

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1019 Assisted Care Communities
SPONSOR(S): Healthcare Council and Nehr
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1916

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Healthy Seniors</u>	<u>6 Y, 0 N</u>	<u>Walsh</u>	<u>Schoolfield</u>
2) <u>Healthcare Council</u>	<u>16 Y, 0 N, As CS</u>	<u>Schoolfield</u>	<u>Gormley</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

CS/HB 1019 requires DOEA to adopt, or contract with an entity to develop, a curriculum for the minimum core training requirement for assisted living facilities. The bill also requires that DOEA register specified persons to conduct the training.

The bill also amends s.429.907, F.S., to provide for the temporary relocation of adult day care centers in the event of disaster or emergency as defined in statute.

The Department of Elder Affairs should be able to absorb any cost within existing resources.

The bill is effective July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- The bill adds one full-time equivalent employee to and provides rulemaking authority for DOEA. It requires DOEA to adopt, or contract with an entity to develop, a curriculum for the minimum core training requirement for assisted living facilities. The bill also requires that DOEA register specified persons to conduct the training.

Empower families -- The minimum core training curriculum is intended to produce consistently- and appropriately-trained staff to work in assisted living facilities serving Florida's elders and their families.

B. EFFECT OF PROPOSED CHANGES:

Background

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.²

Nursing homes and assisted living facilities 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 and assisted living facilities.

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 Part I of Chapter 429, 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

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.

operating on a for-profit basis account for the majority of the state's ALF, as more than 83 percent of Florida's ALF function as for-profit enterprises.³

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.⁴

Administrators, managers, and staff of ALF are required to obtain specific training and education pursuant to s. 429.52, 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) 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.⁵

Adult Day Care Centers

Adult day care centers refer to the building or buildings that house programs of basic services to adult participants during part of a day. The services provided in adult day care centers include therapeutic programs of social and health activities, leisure activities, self-care training, rest, nutritional services and respite care. The Agency for Health Care Administration (AHCA) must license each adult day care center in accordance with s. 429.907, F.S. and Rule 58A-6, F.A.C. AHCA must issue separate licenses for separate premises. The Department of Elder Affairs is responsible for rule promulgation for this program. In 2006, 157 adult day care centers were licensed with a capacity to serve 7,503 people⁶. During fiscal year 2005-2006, DOEA served 3,488 people in adult day care centers through state and federal funds.⁷

Effect of Proposed Bill

Assisted Living Facilities: On July 1, 2003, the training component for ALF was privatized by DOEA.⁸ Consequently, ALF currently contract with private consultants and associations to ensure that facility staff is 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 DOEA or any state agency. ALF operators and administrators have expressed concerns that unqualified trainers are able to advertise and provide training, with the result that their staff wastes time and money on training which may not conform to the requirements of the rule.

The bill requires DOEA to adopt, or contract with an entity to develop, a minimum core training requirement curriculum. DOEA must consult with ALF stakeholders in development of the curriculum.

³ *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.

⁴ An exception is made for an existing resident who is receiving licensed hospice services while residing in an ALF.

⁵ Rule 58A-5.0191, F.A.C.

⁶ Molly McKinstry, Agency for Health Care Administration, April 18, 2007 email on Adult Day Care Centers

⁷ Horatio Soberon-Ferrar, Ph.D., Strategic Planning Coordinator, Department of Elder Affairs, April 18, 2007 email on Adult Day Care Data.

⁸ 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.

The bill requires that ALF training must be conducted by persons who are registered with DOEA as trainers. In order to become registered, the person must show proof of completion of the core training requirements, successful passage of the competency test, and completion of the requisite continuing education requirements. In addition, the person must also meet one of the following criteria:

- Have completed a 4-year degree and have worked in a management position in an ALF for three years after completing the core requirements
- Have worked in a management position in an ALF for five years after completing the core requirements and have one year of teaching experience training ALF or other long-term care staff
- Have been previously employed by DOEA as a trainer of the core requirements.
- Meet other qualification criteria defined in rule by DOEA.

Adult Day Care Centers: The Adult Day Care Association has indicated that when an adult day care facility is damaged and unusable the alternatives for the licensee are to cease providing services, provide uncompensated services at another location or send clients to other licensed facilities. The Association notes that this is particularly disruptive for persons who are frail or suffering from some form of dementia.

The bill provides an exception to the separate license requirement for separate premises of adult day care centers in the case of disaster or emergency that renders the current facility unusable. Under these circumstances, the licensee may continue operation at one or more premises under their current license for up to 180 days. The premises must be included in the licensee's comprehensive emergency management plan and approved by the county emergency management authority. The licensee of the adult day care center must notify AHCA and county emergency management authorities within 24 hours of beginning operation in a separate premises.

The bill is effective July 1, 2007.

C. SECTION DIRECTORY:

Section 1: Amends subsection 429.52(8) and adds subsections 429.52(9) through (11), F.S.; requires DOEA to adopt minimum core training requirements for ALF; requires that trainers be registered; sets standards for trainer registration; provides rulemaking authority.

Section 2: Amends subsection 429.907(2) to allow exceptions to license requirements during a disaster or emergency.

Section 3: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The fiscal impact should be absorbable within current departmental resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The operators of assisted living facilities will be able to hire and retain staff that is trained using a known, consistent and appropriate curriculum by qualified trainers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DOEA is directed to adopt rules to establish trainer registration requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Currently, over 75,000 Floridians reside in assisted living facilities. In order for them to maintain a high quality, dignified standard of living, those responsible for caring for these residents must be properly trained to provide for their special needs.

Administrators, managers, and staff of assisted living facilities are required by statute to obtain specific training and education. DOEA rules set forth the specific training requirements, which are generally tailored to the services provided in the ALF. Prior to July 1, 2003, this training, which is referred to as "core training," was conducted by DOEA staff. However, during special session 2003-A, the Legislature eliminated the requirement that DOEA provide this training, but did not provide any criteria for who could be eligible to serve as a core trainer.

The purpose of this bill is to ensure that those people caring for seniors residing in assisted living facilities receive training from knowledgeable, highly qualified people. The bill requires that persons conducting core training be registered with DOEA and show proof of completion of the core training requirements, successful passage of a competency test, and completion of the requisite continuing education requirements. The bill sets forth other minimum standards for core trainers. The bill also requires that DOEA adopt minimum core training requirements through the rule making process.

This bill is supported by the Florida Assisted Living Affiliation and was developed in partnership with the Department of Elder Affairs.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

At its March 13, 2007, meeting, the Committee on Healthy Seniors adopted one amendment to HB 1019 as filed. The amendment makes the act effective contingent upon an appropriation to fund its provisions. The Committee reported the bill favorably with one amendment.

At its April 17, 2007, meeting, the Healthcare Council adopted two amendments including a strike all amendment and an amendment to the strike all amendment. The amended strike all to HB 1019 deleted the appropriation for the bill, added language related to Assisted Living Facility trainer credentials and added a new section which provides for the temporary relocation of adult day care centers in the event of a disaster or emergency.

The bill was reported favorably as a Council Substitute. The analysis is drafted to the Council Substitute.