

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 501 CS                   **Assisted Care Communities**  
**SPONSOR(S):** Clarke  
**TIED BILLS:**                           **IDEN./SIM. BILLS:** SB 388

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	8 Y, 0 N, w/CS	DePalma	Walsh
2) Future of Florida's Families Committee	7 Y, 0 N	Davis	Collins
3) Governmental Operations Committee	5 Y, 0 N	Ziegler	Williamson
4) Health & Families Council	9 Y, 0 N, w/CS	DePalma	Moore
5)			

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### SUMMARY ANALYSIS

The Council Substitute for HB 501 CS transfers provisions relating to assisted living facilities, adult family-care homes and adult day care centers from Parts III, V and VII of Chapter 400, F.S., to newly-created Parts I, II and III of Chapter 429, F.S., to be entitled "Assisted Care Communities."

The CS makes multiple statutory revisions which specify each conforming change required to accurately move these sections to their new chapter.

The legislation also permits licensed physician assistants to provide certain medical examinations to residents of assisted living facilities.

The CS does not appear to have a fiscal impact on state or local government.

The effective date of the CS is July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The CS does not appear to implicate any of the House principles.

#### B. EFFECT OF PROPOSED CHANGES:

#### **BACKGROUND**

#### **Regulation of Health Care Facilities and Services**

Chapter 408, F.S., "Health Care Administration" contains the general statutory provisions assigned to the Agency for Health Care Administration (AHCA). The Agency, as created in s. 20.42, F.S., is responsible for:

- Health facility licensure, inspection, and regulatory enforcement;
- Investigation of consumer complaints related to health care facilities and managed care plans;
- Implementation of the certificate of need program;
- Operation of the State Center for Health Statistics;
- Administration of the Medicaid program;
- Administration of the contracts with the Florida Healthy Kids Corporation;
- Certification of health maintenance organizations and prepaid health clinics as set forth in part III of chapter 641, F.S.; and
- Any other duties prescribed by statute or agreement.

The statutory provisions for the health care facilities and services requiring licensure by, or registration with, AHCA, are found in chapters 112, 383, 390, 394, 395, 400, 440, 483, and 765, F.S. The facilities and services include drug free workplace laboratories, birth centers, abortion clinics, crisis stabilization units, short term residential treatment units, residential treatment facilities, residential treatment centers for children and adolescents, hospitals, ambulatory surgical centers, mobile surgical facilities, private review agents, health care risk managers, nursing homes, assisted living facilities, home health agencies, nurse registries, companion services or homemaker services providers, adult day care centers, hospices, adult family care homes, homes for special services, transitional living facilities, prescribed pediatric extended care centers, home medical equipment providers, intermediate care facilities for the developmentally disabled, health care services pools, health care clinics, clinical laboratories, multiphasic health testing centers, and organ and tissue procurement agencies.

These regulated health care facilities and services provide care in settings ranging from individual homes to institutions such as hospitals and nursing homes. The complexity of care provided ranges from companion and homemaker services in the home to trauma care and intensive care in hospitals. The duration of service ranges from short-term to long-term.

The Department of Elderly Affairs currently has rulemaking authority for the assisted living facility, adult family care home, adult day care center, and hospice programs. The Agency for Health Care Administration has rulemaking authority for the majority of other programs it licenses including hospitals, nursing homes, home health agencies, and others.

#### **Nursing Homes and Related Health Care Facilities**

Chapter 400, F.S., is entitled "Nursing Homes and Related Health Care Facilities" and consists of 13 parts.

<b>Part</b>	<b>Title</b>
I	Long-Term Care Facilities: Ombudsman Program
II	Nursing Homes
III	Assisted Living Facilities
IV	Home Health Agencies
V	Adult Day Care Centers
VI	Hospices
VII	Adult Family-Care Home Act
VIII	Intermediate, Special Services, and Transitional Living Facilities
IX	Prescribed Pediatric Extended Care Centers
X	Home Medical Equipment Providers
XI	Intermediate Care Facilities for Developmentally Disabled Persons
XII	Health Care Services Pools
XIII	Health Care Clinic Act

### **Assisted Living Facilities**

Assisted Living Facilities (ALFs) 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, ALFs provide supervision, assistance with personal and supportive services, and assistance with administration of medications to elders and disabled adults.

Nationally, it is estimated that in 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 ALFs, as more than 83% of Florida's ALFs function as for-profit enterprises.<sup>1</sup>

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 ALFs cannot have conditions that require 24-hour nursing supervision.<sup>2</sup>

Part III of Chapter 400, F.S., was created in 1975, and details the licensing and regulatory requirements for ALFs.

### **Adult Family Care Homes**

Adult Family-Care Homes (AFCHs) are a familial-oriented living arrangement in a private home. AFCHs 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

<sup>1</sup> *Florida's Aging Population: Critical Issues for Florida's Future*, 2<sup>nd</sup> Edition (2004), Pepper Institute on Aging and Public Policy, FSU College of Social Sciences.

<sup>2</sup> An exception is made for an existing resident who is receiving licensed hospice services while residing in an ALF.

supervision. The provider must own or rent and live in the home operating as an AFCH, and staff in AFCHs are either employed by, or under contract with, the provider.

Part VII of Chapter 400, F.S., was created in 1985, and details the licensing and regulatory requirements for AFCHs.

### **Adult Day Care Centers**

Adult Day Care Centers (ADCCs) 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.

Part V of Chapter 400, F.S., was created in 1978, and details the licensing and regulatory requirements for ADCCs.

### **Division of Statutory Revision**

The Division of Statutory Revision (the “Division”) is a unit within the Office of Legislative Services (OLS), which is responsible for editing, compiling, indexing, and publishing the Florida Statutes under the continuous permanent statutory revision plan established under ss. 11.241-11.243, F.S. The powers, duties, and functions of OLS as they pertain to the statutory revision program are specified by these sections of statute.

The provisions of s.11.242(1), F.S., charge the Division with conducting a systematic and continuing study of the statutes and laws of this state for the purpose of reducing their number and bulk, removing inconsistencies, redundancies, and unnecessary repetitions and otherwise improving their clarity and facilitating their correct and proper interpretation; and for the same purpose, to prepare and submit to the Legislature reviser’s bills and bills for the amendment, consolidation, revision, repeal, or other alterations or changes in any general statute or laws or parts thereof of a general nature required as a result of legislation approved during the preceding session or sessions.

### **EFFECT OF PROPOSED CHANGES**

The Council Substitute for HB 501 CS transfers all sections of parts III, V and VII of chapter 400, F.S., to chapter 429, F.S., entitling the chapter “Assisted Care Communities” and making multiple statutory revisions necessary to accurately reflect the move of part III of chapter 400, F.S., to chapter 429, F.S. Chapter 429, F.S. is organized into parts I, II and III as follows:

<b><u>Chapter 400, F.S., part</u></b>	<b><u>Title</u></b>	<b><u>Transfer to Chapter 429, F.S., part</u></b>
III	Assisted Living Facilities	I
VII	Adult Family-Care Homes	II
V	Adult Day Care Centers	III

The CS also permits licensed physician assistants to provide certain medical examinations to residents of assisted living facilities. Previously, such examinations could be performed only by a licensed physician or nurse practitioner.

### **C. SECTION DIRECTORY:**

**Section 1:** Creates Chapter 429, Assisted Care Communities.

**Section 2:** Renumbers ss. 400.401 through 400.454 as ss. 429.01 through 429.54 and designates those sections as Part I, Assisted Living Facilities.

**Section 3:** Renumbers ss. 400.616 through 400.629 as ss. 429.60 through 429.87 and designates those sections as Part II, Adult Family-Care Homes.

**Section 4:** Renumbers ss. 400.55 through 400.564 as ss. 429.90 through 429.933 and designates those sections as Part III, Adult Day Care Centers.

**Sections 5 through 120:** Specifies each conforming change required to reflect the relocation of Parts III, VII and V of Chapter 400, F.S., to newly-created Parts I, II, and III of Chapter 429, F.S.

**Section 121:** Directs the Division of Statutory Revision to prepare a reviser's bill for introduction at a subsequent legislative session making conforming changes to Florida Statutes.

**Section 122:** Provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The Agency for Health Care Administration reports that there should be no fiscal impact through implementation of the provisions of the CS.

#### **2. Expenditures:**

The Agency for Health Care Administration reports that there should be no fiscal impact through implementation of the provisions of the CS.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

The municipal/county mandates provision in Section 18 of Article VII of the Florida Constitution does not appear to be applicable since the CS does not appear to require counties or municipalities to take action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with 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**

At its January 25, 2006 meeting, the Committee on Elder & Long-Term Care adopted a strike-all amendment to HB 501. The strike-all corrects several technical and conforming references throughout the bill. The Committee favorably reported a Committee Substitute.

At its April 18, 2006 meeting, the Health and Families Council adopted three amendments to HB 501 CS, each permitting licensed physician assistants to provide certain medical examinations to residents of assisted living facilities.

The Council favorably reported a Council Substitute, and this analysis is drafted to the Council Substitute.