

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1401 Adult Protection and Care
SPONSOR(S): Gibson and others
TIED BILLS: HB 1403 **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----------------------------------------|-----------------|---------------------------|----------------|
| 1) <u>Committee on Healthy Seniors</u> | <u>9 Y, 0 N</u> | <u>Ciccone</u> | <u>Ciccone</u> |
| 2) <u>Healthcare Council</u> | <u></u> | <u>Ciccone/Massengale</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

House Bill 1401 amends several provisions contained in Chapter 429, F. S. relating to transfer and discharge procedures, notices requirements, and fair hearing appeals processes available to residents of assisted living facilities.

The bill extends similar transfer and discharge protections provided to residents of state nursing home facilities to residents of assisted living facilities (ALFs). The bill provides that assisted living facilities are required to permit residents to remain in the facility they reside in, except under certain conditions provided in the bill.

The bill expands the notice requirements provided to assisted living facility residents regarding a proposed transfer or discharge, and directs the Agency for Health Care Administration to develop a standard notice document for facilities to use in transfer and discharge circumstances. Among other requirements, the document must detail the specific reason for the discharge or transfer, the effective date of the transfer or discharge, the location to which the resident is being transferred or discharged, and a description of the resident's right to appeal, and must include a means for a resident to request the assistance of the local long term care ombudsman council in reviewing the notice and initiating a fair hearing. The bill further specifies the method, timing and signature requirements regarding the notice, and the review and response requirement of the local long-term care ombudsman council.

The bill specifies that an assisted living facility resident is entitled to a fair hearing to challenge a facility's proposed discharge or transfer anytime within 90 days of receipt of notice, and provides that a resident request for a fair hearing within the initial 10 days of receipt of notice stays the transfer or discharge pending a final hearing decision. Finally, the bill directs the Department of Children and Family Services' Office of Appeals Hearings to conduct fair hearings regarding resident transfer or discharge disputes.

The legislation has a negative fiscal impact on the general revenue fund.

The bill provides an effective date of July 1, 2008.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1401b.HCC.doc
DATE: 4/4/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families – The bill provides residents of assisted living facilities with transfer and discharge protections similar to those provided to nursing home residents. By specifying allowable reasons pertaining to resident transfers and discharges, and providing recourse through the local ombudsman council and a fair hearing process, residents and their families may be afforded additional resident protection.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Assisted Living Facilities

There are 2,583 licensed ALFs in Florida, housing a total of 76,834 beds.¹ Potential residents of an ALF must first undergo a health assessment 60 days prior to admission. The assessment is designed to address the physical and mental status of the individual, the individual's potential need for supervision or assistance, and the individual's dietary needs.² Potential residents of an ALF must meet the admission criteria established in rule.³ These criteria include that a person:

- Be at least 18 years of age and able to perform activities of daily living with supervision or assistance if necessary;
- Be capable of taking medication with supervision or assistance from staff;
- Not be a danger to self or others, require licensed professional mental health treatment on a 24-hour basis, or be bedridden; and
- Not have any stage three or four pressure sores or require 24-hour supervision.

Licenses

A standard license is issued to an ALF that provides one or more personal services.⁴ A facility operating under a standard license may also employ or contract with an individual licensed to administer medications and perform other tasks as specified in s. 429.255, F.S., relating to the use of personnel. Once an ALF receives a standard license, the ALF may apply for specialty licenses including:

- Limited Nursing Services (LNS):⁵ An ALF with an LNS license allows the licensee to provide the basic services of an ALF and specific nursing services including nursing assessments, wound dressing care, care of casts, braces and splints, administration of portable oxygen, care of catheters and colostomies, and other specific nursing services.⁶

¹ Agency for Health Care Administration, 2008 Bill Analysis & Economic Impact Statement, on file with the committee.

² Chapter 58A-5.0181, F.A.C.

³ *Id.*

⁴ S.429.02(16),F.S., defines the term “personal services” as direct physical assistance with or supervision of the activities of daily living and the self-administration of medication and other similar services which the DOEA may define by rule. The term “personal services” shall not be construed to mean the provision of medical, nursing, dental, or mental health services.

⁵ S.429.07(3)(c),F.S.

⁶ Agency for Health Care Administration, 2008 bill Analysis & Economic Impact Statement, on file with the committee.

- Extended Congregate Care (ECC): ⁷An ALF with an ECC license allows a resident to age in place by providing the basic services of an ALF and other services including limited nursing services and assessments, total help with activities of daily living, measurement and recording of vital signs, dietary management, and supervision of residents with dementia or cognitive impairments.⁸
- Limited Mental Health (LMH):⁹ An ALF with an LMH license is required to serve more than two mental health residents. An LMH facility consults with residents' mental health care managers and develops community supported living plans for residents.¹⁰

Inspections

The agency conducts regulatory inspections every two years for assisted living facilities with a standard license. Quarterly monitoring visits are required for those facilities with a standard ECC license. Facilities with a standard LNS license are monitored at least twice a year. Complaint investigations are conducted as received and prioritized by AHCA.

Resident Bill of Rights

Section 429.28, F.S., provides for an ALF resident's rights within the facility. Among these rights are the resident's right to at least 45 days' notice of relocation or termination of residency. This notice is not required for relocation or termination for medical reasons, emergency reasons, or if a resident engages in conduct deemed harmful or offensive. In non-emergency situations, a resident's guardian is given 45 days' notice in cases where the resident has been determined mentally incapacitated.¹¹

According to the Office of the State Long-Term Care Ombudsman Program's statewide complaint data, involuntary discharge investigations surfaced last year as one of the top ten complaints in assisted living facilities.¹²

The ALF resident bill of rights also requires that each resident be able to present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. Each facility is required to establish a grievance procedure to facilitate the residents' exercise of this right. This right includes access to ombudsman volunteers and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.

According to the agency, regulations do not specify how grievances are presented, so each facility may develop its own policy. The agency reports that some ALFs require residents to submit his or her grievance in writing. As well, some facilities reportedly have "open door" grievance policies that are not in writing.

Assisted living facilities are not required to implement risk management programs; however, they must report adverse incidents to the agency within one business day by email, facsimile, or U.S. mail. The ALF must include information regarding the identity of the affected resident, the type of incident, and the status of the ALF's investigation of the incident.

⁷ S. 429.07(3)(b), F.S.

⁸ Agency for Health Care Administration, 2008 Bill Analysis & Economic Impact Statement, on file with the committee.

⁹ S. 419.075, F.S.

¹⁰ Agency for Health Care Administration, 2008 Bill Analysis & Economic Impact Statement, on file with the committee.

¹¹ *Id*

¹² 2008 Department of Elder Affairs, Florida's Long-Care Ombudsman Program *Annual Report 2005-2006*, on file with the committee

The Long Term Care Ombudsman Program

The Long-Term Care Ombudsman Program was created under the Older Americans Act, which was originally passed in 1965 and subsequently amended. The act directs states to create, among other provisions, an Office of the State Ombudsman. In 1993, the Florida Legislature created the Office of State Long-Term Care Ombudsman in the Department of Elderly Affairs.¹³ Among other duties and responsibilities, the Office of State Long-Term Care Ombudsman is directed by law to identify, investigate and resolve complaints made by or on behalf of residents of long term care facilities relating to actions or omissions by providers or representatives of providers of long-term care services, other public or private agencies, guardians, or representative payees that may adversely affect the health, safety, welfare, of rights of the residents.¹⁴ The program, through its network of statewide volunteers, provides assistance to adults residing in long-term care facilities in an effort to secure and maintain the resident's quality of life.

Effective of Proposed Changes

HB 1401 contains three primary provisions:

Permissible Reasons for Resident Transfer or Discharge

- Provides that assisted living facilities licensed under Chapter 429, F.S., are required to permit facility residents to remain in the facility, and may not transfer/discharge a resident unless:
 - a) such transfer/discharge is necessary for the resident's welfare,
 - b) such transfer/discharge is appropriate because the resident's health has sufficiently improved,
 - c) the health or safety of other residents or facility employees would be endangered,
 - d) the resident has failed to provide payment for his or her stay, or
 - e) the facility ceases to operate.

Notice of Transfer or Discharge

- Requires a facility to provide 30 day advance notice to the resident prior to any proposed transfer/discharge, except where the transfer/discharge is necessary for either the resident's welfare or the health and safety of other residents or facility employees is endangered, whereupon a facility must provide notice "as soon as practicable" before the transfer/discharge.
- Instructs the Agency for Health Care Administration (AHCA) to develop a standard notice document, and specifies that such document must include a means for a resident to request the assistance of the local long-term care ombudsmen council to review the notice and receive assistance with initiating a fair hearing.
- Such notice must also detail the specific reason for discharge or transfer, the effective date of the transfer/discharge, the location to which the resident is being discharged/transferred, and a description of the resident's right to appeal.
- Provides that the notice of transfer/discharge must be transmitted to the local long-term care ombudsmen council within 5 business days of resident's signature, and the council shall review transfers/discharges within 7 days after a resident requests such review.

¹³ Ch.93-177, Laws of Florida

¹⁴ S. 400.0065, F.S.

- Specifies that notice of an emergency transfer/discharge must be made by telephone or in person, and directs the ombudsmen council to complete a review of such emergency transfer/discharge, when requested, within 24 hours.
- Requires the notice of transfer/discharge to be signed by a facility administrator (or designee) when the transfer/discharge is initiated by the facility, and by the resident's attending physician when a notice indicates a medical reason for transfer/discharge.

Fair Hearing

- Provides that a resident is entitled to a fair hearing to challenge a facility's proposed transfer/discharge any time within 90 days of receipt of notice to transfer/discharge.
- Specifies that a resident request for a fair hearing within the initial 10 days of receipt of notice stays the proposed transfer/discharge pending a hearing decision.
- Permits a facility to transfer/discharge a resident after 30 days of receipt of notice, pending a final hearing decision, if a fair hearing is not requested within the first 10 days of receipt of notice.
- Provides that emergency transfer/discharge may be implemented as necessary during the period of time after notice is provided and before a hearing decision is rendered.
- Directs the Department of Children and Family Services' Office of Appeals Hearings to conduct fair hearings pursuant to resident transfer/discharge disputes, and specifies that appeals may be made to the district court of appeal in the appellate district in which the facility is located.
- Provides that, in the event the hearing decision is favorable to the resident, such resident must be readmitted to the facility's first available bed.

C. SECTION DIRECTORY:

Section 1. Amends s. 429.28(1)(k), F.S., relating to resident bill of rights; specifying reasons for transfer or discharge from an assisted living facility.

Section 2. Creates s. 429.285, F.S., relating to resident transfer or discharge; providing definitions; specifying transfer or discharge requirements, providing notification provisions relating to types of transfers or discharges; providing fair hearing process.

Section 3. Amends s. 429.07(3)(b)(c), F.S., correcting a statutory cross-reference.

Section 4. Amends s. 429.31(1), F.S., correcting a statutory cross-reference.

Section 5. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

| General Revenue Fund | FY 2008-09 | FY 2009-10 |
|--------------------------------------------------------------------------------------------------|-------------------|-------------------|
| Salaries/Benefits (4 FTE \$36,608 Salary + \$13,400 Benefits) with 25% Lapse in First Year | \$150,024 | \$200,032 |
| Recurring Expenses | \$80,532 | \$80,532 |
| Nonrecurring Expenses | \$13,552 | |
| Nonrecurring Operating Capital Outlay | \$4,000 | |
| Personnel Assessment | \$1,592 | \$1,592 |
| | | |
| Subtotal Recurring General Revenue | \$232,138 | \$282,156 |
| Subtotal Nonrecurring General Revenue | \$17,552 | |
| | | |
| TOTAL General Revenue | \$249,690 | \$282,156 |

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

ALFs will incur a cost in providing the required notices and the cost of representing the facility in any requested hearings. The facility may choose to be represented at the hearing by the administrator, his designee or an attorney.

D. FISCAL COMMENTS:

According to the Department of Children and Family Services, the bill will create a significant workload for the Office of Appeal Hearings. In Fiscal Year 2006-07, the office completed 224 nursing facility discharge hearing requests. According to the Agency for Health Care Administration, there are 679 licensed nursing facilities with 18,000 beds. There are 2,583 licensed Assisted Living Facilities with 76,848 beds. Based on the department's experience with nursing facilities of 0.0125 requests per bed, the department projects a workload of 956 requests. This will require 4.00 full-time positions. There is no federal requirement for this process and no matching federal funding available to assist with this

cost. The office currently has 14 hearing officer positions. There has been a 25 percent increase in hearing requests in the last three fiscal years. The office has met this increase without additional staff. The office cannot continue to absorb increases in the number of hearing requests without additional staff.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This legislation does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Provides rule making authority for the Agency for Health Care Administration.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

At its March 18th, 2008 meeting, the Committee on Healthy Seniors adopted a strike-all amendment to HB 1401. In addition to reconciling several of the inconsistencies created by patterning certain portions of the legislation after similar provisions contained in Part II of Chapter 400, relating to nursing homes, the strike-all also:

- Removes references to a resident's ability to institute a fair hearing to challenge a proposed relocation or termination of residency by a facility;
- Clarifies within the resident bill of rights that a resident must receive at least 45 days written notice in advance of a proposed relocation or termination of residency, and directs facilities to maintain a written log of resident grievances to be available for inspection and maintained for at least two years;
- Specifies that relocation or termination of residency may occur where there is either a documented pattern of harmful and offensive behavior by a resident, or where the contract provided for under s. 429.24(1), F.S., between a licensee and resident expires on its own terms;
- Clarifies that relocation or termination of residency is appropriate where a resident has failed to provide payment for his or her stay in a facility following at least 30 days notice;

- Deletes the requirement for facilities to notify the Agency for Health Care Administration regarding any proposed relocation or termination of residency necessitated by changes in the physical plant of the facility that make the facility unsafe for such resident;
- Directs the Office of State Long-Term Care Ombudsman to compile and publish information relating to resident relocation and termination in its Long-Term Care Ombudsman annual report;
- Clarifies that, when requested by a resident, the local long-term care ombudsman council is responsible for reviewing a notice of proposed relocation or termination of residency within 5 business days of receipt of such request, or within 2 business days of receipt of such request in the event of an emergency relocation or transfer;
- Provides the Department of Children and Family Services with access to information maintained in the Department of Highway Safety and Motor Vehicles' Driver and Vehicle Database system for the purpose of conducting adult protective investigations;
- Clarifies that the Central Abuse Hotline is to transfer reports alleging the abuse of vulnerable adults by parties other than relatives, caregivers, or other household members to the appropriate County Sheriff's office, as they do pursuant to child protective investigations;
- Authorizes the Department of Children and Family Services, upon a good faith belief that a vulnerable adult lacks capacity, to file a petition to determine capacity in both emergency and nonemergency Adult Protection proceedings; and,
- Instructs the Department of Children and Family Services to adopt certain rules necessary to administer chapter 415, F.S.

The committee reported the bill favorably with a strike-all amendment.