

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2266

SPONSOR: Health, Aging and Long-Term Care Committee and Senator Forman

SUBJECT: Healthcare; Unlicensed Assisted Living Facilities

DATE: March 21, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carter</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 2266 requires the local field offices of the Agency for Health Care Administration to establish local workgroups to identify operating unlicensed assisted living facilities (ALFs) and to develop and implement a plan to ensure appropriate enforcement of state laws against such facilities. It provides for sanctioning health care practitioners, hospitals, and community mental health centers for failure to report unlicensed ALFs or ALFs that they know or reasonably suspect to be unlicensed. Hospitals and community mental health centers may be sanctioned, also, for discharging their patients or clients to ALFs that the hospitals or community mental health centers *know* to be unlicensed. The bill adds paramedics and emergency medical technicians to the list of persons who must report abuse, neglect, or exploitation of disabled adults or elderly persons.

This bill substantially amends the following sections of the *Florida Statutes* (F.S.): 400.408 and 415.1034.

II. Present Situation:

Background

Prior to passage of regulations governing licensure of assisted living facilities (ALF), personal care of elderly or disabled persons by anyone other than family members often meant that small, privately run homes or boarding homes took them in. Now ALFs, which are defined in s. 400.402(6), F.S., as *any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide 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*, comprise a multi-billion dollar industry of large corporations that operate on a multistate or a national basis, as well as, particularly in south Florida, small “mom and pop” businesses.

Despite the development of regulatory oversight of the industry, reports persist of unlicensed businesses housing frail elderly and disabled individuals whose sole income is from Social Security benefits and whose medical care is paid by Medicaid or Medicare. It is alleged that the operators of such unlicensed businesses engage in fraudulent conduct relating to receiving Medicaid and Medicare reimbursement for services in addition to receiving payment for care and board provided by their unlicensed businesses.

In the past, ALFs were called “adult congregate living facilities or ACLFs.” These entities were first regulated through licensure requirements in 1975 following enactment of chapter 75-233, *Laws of Florida*. Many ACLFs, or personal care homes as they were often called, began as boarding houses for elderly tourists or retirees. As defined in 1975 and until 1998, this meant *a residential facility which provided one or more personal services on a 24 hour basis, to four or more adults not related to the owner or administrator by blood or marriage.*

Regulation of ALFs

The Agency for Health Care Administration (AHCA or agency) administers the licensure regulation of ALFs under part III of chapter 400, F.S. The Department of Elder Affairs (DOEA or department) establishes standards for resident services in ALFs through adoption of administrative rules authorized under part III of chapter 400. The agency enforces ALF standards adopted by DOEA as a part of licensure regulation.

Section 400.408, F.S., specifies that it is unlawful to own, operate, or maintain an ALF without obtaining a license as prescribed by part III of chapter 400, F.S. The prohibition against owning, operating, or maintaining an unlicensed ALF also applies to situations when a licensed facility is rendered unlicensed due to a change to part III of chapter 400 or to the administrative rules of DOEA and the facility is not in compliance with the changes within 6 months after the effective date of such change and does not cease operation within 10 working days after receiving notification from AHCA. The operation of an unlicensed ALF is designated a third degree felony that is punishable under the criminal sentencing guidelines contained in chapter 775, F.S. Each day of continued operation is deemed a separate offense. A second or subsequent incident of owning, operating, or maintaining an unlicensed ALF is designated a second degree felony. A licensee that has an interest in more than one ALF that fails to license any one of them is subject to having its license revoked or have a moratorium or fine imposed by AHCA on any or all of the licensed facilities until the unlicensed facility is licensed or ceases operation.

Paragraph 400.408(1)(h), F.S., requires any person who is aware of the operation of an unlicensed ALF to report that facility to AHCA and requires AHCA to provide to the department’s elder information and referral providers a list, by county, of licensed ALFs to assist persons who are considering an ALF placement in locating a licensed facility. The list must be at least quarterly updated, as required under paragraph 400.408(2)(c), F.S. Furthermore, AHCA is required to notify physicians, hospitals, nursing homes, and employees of the agency, DOEA, and the Department of Children and Family Services in appropriate trade publications, at least annually, that it is unlawful to knowingly refer a person for residency to an unlicensed ALF and of the penalty for violating such prohibition. The Department and Children and Family Services and DOEA are required to notify service providers under contract who have responsibility for resident

referrals to facilities and provide guidelines and information of how to verify the licensure status of a facility under consideration for a referral for residency.

Referral of a person for residence in an ALF that is known to the person making the referral to be (1) unlicensed; (2) the license of which is under consideration for denial, suspension, or revocation; or (3) is under a moratorium on admissions is unlawful, as provided in s. 400.408(2), F.S. Such a referral is designated a noncriminal violation that is punishable by a fine of up to \$500 as provided in s. 775.083, F.S. Employees of AHCA, DOEA, or the Department of Children and Family Services who knowingly refer a person for residency to such an ALF are subject to disciplinary action by AHCA, DOEA, or the Department of Children and Family Services. The employer of any person who is under contract with the agency, the department, or the Department of Children and Family Services who makes such a prohibited referral is subject to a fine and may be required to prepare a corrective action plan designed to prevent such referrals by its employees in the future.

Exclusions from ALF Regulation

The only lawful exceptions from ALF licensure requirements are facilities licensed as adult family care homes, nursing homes, relatives caring for relatives, and persons providing care in their own homes to no more than two non-relatives. Adult family care homes are private homes that provide personal care on a 24-hour basis for 3 to 5 adults who are not relatives. Such homes are distinguishable from ALFs by the requirement that the owner or operator must live in the home. Nursing homes are medical facilities which provide nursing care on a 24-hour basis for 3 or more persons not related by blood or marriage. Adult family care homes and ALFs, unlike nursing homes, are prohibited from accepting anyone who requires 24-hour nursing care.

Workgroup Created During the 1999 Legislative Session

Chapter 99-179, *Laws of Florida*, established a workgroup to identify additional legal and administrative steps to discourage the operation of unlicensed ALFs. The workgroup consisted of AHCA, DOEA, the Department of Children and Family Services, the Department of Business and Professional Regulation, the Department of Community Affairs, the State Fire Marshal's Office, local law enforcement authorities, health care providers, long-term care providers, and consumers. In its report, the workgroup provided recommendations for improving detection of unlicensed ALFs and recommendations for how law enforcement and health care professionals, such as hospital discharge planners and health care practitioners, could be better involved in reducing the number of referrals to unlicensed ALFs. The workgroup reported that AHCA data indicate that approximately 30%, or 142, of the total number of complaints (471) about the operation of unlicensed ALFs received between September 1997 and April 1999 were confirmed. (See p. 15 of *Unlicensed Assisted Living Facilities Workgroup: Findings and Recommendations*, February 2000.)

III. Effect of Proposed Changes:

Section 1. Amends s. 400.408, F.S., relating to unlicensed ALFs, referral of persons for residency in unlicensed ALFs, and providing for verification of an ALF's licensure status, to require AHCA local field offices to establish local coordinating workgroups in their respective areas to: (1)

identify the operation of unlicensed ALFs; (2) develop and implement a plan to ensure appropriate enforcement of state laws relating to unlicensed ALFs; and (3) semi-annually report their findings, actions, and recommendations to the director of Health Facility Regulation in AHCA. The bill requires that representatives of the following agencies or organizations be included in the membership of each local coordinating workgroup: local law enforcement agencies, state attorneys, local fire authorities, the Department of Children and Family Services, district long-term care ombudsman councils, and district human rights advocacy committees.

This provision of law is further amended to require that any health care practitioner, as defined in s. 455.501, F.S., report an unlicensed ALF of which such practitioner is aware or has reasonable cause to suspect is unlicensed. Failure of such practitioners to report an unlicensed ALF must be reported to the practitioner's licensing board. Any state-licensed hospital or community mental health center which discharges a patient or client to an ALF that the hospital or center knows is unlicensed is made subject to sanctions by the agency.

Section 2. Amends s. 415.1034, F.S., providing for mandatory reporting of abuse, neglect, or exploitation of disabled adults or elderly persons, to add paramedics, emergency medical technicians, and employees of the Department of Business and Professional Regulation who conduct inspections of public lodging establishments under s. 509.032, F.S., to the list of persons who are required to report known or reasonably suspected abuse, neglect, or exploitation of a disabled adult or elderly person to the central abuse registry and tracking system on the statewide toll-free telephone number.

Section 3. Provides an effective date of July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Since none of the required activities of the workgroups or sanctionable events have occurred, it is not possible to conjecture, with any degree of certainty, as to the fiscal impact of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
