

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government --- The bill creates the Florida Caregiver Institute, Inc., as an independent not-for-profit corporation administratively housed within the Agency for Workforce Innovation. One of the functions of the corporation is to provide training to employees of private businesses.

B. EFFECT OF PROPOSED CHANGES:

Caregiving

About 10.1 million people over the age of 18 in the U.S., or 3.8 percent of the population, need another person's assistance to carry out activities such as bathing, feeding, cleaning, or grocery shopping.¹ Within this group, it is estimated that 4.2 million are age 65 or older. Most of them live at home. Others live in nursing homes and other institutional settings, but some could live at home or in the community if appropriate, affordable support was available.²

Family members and friends provide most of the needed assistance for people in home and community-based settings, but home care workers, personal assistants, direct support professionals and other direct-care workers are a critical resource for many. Individuals and families rely on these workers to provide them with comfort, companionship, and care in an atmosphere that preserves their dignity and well-being. Such workers are already in short supply in many regions and demand is expected to grow rapidly, due to a combination of consumer demand and changes in public policy.

Nursing homes, assisted living facilities, and adult family care homes employ staff that are responsible for "caregiving" or providing certain types of care or assistance to persons that enable them to live as independently as possible. The requirements for staff training and education vary depending on the setting and the specific job responsibilities of the caregiver.

Although the Omnibus Budget Reconciliation Act of 1987 enhanced the training required of certified nursing assistants in nursing homes and home health aides in certified home health agencies, federal regulations for paraprofessional training are inconsistent and often fall short of what is necessary to develop workers with the requisite skills to meet the complex needs of individuals needing long-term care services. Federal health care training resources are typically reserved for the development of professionals (doctors, nurses, etc.); few are directed toward the development of the country's several million paraprofessional caregivers who work in nursing homes, assisted living facilities, adult day care centers, and private homes.

Assisted Living Facilities

Assisted Living Facilities (ALF) are residential care facilities that provide housing, meals, personal care, and supportive services to older persons and disabled adults who are unable to live independently. These facilities are licensed under Chapter 400, part III, F.S. ALF are intended to be a less costly alternative to more restrictive, institutional settings for individuals who do not require 24-hour nursing supervision. Assisted Living Facilities are regulated in a manner so as to encourage dignity, individuality, and choice for residents, while providing reasonable assurance for their safety and welfare. To reside in a standard ALF, a person must meet the standard ALF "residency criteria," which

¹ McNeil, Jack. 2001. *Americans with disabilities: Household economic studies*. Washington, DC: US Department of Commerce, Economics and Statistics Administration, US Census Bureau.

² U.S. Department of Health and Human Services. 2000. *Understanding Medicaid Home and Community Services: A Primer*. Washington, DC: Office of the Assistant Secretary for Planning and Evaluation.

are defined by state regulations and by facility policy. Generally speaking, ALF provide supervision, assistance with personal and supportive services, and assistance with or administration of medications to elders and disabled adults who require such services.

In addition to a standard ALF license, there are three “specialty” ALF licenses: extended congregate care (ECC), limited nursing services (LNS), and limited mental health (LMH). An ALF holding an ECC license may provide additional nursing services and total assistance with personal care services. Residents living in ECC-licensed facilities may have higher impairment levels than those living in a standard ALF. Residents living in an ALF holding a LNS or LMH license must meet the same residency criteria as a standard-licensed ALF.

Regardless of the facility’s license status, residents living in ALF cannot have conditions that require 24-hour nursing supervision. The only exception is for an existing resident who is receiving licensed hospice services while residing in the ALF.

Administrators, managers, and staff of ALF are required to obtain specific training and education pursuant to s. 400.452, F.S., and Rule 58A-5.0191, F.A.C. Assisted Living Facility training requirements are related to the individual's responsibilities within the facility.

ALF Training Requirements

The following training requirements are taken from the pertinent statute and administrative code and are specific to administrators, managers, ECC supervisors, and ALF staff. These training requirements are known as Core Training requirements.

ALF Statutory Training Requirements

Section 400.452, F.S., provides that administrators and other ALF staff must meet the minimum training and education requirements established by Department of Elderly Affairs (DOEA) by rule. This training and education is intended to assist facilities to appropriately respond to the needs of residents, to maintain resident care and facility standards, and to meet licensure requirements.

DOEA is required to establish a competency test and a minimum required score to indicate successful completion of the training and educational requirements. The competency test must be developed by DOEA in conjunction with the AHCA and providers. The required training and education must cover at least the following topics:

- State law and rules relating to ALFs;
- Resident rights and identifying and reporting abuse, neglect, and exploitation;
- Special needs of elderly persons, persons with mental illness, and persons with developmental disabilities and how to meet those needs;
- Nutrition and food service, including acceptable sanitation practices for preparing, storing, and serving food;
- Medication management, recordkeeping, and proper techniques for assisting residents with self-administered medication;
- Fire safety requirements, including fire evacuation drill procedures and other emergency procedures; and
- Care of persons with Alzheimer’s disease and related disorders.

New ALF administrators are required to complete the required training and education, including the competency test, within a reasonable time after being employed as an administrator. Failure to do so is a violation of s. 400.452, F.S., and subjects the violator to an administrative fine as prescribed in s. 400.419, F.S. Nursing home administrators licensed in accordance with Chapter 468, part II, F.S., are exempt from this requirement. Other licensed professionals may be exempted, as determined by DOEA by rule. ALF administrators are required to participate in continuing education for a minimum of 12 contact hours every 2 years.

Staff involved with the management of medications and assisting with the self-administration of medications under s. 400.4256, F.S., must complete a minimum of 4 additional hours of training provided by a registered nurse, licensed pharmacist, or DOEA staff. DOEA is required to establish by rule the minimum requirements for this additional training. Other facility staff are required to participate in training relevant to their job duties as specified by DOEA rule.

If DOEA or AHCA determines that there are problems in a facility that could be reduced through specific staff training or education beyond that already required under this section, DOEA or AHCA may require and provide, or cause to be provided, the training or education of any personal care staff in the ALF. DOEA is required to adopt rules related to these training requirements, the competency test, and testing fees. Staff working in ALF are also required to receive training in other areas related to resident and facility care. Each of these areas has its own specific requirements. These include:

Staff In-service Training

Assisted Living Facilities are required to provide various in-service training to facility staff and to adopt rules related to these training requirements, the competency test, and testing fees. Individual in-service training requirements may vary due to differences in staff qualifications.

HIV/AIDS Training

All ALF staff, including administrators and managers, are required to complete, biennially, a continuing education course on HIV and AIDS. Pursuant to s. 381.0035, F.S., HIV/AIDS training may be provided by training providers approved by the Department of Health or a health-related professional board.

First Aid and CPR

Assisted Living Facilities are required to have at least one staff member in the facility at all times who has completed courses in First Aid and CPR and holds a currently valid card documenting completion of such courses.

Assistance with Self-Administered Medication

Assisted Living Facilities that utilize unlicensed staff to assist residents with self-administered medications must ensure that those staff receive a minimum of 4 hours of training prior to assuming this responsibility.

Nutrition and Food Service

The administrator, or the person designated by the administrator as responsible for the facility's food service and the day-to-day supervision of food service staff, must obtain, annually, a minimum of 2 hours continuing education in topics pertinent to nutrition and food service in an ALF.

Extended Congregate Care Training

The administrator and ECC supervisor, if different from the administrator, must complete the ALF Core Training program and 6 hours of initial training in extended congregate care provided by ECC training providers prior to the facility's receiving its ECC license or within three months of beginning employment in the facility as an administrator or ECC supervisor. Completion of Core Training is a prerequisite for this training.

Limited Mental Health Training

Pursuant to s. 400.4075, F.S., administrators, managers, and staff in direct contact with mental health residents in a facility with a Limited Mental Health license must receive a minimum of 6 hours training provided or approved by DCF within 6 months of the facility's receiving an LMH license or within six months of employment in a facility holding an LMH license.

Alzheimer's Disease and Related Disorders

Facilities which advertise that they provide special care for persons with Alzheimer's disease and related disorders, or who maintain secured areas as described in 58A-5.023, F.A.C., must ensure that facility staff receive training in this area.

Adult Family Care Homes

An adult family care home (AFCH) is a family-type living arrangement in a private home. Adult Family Care Homes are licensed in accordance with Chapter 400, part VII, F.S., to provide room, board, and personal care on a 24-hour basis for up to five individuals. Adult Family Care Homes are intended to be an alternative to more restrictive, institutional settings for individuals who need housing and supportive services but who do not need 24-hour nursing supervision. The provider must own or rent and live in the home.

Staff in AFCH are either employed or under contract with the provider to render services to residents. All AFCH providers must attend a 12-hour Adult Family Care Home Basic Training program that covers the minimum requirements of s. 400.6211, F.S., prior to accepting any residents, or, for providers who already have persons residing in the home that will be considered residents, prior to licensing.

In addition to the basic training, the AFCH provider is required to annually obtain 3 hours of continuing education in topics related to the care and treatment of frail elders or disabled adults, or to the management and administration of an AFCH. AFCH providers must also attend update training for any portion of the basic course that has been updated as the result of new legislation or rule amendment.

First Aid/CPR

The AFCH provider, each relief person, and any person left in sole charge of residents, which may include staff, household members or volunteers, must hold a currently valid card documenting completion of courses in First Aid and CPR. A licensed nurse is considered as having met the training requirement for First Aid.

Relief Persons/Staff

Prior to assuming responsibility for the care of residents or within 30 days of employment, the AFCH provider shall ensure that each relief person and all staff receive training in areas that are relevant to the person's job duties, including emergency and evacuation procedures, universal precautions, food safety, reporting abuse and neglect, and resident rights.

Caregiver Training Providers

Until 2003, the Florida Administrative Code specified³ that DOEA would provide Core, Core Update, and Extended Congregate Care training for particular ALF and AFCH personnel, which DOEA accomplished through its Assisted Living Training Program. Adult day care staff did not receive training through this program. While the Core Training was being provided by DOEA, it was not unusual for staff other than the administrator and the managers to attend this training and take the state exam. Training was provided by 11 trainers employed by DOEA, located in each Planning and Service Area throughout the state. The trainers provided the Core Training and ECC Training, but also provided training in other areas, including medication management, first aid/CPR, HIV/AIDS, and food safety, required by statute. The trainers also provided technical assistance to local ALF and AFCH on survey requirements and quality of care concerns.

Costs for the Core Training provided by DOEA staff ranged from "no charge" to \$160, depending on the number of residents receiving Optional State Supplementation (OSS) funding at the facility. Facilities with recipients receiving OSS funding were given discounted rates for the training. The costs for the examination were paid by DOEA and ranged in price from "no charge" to \$45, again depending on the number of residents receiving OSS funding at the facility.

An evaluation of the training program at DOEA was completed by the Pepper Institute on Aging at the Florida State University in early 2003.⁴ According to the report, the benefits of this training included a very high level of customer satisfaction with the training, the provision of technical assistance and

³ Rule 58A-5.0191, F.A.C.

⁴ *DOEA Assisted Living Training Program Evaluation and Privatization Feasibility Study*, Conducted for the Department of Elder Affairs (September 30, 2002), Pepper Institute on Aging, Florida State University.

consultation by the trainers following the completion of training, and the provision of valuable input by trainers into policymaking at DOEA. This report reflected that DOEA-provided training was both cost efficient and effective.

In accordance with Chapter 2003-405, L.O.F., DOEA is no longer directly providing training to administrators and staff of ALF. However, the training requirements still exist for facilities. Facilities are required to contract with private trainers to make sure that facility staff receive the training mandated in statute. Currently, s. 400.4176, F.S., requires the owner of an ALF to provide documentation within 90 days that a new administrator has completed the applicable core educational requirements under s. 400.452, F.S. DOEA is in the process of revising Rule 58A-5.0191, F.A.C., to comport with the changes made in Chapter 2003-405, L.O.F.

There are currently 15 entities providing the ALF Core Training statewide. Private trainers do not have to be certified by DOEA. However, in order to be listed on the DOEA website as a training provider, trainers must submit training materials to DOEA for review and suggested changes.

Since the passage of Chapter 2003-405, L.O.F., concerns have been raised regarding decreased availability of trainers and increased costs to facilities, especially those facilities serving OSS residents. The cost of training has increased in some areas to \$250 per person, and the cost for the examination has increased from \$45 to \$100.⁵ Prior to March 2004, the newly privatized training was not available in the northern part of the state. Persons needing this training were required to travel to Jacksonville or Tampa, resulting in additional travel expenses to attend the five-day training. It is reported by DOEA that only ALF administrators and managers are currently attending the Core Training classes.

Caregiver Training Testing

Until 1997, DOEA provided the Core Training and testing through the department. Trainers taught the course, developed the testing materials, and administered the test. In order to validate the training DOEA was providing, DOEA began to contract out for the development of testing materials and the distribution of the test for the Core Training. DOEA has contracted, and currently contracts, with the Institute for Instructional Research and Practice at the University of South Florida to develop the testing materials for the ALF Core Training requirements and to administer the test. DOEA is involved in the test development (questions and format) with USF. Once the new ALF rule related to training is approved, USF will convene a workgroup to once again reevaluate the testing materials and rewrite any questions as deemed necessary.

University Research on Aging

There are a number of research institutes and centers on aging affiliated with Florida's state universities. Each institute has a specific focus for research and policy related to aging and long-term care. Research areas include work and retirement, pensions, long-term care, assisted living, technology and aging, dementia and caregiving, well-being, life satisfaction, the impact of Alzheimer's disease on families and communities, intergenerational relations, Social Security, and health and aging.

There is one policy exchange center on aging at the University of South Florida. The Florida Policy Exchange Center on Aging collects and analyzes information related to older adults, especially older Floridians. The Center is charged with informing policymakers, media representatives, scholars, and advocates on policies, programs, and services for older adults.

Proposed Changes

HB 161 provides for legislative intent to foster the development of caregiving as a non-licensed paraprofessional activity to provide care for frail and vulnerable adults who live in the community, reside

⁵ Costs have increased due to the fees charged for training by the privatized trainers and an increase in the cost of the exam by the University of South Florida.

in a licensed assisted living facility or adult family care home; and to promote the use of nationally recognized best-practices information by caregivers to improve the quality of care, as well as improve uniformity of techniques, practices, and standards that are used in caring for the state's most vulnerable residents.

The bill creates the Florida Caregiver Institute, Inc., "the corporation." The corporation is created for the purpose of developing best-practices information and placing that information in the hands of persons providing care for persons living in the community, residing in an assisted living facility or adult family care home. The corporation is to be organized as a not-for-profit corporation in compliance with Chapter. 617, F.S., and is not a unit or entity of state government. The corporation is administratively housed within the Agency for Workforce Innovation (AWI). The corporation is not to be subject to the control of AWI, but is directed to work in collaboration with the agency to help improve the availability of caregivers and the use of best practices by caregivers in the community and in facilities licensed under part III (ALF) or part VII (AFCH) of Chapter 400, F.S.

The bill directs the corporation to assist AWI with the development of policy recommendations to enhance the agency's efforts to improve the availability and skills of individuals seeking to work as caregivers in the home or community, or in an AFCH or ALF. The corporation is directed to exercise certain responsibilities including:

- Seeking state, federal, and private funding to provide training in the use of best practices;
- Working with universities, research and policy development centers and other institutions to develop training materials, identify best-practices techniques, and develop a curriculum;
- Conducting a needs assessment of non-licensed caregivers working in the community or facilities licensed under part III or VII of Chapter 400, F.S.;
- Making recommendations to AWI, DOEA, the Department of Children and Family Services (DCF), AHCA and DOH regarding policy and related changes to help improve the quality, availability, and retention of non-licensed caregivers;
- Reviewing and forecasting the need for nonlicensed caregivers and providing this information to the Governor and the Legislature;
- Making recommendations to the Legislature and Governor on proposed legislative changes and budget-related items; and
- Developing agreements with AHCA, DOEA, DOH, DCF, and any other state agency for the purpose of accessing state-owned buildings and state employees to provide training and professional development.

THB 161 authorizes the corporation to charge a reasonable fee to provide training for caregivers. The corporation is further authorized to offer training to staff of ALF.

The bill directs the corporation to collect information regarding nonlicensed caregivers who work in the community and in facilities licensed under part III or part VII of Chapter 400, F.S. It specifies that the information collected must include but is not limited to:

- the salary rates for various positions
- professional development needs of caregivers
- turnover and retention
- the number of caregivers using best-practices information in day-to-day care related activities.

The corporation must also develop a memorandum of understanding with AWI describing how the corporation will interact with AWI and other state agencies in carrying out its responsibilities. The corporation must develop an agreement with AWI for the center's provision of start-up and administrative support, with the expectation that the corporation will not rely on AWI staff or financial assistance after December 31, 2007. The corporation is authorized to contract with AWI for the provision of staff support, research, technical assistance, and data storage under a memorandum of agreement.

The bill provides that the board of directors of the corporation is to consist of 13 members who represent the views, interests, and perspectives of the parties, individuals, and stakeholders affected by the activities of the corporation. Each member is to be appointed to a two-year term and may not be reappointed to more than three additional terms with the exception of initial legislative appointments that shall be for three years. The board of directors for the corporation shall include:

- One member appointed by the Florida Association of Homes for the Aging;
- One member appointed by the Florida Assisted Living Affiliation;
- One member appointed by the Alzheimer's Association;
- One member appointed by the Florida Council on Aging;
- Three members appointed by the Governor;
- Three members appointed by the President of the Senate; and
- Three members appointed by the Speaker of the House of Representatives.

The bill requires the Governor, President of the Senate, and the Speaker of the House of Representatives to make their initial appointments no later than September 1, 2005. Appointed members serve at the pleasure of the entity that appointed them and may be removed by the appointing entity without cause.

The bill provides that the chair is to be elected by the members and may not serve more than two one-year terms and may not be a state employee. The corporation is directed to develop by-laws, follow Robert's Rules of Order, and to meet quarterly unless the chair considers it appropriate to meet more often. The majority of the corporation membership constitutes a quorum. The corporation is directed to make its meetings open to the public and accept input from stakeholders. The chair is responsible for ensuring that accurate meeting minutes are kept and may appoint advisory committees to advise the corporation on particular issues. The chair of the committee may also appoint advisory committees to advise the corporation on specific issues as well as remove a member of the board for three unexcused absences from regularly scheduled meetings. Members of the board and its advisory committees must serve at their own expense.

HB 161 requires the chairman of the board of the corporation to establish an audit committee to annually review and report on the financial condition of the corporation. The committee is to provide to the board members, the Governor, and the Legislature a report that includes a complete accounting for all revenues and expenses incurred by the corporation during that year. The bill authorizes the corporation to employ staff, contract with consultants, and otherwise retain the necessary staff, within available funds, to accomplish its goals and purposes.

The bill requires the corporation to annually evaluate and report to the Legislature and the Governor the status of its work relative to promoting the use of best practices by caregivers and developing non-licensed caregivers. This annual report is due in October of each year.

HB 161 requires public-sector agencies that provide training or support to non-licensed caregivers who work in the community, ALF and AFCH, to cooperate with the corporation. AWI is required to certify, using criteria that includes communication, timeliness of response, and coordination efforts, as to whether the corporation is receiving the necessary support from the various public-sector entities that provide training to non-licensed caregivers.

The bill directs OPPAGA to conduct a review of the Florida Caregiver Institute, Inc., by October 1, 2008. OPPAGA is required to report to the Legislature and the Governor as to whether the corporation has been effective in helping the state meet its goals of improving the retention of non-licensed caregivers in the community and in facilities licensed under part III or part VII of Chapter 400, F.S., and whether it has been successful in promoting the use of best-practice techniques by caregivers who care for Florida's frail and disabled adult population.

The bill provides an effective date of July 1, 2005.

C. SECTION DIRECTORY:

Section 1: Creates the Florida Caregiver Institute, Inc., as an independent not-for-profit corporation administratively housed within the Agency for Workforce Innovation (AWI); provides purpose, duties and powers of the corporation; provides for a board of directors; provides for membership, terms of office, meetings, and powers and duties of the board; provides for an audit committee; requires annual reports; provides duties for AWI and other agencies.

Section 2: Requires OPPAGA to conduct a review of the corporation by a specified date; requires report to the Governor and Legislature.

Section 3: Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments" below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

AWI reports that due to the restrictive nature of the funding that is received from the U.S. Department of Labor, expenditures associated with providing support for the corporation are disallowed. Additional funding would be required to support the corporation.

The bill requires that the corporation develop an agreement with AWI for the provision of administrative support and start-up costs, with the expectation that the corporation shall not rely upon AWI for staff or financial assistance after December 31, 2007.

AWI estimates it will cost approximately \$130,000 per fiscal year to provide administrative staff support to the corporation.

It is unclear what "start-up costs" are intended to include. However, AWI estimates that travel expenses for the board for four meetings per year would be \$31,000. If AWI were required to collect the caregiver information and perform the needs assessment required by the bill, the agency estimates it would cost in excess of \$212 million. It is also unclear whether the annual review and forecast of the need for nonlicensed caregivers and the annual financial audit to be performed by the corporation audit committee are "start-up costs."

In addition, the bill requires the corporation to enter into agreements with AHCA, DOEA, DOH, DCF, and any other state agency it considers necessary for the purpose of providing access to state buildings and state employees to perform training and paraprofessional development assistance to nonlicensed caregivers. The fiscal impact of this requirement on each affected agency is undetermined.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not affect counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES