

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 49 CS
SPONSOR(S): Meadows
TIED BILLS:

Caregivers for Adults

IDEN./SIM. BILLS: SB 88

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Elder & Long-Term Care Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>DePalma</u>	<u>Walsh</u>
2) <u>Community Colleges & Workforce Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Health Care Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Health & Families Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Committee Substitute for HB 49 enables the Department of Elder Affairs to contract with a not-for-profit corporation operated in compliance with chapter 617, F.S., and specifies that such contracted corporation may be physically located in the Florida Policy Exchange Center on Aging at the University of South Florida. The corporation’s 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.

The CS provides for the corporation to assist the Florida Policy Exchange Center on Aging in developing policy recommendations, and also stipulates certain contractual responsibilities of the contracted corporation.

The CS requires each public sector agency providing training or support for nonlicensed community or facility caregivers to cooperate with the corporation.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is directed to conduct an evaluation and review of the corporation and to provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2009.

The effective date provided is July 1, 2006.

The fiscal impact of this CS is undetermined. Please see “Fiscal Comments” for further information.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The CS allows the Department of Elder Affairs to contract with a not-for-profit corporation which may be located in the Florida Policy Exchange Center on Aging at the University of South Florida. One of the functions of the contracted corporation is to provide training to employees of private businesses.

B. EFFECT OF PROPOSED CHANGES:

In summary, the CS for HB 49 enables the Department of Elder Affairs (DOEA) to contract with a not-for-profit corporation operated in compliance with chapter 617, F.S., and specifies that such contracted corporation may be physically located in the Florida Policy Exchange Center on Aging (FPECA, or the “Exchange Center”) 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-oriented 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 DOEA¹⁶. 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

The CS 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 CS grants DOEA the ability to contract with a not-for-profit corporation operated in compliance with chapter 617, F.S., and specifies that such contracted corporation may be physically located in the Florida Policy Exchange Center on Aging.

The CS indicates that the contract with the corporation shall provide for the corporation to assist FPECA with the development of policy recommendations, in an effort to enhance the Exchange Center'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 contract must additionally provide that the corporation:

- seek state, federal, and private funding to provide training in the use of best practices;
- work with universities, research and policy development centers and other institutions to develop training materials, identify best-practices techniques, and develop a curriculum;
- conduct 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.;

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.

- make 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;
- make recommendations to the Legislature and Governor on proposed legislative changes and budget-related items; and
- develop 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 CS 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 CS 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.

The CS 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 CS directs OPPAGA to conduct a review of the contracted services for developing best practices information and providing it to caregivers, 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 CS provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Provides that DOEA may contract with a not-for-profit corporation which may be physically located in the Florida Policy and Exchange Center on Aging; provides purpose, duties and powers of the corporation; 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 CS 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 CS mandates agreements to 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 CS 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 CS does not affect counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although the CS 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

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.*

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.

In subsection 3(g) of section 1, the CS 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

At its March 8, 2006 meeting, the Committee on Elder & Long-Term Care adopted a strike-all amendment to HB 49. The amendment addresses a constitutional concern raised through creation of the Florida Caregiver Institute, Inc. (the “Institute”), as an independent not-for-profit corporation administratively housed within the Florida Policy Exchange Center on Aging at the University of South Florida. Specifically, Article IV, Section 6 of the state constitution limits the power of the Legislature to create new departments, while simultaneously vesting 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 strike-all alters this dynamic by allowing the Department of Elder Affairs to contract with a not-for-profit corporation given the same responsibilities and duties as the Florida Caregiver Institute, Inc. was provided, and specifying that this contracted corporation “may” be physically located in the Exchange Center. In addition to providing several conforming changes necessary to reflect this amendment, provisions relating to the Institute’s board of directors are deleted.

The Committee favorably reported a Committee Substitute. This analysis is drafted to the Committee Substitute.

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.