

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 Florida Policy Exchange Center on Aging at the University of South Florida. Membership on the board of the corporation consists of representatives from the private sector and from various state agencies. One of the functions of the corporation is to provide training to employees of private businesses.

B. EFFECT OF PROPOSED CHANGES:

In summary, HB 49 creates the Florida Caregiver Institute, Inc., as an independent not-for-profit corporation administratively housed within the Florida Policy Exchange Center on Aging (FPECA) at the University of South Florida. Its mission is to foster the development of caregiving for adults as a non-licensed paraprofessional activity and promote the use of nationally recognized best practices information by non-licensed caregivers. Following is background information and a detailed description of the legislation.

BACKGROUND

Caregiving

About 10.1 million people over the age of 18 in the U.S. – nearly 4 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, nearly 80 percent of care recipients are 50 and older, and the average age of care recipients 50 and older in the U.S. is 75.² Most care recipients (79 percent) who need long-term care live at home or in the community,³ and those individuals living in nursing homes and other institutional settings could potentially live in the community if appropriate, affordable support was available.⁴

Depending on which definition of “caregiver” and “care recipient” is utilized, there is wide latitude in estimates of the precise number of caregivers in the U.S.⁵ A 2004 study coordinated by the National Alliance for Caregiving and the AARP concluded that 44.4 million Americans (21% of the population) provided unpaid care to friends and family age 18 and older.⁶ Moreover, 59% of these U.S. caregivers reported being presently employed, and while the services they provide to care recipients are unpaid, the value of such services has been estimated at \$257 billion annually.⁷ Nearly 20% of caregivers in the U.S. provide more than 40 hours of care per week,⁸ and the overall amount of time spent caring for

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

² *Caregiving in the U.S.*, 2004, National Alliance for Caregiving and AARP, available at <http://www.aarp.org/research/reference/publicopinions/aresearch-import-853.html>.

³ *Long-term Care Users Range in Age and Most Do Not Live in Nursing Homes: Research Alert*, 2000, Agency for Healthcare Research and Quality, available, in part, at <http://www.ahcpr.gov/research/nov00/1100RA19.htm>.

⁴ *Understanding Medicaid Home and Community Services: A Primer*, 2000, U.S. Department of Health and Human Services. Available at <http://aspe.hhs.gov/daltcp/reports/primer.pdf>.

⁵ *Fact Sheet: Side-by-side Comparison of Family Caregiver Prevalence Studies*, Family Caregiver Alliance, 2001, available at http://www.caregiver.org/caregiver/jsp/content/pdfs/fs_caregiver_stats_side_by_side.pdf.

⁶ *Caregiving in the U.S.*, National Alliance for Caregiving and AARP.

⁷ *Ibid.*

⁸ *Ibid.*

another increases substantially as the care recipient's cognitive impairment worsens.⁹ In terms of lost productivity to American businesses, informal caregiving results in an \$11-29 billion loss annually.¹⁰

Although family members and friends provide most of the needed assistance for people in home and community-based settings, 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 both licensed and unlicensed staff responsible for providing medical, nursing or personal care assistance to their residents, enabling 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 funds allocated for health care training are typically reserved for the development of various medical professionals (doctors, nurses, etc.). Consequently, there are limited resources available to address the training needs of paraprofessional caregivers who work in nursing homes, assisted living facilities, adult day care centers, and private residences.

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. The facilities are licensed under Chapter 400, part III, F.S., and are intended to be a less costly alternative to more restrictive institutional settings for individuals who do not require 24-hour nursing supervision. Generally speaking, ALF provide supervision, assistance with personal and supportive services, and assistance with administration of medications to elders and disabled adults.

Nationally, it is estimated that an excess of 600,000 seniors currently reside in an ALF. In 2000, Florida's 2,305 assisted living facilities alone housed approximately 75,000 residents. Facilities operating on a for-profit basis account for the majority of the state's ALF, as more than 83% of Florida's ALF function as for-profit enterprises.¹¹

In addition to a standard ALF operating 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 greater 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.¹²

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. Training requirements are specific to an individual's responsibilities within the facility; the Department of Elder Affairs (DOEA)

⁹ *National Estimates of the Quantity and Cost of Informal Caregiving for the Elderly with Dementia*, 2001, Journal of General Internal Medicine, Volume 16: 770-778.

¹⁰ The MetLife Study of Employer Costs for Working Caregivers (based on data from "Family Caregiving in the U.S.: Findings from a National Survey"), 1997, Metropolitan Life Insurance Company, available at <http://www.metlife.com/WPSAssets/14002396171048285176V1FEmployer%20Costs%20study%20.pdf>.

¹¹ *Florida's Aging Population: Critical Issues for Florida's Future*, 2nd Edition (2004), Pepper Institute on Aging and Public Policy, FSU College of Social Sciences.

¹² An exception is made for an existing resident who is receiving licensed hospice services while residing in an ALF.

establishes minimum training and education requirements by rule. Facility staff is required to participate in training relevant to their job duties as specified by rule. Depending on the staff and particular facility, required training may include ongoing staff in-service training, HIV/AIDS training, first aid, CPR, assistance with self-administered medication, nutrition and food service, extended congregate care training, or limited mental health training. Facilities that advertise that they provide special care for persons with Alzheimer's Disease and related disorders must ensure that facility staff receives training in this area.¹³

Adult Family Care Homes

An adult family care home (AFCH) is a familial living arrangement in a private home. AFCH 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 residents as an alternative to more restrictive institutional settings for individuals who need housing and supportive services, but not 24-hour nursing supervision. The provider must own or rent and live in the home operating as an AFCH, and staff in AFCH are either employed by, or under contract with, the provider.

Prior to accepting any residents or becoming licensed, **all AFCH providers must attend a 12-hour Adult Family Care Home Basic Training program** that conforms to the minimum requirements of s. 400.6211, F.S. Additionally, 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 the management and administration of an AFCH, and providers must attend update training when the basic course is updated by legislation or through rule amendment.¹⁴

Prior to assuming responsibility for the care of residents (or within 30 days of employment), an AFCH provider shall ensure that each relief person and all staff receive training relevant to assigned job duties, including emergency/evacuation procedures, universal precautions, food safety, procedures for reporting abuse and neglect, and a review of resident rights. Moreover, providers, relief individuals, and any person left in sole charge of residents must hold a currently valid card documenting completion of First Aid and CPR courses.¹⁵

Adult Day Care Centers

Adult Day Care Centers (ADCC) are licensed under Part V of Chapter 400, F.S., to provide a variety of therapeutic, social, and health activities and services to adults who have functional impairments, in an effort to help restore, remediate, or maintain optimal functioning and increase interaction with others in a non-institutional setting. Participants may utilize a variety of services offered during any part of a day but less than a 24-hour period.

Training requirements of staff employed by an ADCC vary based upon the work performed by the individual. All staff employed by an ADCC must receive basic written information about interacting with participants who have Alzheimer's disease or dementia-related disorders. Section 400.5571, F.S., requires new employees having direct contact with participants who suffer from Alzheimer's disease or other dementia-related disorders to complete certain training within specified time periods.

Caregiver Training Providers

On July 1, 2003 the training component for ALF and AFCH was privatized by DOE¹⁶. Consequently, ALF and AFCH currently contract with private consultants and associations to ensure that facility staff is

¹³ Rule 58A-5.0191, F.A.C.

¹⁴ Rule 58A-14.008, F.A.C.

¹⁵ Ibid.

¹⁶ During Special Session 2003-A, the Legislature privatized the Department of Elderly Affairs' ALF core training program and the eleven FTE training positions associated with the program were eliminated. Section 3, Chapter 2003-405, L.O.F.

provided with required training. There are 19 training providers statewide, and these providers and the fees charged in connection with training are not regulated by any state agency.

Training providers and facility administrators have expressed concerns about increased staff training costs to facilities, especially those serving Optional State Supplementation (OSS)¹⁷ residents. The Department of Elder Affairs currently contracts with the Institute for Instructional Research and Practice at the University of South Florida to develop testing materials for the ALF Core Training requirements, and administer a caregiver examination.

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.

Created in 1992, the Florida Policy Exchange Center on Aging (FPECA) at the University of South Florida collects and analyzes information related to older adults, especially older Floridians. The Center informs policymakers, media representatives, scholars and advocates on policies, programs and services for older adults. The Center carries a Type I designation from the State Board of Education, meaning the Center has a responsibility to work closely with faculty and students from all Florida universities who are involved in aging-related research activities.

PROPOSED CHANGES

HB 49 provides the 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 in a licensed assisted living facility or adult family care home, or attend an adult day care center; and to promote the use of nationally recognized best-practices information by caregivers in an effort to improve the quality of care and facilitate 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 disseminating such information to caregivers and vulnerable adults alike. 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 Florida Policy Exchange Center on Aging at the University of South Florida.

The bill directs the corporation to assist FPECA with the development of policy recommendations to enhance the FPECA's efforts to improve the availability and skills of individuals seeking to work as caregivers in the home or community, or in an AFCH, ADCC, 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;

¹⁷ OSS is a non-Medicaid cash assistance program offered by the Department of Children and Family Services, intended to supplement an individual's income to help pay for costs in an assisted living facility, mental health residential treatment facility, and adult family care home. Calculation formulas and eligibility requirements are available at <http://www.dcf.state.fl.us/ess/ssifactsheet.pdf>, updated July, 2005.

- Conducting a needs assessment of non-licensed caregivers working in the community or facilities licensed under parts III, V, or VII of Chapter 400, F.S.;
- Making recommendations to DOEA, the Department of Children and Family Services (DCF), the Agency for Health Care Administration (AHCA) and the Florida Department of Health (DOH) regarding policy and related changes to help improve the quality, availability, and retention of non-licensed caregivers;
- Making recommendations to the Legislature and Governor on proposed legislative changes and budget-related items; and
- Developing agreements with AHCA, DOEA, DOH, DCF, and other relevant state agencies to allow access to state-owned buildings and state employees to provide training and professional development.

The corporation is further authorized to offer training to staff of ALF, AFCH, and ADCC and to charge a reasonable fee based on a sliding scale to provide the training. DOEA, in consultation with the corporation and the contractor responsible for the development of the training testing materials, must annually evaluate the testing materials.

The bill directs the corporation to collect information regarding non-licensed 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 non-licensed caregivers
- turnover rates 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 FPECA describing how the corporation will interact with FPECA in carrying out its responsibilities. The corporation must develop an agreement with FPECA for the center's provision of start-up costs and administrative support, with the expectation that the corporation will not rely on FPECA staff or financial assistance after June 1, 2008. The corporation is authorized to contract with FPECA 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;
- One member appointed by the Florida Adult Day Care Association;
- One member appointed by the Florida Respite Coalition;
- One member appointed by the State Long-Term Care Ombudsman;
- Two members appointed by the Governor;
- Two members appointed by the President of the Senate; and
- Two members appointed by the Speaker of the House of Representatives.

HB 49 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, 2006. 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 adopt by-laws, follow Robert's Rules of Order, and to meet quarterly unless the chair considers it appropriate to meet more often. A majority of the board 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 49 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, the President of the Senate, and the Speaker of the House of Representatives, by January 10 of each year, 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 fund limits, to accomplish its goals and purposes.

The bill requires the corporation to annually evaluate and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives 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 by January 10 each year.

HB 49 requires public-sector agencies that provide training or support to non-licensed caregivers who work in the community, ALF, ADCC, and AFCH, to cooperate with the corporation. FPECA is required to certify to the Governor, the President of the Senate, and the Speaker of the House of Representatives – using criteria that includes communication, timeliness of response, and coordination efforts – 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, 2009. OPPAGA is required to report to the Governor, the President of the Senate, and the Speaker of the House of Representatives concerning whether the corporation has been effective in helping to improve the retention of non-licensed caregivers in the community and in facilities licensed under parts III, V, or 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, 2006.

C. SECTION DIRECTORY:

Section 1: Creates the Florida Caregiver Institute, Inc., as an independent not-for-profit corporation administratively housed within FPECA; 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 FPECA and state agencies.

Section 2: Requires OPPAGA to conduct a review of the corporation by a specified date; requires report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 3: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Impact", below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Corporation will need funding for start-up.

There is an undetermined cost for the corporation to perform the responsibilities assigned by the legislation. These responsibilities include developing training curricula and materials, conducting a caregiver needs assessment, reviewing the need for caregivers in certain areas, developing core training materials, and collecting and reporting information regarding the caregiver population.

D. FISCAL COMMENTS:

The University of South Florida

According to the Florida Policy Exchange Center on Aging at the University of South Florida, there will be an estimated cost of \$100,000 for the Exchange Center to support the activities of this corporation.

State Agencies

The bill requires that the corporation develop agreements with DOEA, DCF, AHCA, DOH and any other state agency it considers necessary for the purpose of accessing state buildings and employees to provide training. The agencies will incur undetermined costs associated with this requirement.

Department of Elder Affairs

The Department of Elder Affairs reports that they no longer have the staffing or infrastructure capacity to meet the provisions of the legislation because their training program was privatized during the 2003 Legislative Session.

Agency for Health Care Administration

AHCA notes that the bill mandates agreements be developed with itself, DOEA, DOH and DCF for the exclusive purpose of accessing state-owned buildings and state employees for the purpose of providing low-cost effective training. According to AHCA, without knowledge of the number of individuals who would actually need to be trained, at a minimum, the bill creates a need for one additional full-time equivalent position for the Agency to provide the proposed training. The position, located in Tallahassee, will travel to different locations around the state as needed to provide the training. The

comparable position identified for this training is a Health Services and Facilities Consultant (pay grade 24). It is estimated that there will be \$18,200 in travel expenses annually. The trainer would travel to seven districts quarterly with the following travel expenses: \$300 airfare, \$300 hotel expenses (3 days) and \$50 for incidentals. This would be a \$650 travel expense for each trip totaling \$18,200 annually. Deducting the allowance for travel of \$3,550 that is already included in the annual standard expenditure allowance for a position, an additional travel amount of \$14,650 per year would be needed. This would be a total cost to AHCA (salary and travel) in year 1 of \$81,319 and in year 2 of \$77,309.

AHCA notes it is not possible to determine how much training would be required, however there are over 2,300 licensed ALF and the staff turnover is high in some areas. In addition, there are 463 AFCH and relief personnel, and 163 ADCC staff, who would also need to be trained.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not affect counties or municipalities.

2. Other:

Article IV, Section 6 of the state constitution, limits the power of the Legislature to create new departments, and specifically vests all functions of the executive branch of state government “among not more than twenty-five departments, exclusive of those specifically provided for or authorized” in the constitution. The creation of a corporation “administratively housed” within the Florida Policy and Exchange Center on Aging at the University of South Florida may raise this constitutional concern.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although the bill appears directed at unlicensed caregivers employed by either licensed facilities or private entities, no definition of “caregiver” is provided. The Family Caregiver Alliance (FCA) defines a caregiver as one “who provides assistance to someone else who is, in some degree, incapacitated and needs help.”¹⁸ The FCA further distinguishes between “informal caregivers” (unpaid individuals such as family, friends, and neighbors) and “formal caregivers” (volunteers or paid care providers associated with a service system).¹⁹ On December 6, 2005, the Senate Committee on Children & Families adopted without engrossing a definition of a “caregiver” as “a person who receives financial compensation for providing assistance, care, or personal services to another person.” Moreover, there is no specific requirement that any member of the Board of Directors of the Florida Caregiver Institute, Inc., be a caregiver.

The legislation directs the board chairman to create an audit committee, constituted by at least three board members, to annually review the financial status of the corporation and ultimately report these findings to the Governor, President of the Senate, and Speaker of the House of Representatives. Nowhere, however, does the bill stipulate that certain members of the board will have accounting or audit experience, and the legislation makes no provision for the board’s collaboration with certified public accountants throughout such an audit process. CPAs are typically involved in audits to ensure accuracy and unbiased reporting.

¹⁸ *Selected Caregiver Statistics*, accessed January 6, 2006, Family Caregiver Alliance, available at: http://www.caregiver.org/caregiver/jsp/content_node.jsp?nodeid=439.

¹⁹ *Ibid.*

The bill specifies that the Florida Caregiver Institute, Inc. is not a unit of state government. The bill also does not require that the corporation (and any committees it forms) be subject to the public records requirements of Chapter 119, F.S., or the public meetings requirements of Chapter 286, F.S.

In subsection 3(g) of section 1, the bill enables the corporation to charge a reasonable fee, on a sliding scale, for the training of unlicensed caregivers who work in the community or Parts III, V, or VII of Chapter 400, F.S., but provides no parameters for evaluation of what is considered a “reasonable fee”.

AHCA has reported that the agency is uncertain how the corporation’s mission will impact either the Consumer Directed Care or Assisted Living for the Elderly waiver programs.²⁰

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

²⁰ The Florida Consumer Directed Care project, one of three such waiver programs nationally, is a cash benefit allowing recipients to make more of their own decisions about personal attendant and related personal assistance services. Similarly, the Assisted Living for the Elderly waiver provides additional personal care and supervision services to aged individuals who would otherwise require nursing home placement. Source: *Model Florida Long-Term Care System / Analyzing Long-Term Care Initiatives in Florida*, November 2003, Senate Committee on Health, Aging, and Long-Term Care, available at: http://www.flsenate.gov/data/Publications/2004/Senate/reports/interim_reports/pdf/2004-144hclong.pdf.