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

BILL #: CS/HB 4035

RELATING TO: Adult Family Care Homes

SPONSOR(S): Committee on Elder Affairs & Long Term Care and Representative Roberts-Burke

COMPANION BILL(S): SB 1872

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

- (1) ELDER AFFAIRS AND LONG TERM CARE YEAS 7 NAYS 0
 - (2) GOVERNMENTAL RULES AND REGULATIONS
 - (3)
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I. SUMMARY:

CS/HB 4035 amends Chapter 400, Part VII, F.S., relating to adult family care homes (AFCH). The bill clarifies that an AFCH provides housing and personal care for disabled adults and frail elders who choose to live with an individual or family in a private home. The bill also defines the terms "frail elder", "appropriate placement", "personal care", "relief person" and "resident"

The bill requires establishments with two or more, rather than three or more, residents to obtain licensure as an AFCH. The bill exempts from licensure those establishments that provide personal care to two or fewer residents who do not receive optional state supplementation. The bill provides that residents who need 24-hour nursing supervision are permitted to remain in an AFCH if they are enrolled in hospice and the continued residency is mutually agreeable to the resident and the provider.

The bill also provides that upon receipt of an AFCH license application or renewal, AHCA shall conduct a level 1 background screening on the AFCH provider, the designated relief person, all adult household members and all staff members. The bill authorizes a late fee of \$50 for failure to timely file an AFCH license renewal. The bill also expands existing reasons for denying, suspending or revoking an AFCH license to include:

- failure to undergo a level 1 background screening;
- failure to correct cited fire code violations that threaten the health, safety, or welfare of residents; and
- failure to submit a completed license application or to complete a license renewal within the specified timeframe.

The bill includes an expression of legislative intent with regard to rules adopted by the DOEA and AHCA. DOEA and AHCA are encouraged to make their rules as minimal and flexible as possible to protect residents and minimize the obstacles that inhibit the creation of AFCHs.

The bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Adult Family Care Homes

Chapter 400, Part VII provides that an Adult Family Care Home (AFCH) is a full-time, family-type living arrangement in a private home. An AFCH provides room, board and one or more personal care services for no more than five aged persons or disabled adults. If a home has 1, 2 or 3 residents and advertises, then it is required to be licensed. Currently there are 374 licensed AFCHs in the state.

Not Adult Family Care Homes for Licensure Purposes

- ▶ An establishment that provides personal care services to three or fewer adults when none of them receive optional state supplementation (OSS),
- ▶ An establishment that provides personal care to three or fewer adults but does not hold itself out to the public as a place that regularly provides such services,
- ▶ An establishment in which personal care is provided only to relatives,
- ▶ An establishment that is licensed as an assisted living facility (ALF).

OSS Reserved Beds

AFCHs licensed after January 1994 must designate one space in the home for a resident receiving OSS.

The OSS program is a cash assistance program administered by the Department of Children and Family Services (DCFS), which aims to prevent institutionalization by supplementing the person's income to help pay for alternative living arrangements in the community.

Rules & Licensure

Section 400.621, F.S., provides that DOEA, in consultation with the DCFS and AHCA, shall establish, by rule, the minimum standards and licensing procedures for AFCHs. The agency is responsible for licensure and enforcement of compliance with regulations. The Department of Health (DOH) has inspection responsibilities that are carried out by the local county public health units.

Background Checks

Current law requires the agency to check with abuse registry and the Florida Department of Law Enforcement (FDLE) concerning the AFCH applicant, all adult

household members, and all staff members. However, there is no specific requirement to meet level 1 background screening standards as provided in section 435.03, F.S.

Residents & the Concept of Aging-in-Place

Section 400.618, F.S., defines "aged persons" as persons 60 years of age or older who require one or more personal services but not 24-hour nursing supervision. A disabled person is defined as a state resident between 18 and 59 years of age who has one or more permanent physical or mental limitations that restrict the person's ability to perform the normal activities of daily living. In addition, personal services are defined in s. 400.618, F.S., as individual assistance with or supervision of activities of daily living, supervision of self-administered medication, and other similar services.

Section 400.617, F.S., states that it is the intent of the Legislature that AFCH regulations be sufficiently flexible to allow residents to age-in-place, if the resources are available to meet their needs and accommodate their preferences.

Section 400.621, F.S., provides that a person who would not be an appropriate resident in any assisted living facility under s. 400.426, F.S., would not be appropriate in an AFCH. The statute allows the department to, by rule, establish standards for the adequate supervision of AFCH residents.

Legislative intent specifies that the purpose of the AFCH statute is to provide for the health, safety and welfare of residents in an AFCH. AHCA reports that regulations governing AFCHs are considerably less restrictive than the statutes governing the ALF program though both facilities serve residents who need some assistance and personal care to manage the activities of daily living.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 4035 provides definitions for the terms "frail elder", "appropriate placement", "personal care", "relief person" and "resident". The bill replaces the phrase "aged person" with "frail elder" to comport with chapter 430, F.S., which governs the DOEA. The bill revises Legislative intent regarding services to frail elders, and stipulates that an AFCH provides housing and personal care for disabled adults and frail elders who choose to live with an individual or a family in a private home.

The bill requires facilities with two or more, rather than three or more, residents to obtain licensure as an AFCH. The bill exempts from licensure those establishments that provide personal care to two or fewer residents who do not receive OSS. The bill also deletes the provision that a resident who is not appropriate for an ALF is not appropriate for an AFCH. Residents who need 24-hour nursing supervision are permitted to remain in an AFCH if they are enrolled in hospice and the continued residency is mutually agreeable to the resident and the provider.

The bill provides that upon receipt of an AFCH license application or renewal, AHCA shall conduct a level 1 background screening on the AFCH provider, the designated

relief person, all adult household members and all staff members. AHCA will continue to cover the costs associated with these background screenings. The bill authorizes a late fee of \$50 for failure to timely file an AFCH license renewal. The bill also expands existing reasons for denying, suspending or revoking an AFCH license to include:

- failure to undergo a level 1 background screening;
- failure to correct cited fire code violations that threaten the health, safety, or welfare of residents; and
- failure to submit a completed license application or to complete a license renewal within the specified timeframe.

The bill includes a vague expression of legislative intent with regard to rules adopted by the DOEA and AHCA. DOEA and AHCA are encouraged to make their rules as minimal and flexible as possible to protect residents and minimize the obstacles that inhibit the creation of AFCHs.

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 department and AHCA are urged to adopt rules which are as minimal and flexible as possible to ensure the protection of residents while minimizing obstacles that could inhibit the establishment of AFCHs.

Section 7 of the bill deletes the department's authority to write rules establishing standards for the adequate supervision of residents.

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

Yes. Facilities with three or more, rather than four or more, residents must be licensed as an AFCH.

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

None.

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?

N/A.

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

N/A.

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

N/A.

2. Lower Taxes:

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

No.

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

No.

- 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?

The AFCH operators pay for the costs of licensure.

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?

No.

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

No.

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

No.

- 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 VII

E. SECTION-BY-SECTION RESEARCH:

Section 1 provides that this part of chapter 400, F.S., may be cited as the "Adult Family-Care Home Act."

Section 2 changes the phrase "aged persons" to "frail elders". It revises the description of "Adult Family Care Home" to add that an AFCH provides housing and personal care for disabled adults and frail elders who choose to live with a family in a private home. It revises the phrase "personal services" to "personal care".

Section 3 reduces the number of persons who can be cared for in a home that is not licensed as an AFCH from three to two. It deletes the criteria that a home not hold itself out to the public as a determinant of whether licensure would be required. It deletes the definition of "aged person" and adds a definition for "frail elder". A definition of "appropriate placement" is provided which allows the resident to be considered appropriately placed, if the AFCH or the resident can arrange sufficient services so that the resident's needs are met. The definition of personal care includes assistance with or supervision of the self-administration of medication. Definitions of "*resident*" and "*relief person*" are added.

Section 4 requires that the provider of an AFCH must apply for a license at least 90 days before operating the home. A person who intends to be an AFCH provider must rent or own, and live in, the home to be licensed. The provider must sign the AFCH application under oath. AHCA is directed to conduct a level 1 background screening under s. 435.03, F.S., on the provider applicant and the designated relief person in addition to those specified in current law. Failure to timely file for a license renewal

would subject the applicant to a late fee equal to fifty per cent of the license fee. The section makes technical and conforming changes and deletes the list of causes for which AHCA could deny, suspend or revoke a license.

Section 5 creates s. 400.6194, F.S., related to the denial, suspension or revocation of a license. It incorporates the provisions which were in 400.619, F.S., and adds:

- ▶ failure to correct cited fire code violations that threaten the health, safety, or welfare of the residents *[this requirement is also essentially provided at 400.621(2), F.S.]*
- ▶ failure to undergo a level 1 background screening.
- ▶ failure to submit a completed initial license application or to renew the license as required.

Section 6 makes technical and conforming changes.

Section 7 relating to rules and standards for AFCHs, provides that the department's rules must assure that the resident is appropriately placed in an AFCH. DOEA and AHCA are directed to implement regulatory requirements that are adequate to protect health and safety of residents but which do not inhibit the establishment of AFCHs. It deletes the requirement that DOEA establish in rule standards for the adequate supervision of residents. It deletes the provision that a person not appropriate for an ALF would not be appropriate for an AFCH. A persons who needs 24-hour nursing supervision cannot continue to live in an AFCH unless the resident is a hospice patient and continued residency is agreeable to the resident and to the provider. It provides that DOEA and AHCA implement regulatory requirements that are flexible and as minimal as possible to protect residents while minimizing obstacles to the establishment of AFCH.

Section 8 makes technical and conforming changes.

Section 9 makes technical and conforming changes.

Section 10 makes technical and conforming changes.

Section 11 makes technical and conforming changes.

Section 12 provides that the AFCH ensure that the legal representatives of the residents are made aware of the residents' rights. The section also makes technical and conforming changes.

Section 13 makes technical and conforming changes.

Section 14 makes technical and conforming changes.

Section 15 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:

N/A

2. Recurring Effects:

Additional establishments subject to AFCH licensure must pay an annual \$100 licensing fee.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

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

Private homes that currently have three residents will be required to obtain a license at a cost of \$100 per year.

2. Direct Private Sector Benefits:

AFCHs that accept up to two residents who do not receive OSS would not be subject to licensure.

Background screenings will identify AFCH applicants with criminal histories and such individuals will be unable to obtain licensure.

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

None is projected.

D. FISCAL COMMENTS:

AHCA indicates that the inspection workload associated with any increase in homes licensed as AFCHs will be minimal and can be absorbed by existing revenues.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require 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 revenues 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:

Section 7 of CS/HB 4035 amends s. 400.621, F.S., relating to the rules and standards of AFCHs. This section contains a vague expression of legislative intent which essentially has no bearing upon the adoption of rules by DOEA.

A more effective approach to address the content of rules promulgated by DOEA and enforced by AHCA would be to amend subsection (1) of s. 400.621, F.S., to more clearly delineate the particular tasks and duties of the department when establishing the minimum standards and licensure procedures for AFCHs.

Section 7 of the bill also deletes a provision which authorizes DOEA to establish, by rule, standards for the adequate supervision of residents of AFCHs. The staff of the Health Care

Services Committee note that this provision was inadvertently removed when the bill was re-written into a committee substitute. DOEA maintains that this provision is necessary to ensure that the department's existing rules have the proper statutory authority.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Elder Affairs and Long Term Care adopted a committee substitute (CS). The significant differences between the original bill and the CS are as follows:

- a. Adds that a resident's "legal representative" must also be made aware of the resident's rights.
- b. Revises references to "Part" instead of specific subsections.
- c. Adds definitions of "relief person" and "resident".
- d. Adds assistance and supervision of self-administration of medication as part of personal care.
- e. Adds requirement that the application for an AFCH license be signed under oath.
- f. Adds a late fee equal to 50% of the license fee for facilities that do not renew their licenses on time.
- g. Moves all provisions related to the denial or revocation of a license to a new section.
- h. Allows a person who is enrolled in hospice and who needs 24-hour nursing supervision to continue to live in an AFCH.
- i. Makes technical and conforming changes as required.

VII. SIGNATURES:

COMMITTEE ON ELDER AFFAIRS AND LONG TERM CARE:

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