Removes from the bill the provisions related to staff training and education programs.
- ▶ Implements assistance with self-administration of medication
- ▶ Home health agencies would have 72 hours to report unlicensed ALFs or be subject to disciplinary action.
- ▶ Clarifies the definition of "retirement community."

VII. SIGNATURES:

COMMITTEE ON Elder Affairs & Long Term Care:

Prepared by:

Legislative Research Director:

Melanie Meyer

Tom Batchelor, Ph.D.

AS FURTHER REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

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David M. Greenbaum

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